

Dated

15<sup>th</sup> December

2014

EAST DEVON DISTRICT COUNCIL  
and  
DEVON COUNTY COUNCIL  
and  
WADDETON PARK LIMITED  
and  
TERRY ADAMS RESIDENTIAL LLP  
and  
WILLIAM MCKENNA LINDON TRAVERS

**AGREEMENT**

under section 106 of the  
Town and Planning Act 1990 (as amended)  
- relating to –  
land at former Gerway Nurseries, Sidmouth Road  
Ottery St Mary EX11 1PN  
Application Reference: 14/1227/MOUT

Stephens  
Scown  
Solicitors

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

**Relating to land at former Gerway Nursery Sidmouth Road Ottery St Mary EX11 1PN**

**Dated** 15<sup>th</sup> December 2014

**Parties**

- (1) **EAST DEVON DISTRICT COUNCIL** of Council Office Knowle Sidmouth Devon EX10 8HL ("the Council") and
- (2) **DEVON COUNTY COUNCIL** of County Hall Topsham Road Exeter Devon EX2 4QD ("the County Council")
- (3) **WADDETON PARK LIMITED** (Co. Regn. No. 05827399) of Greendale Court Clyst St Mary Exeter Devon EX5 1AW ("the First Owner")
- (4) **TERRY ADAMS RESIDENTIAL LLP** (Co. Regn. No. OC347417) of Greendale Court Clyst St Mary Exeter Devon EX5 1AW ("the Second Owner")
- (5) **WILLIAM MCKENNA LINDON TRAVERS** of Upper House Upper House Lane Shamley Green Guildford Surrey GU5 0SX ("the Third Owner")

**Introduction**

1. The Council is the local planning authority by whom the Obligations imposed by this Agreement shall be enforceable
2. The County Council is a local planning authority the highway authority and the education authority by whom the Obligations imposed by this Agreement shall be enforceable
3. The First Owner is the registered proprietor with title absolute under title number DN125291 of part of the Land subject to the entries disclosed on the Charges Register of the said title but otherwise free from incumbrances
4. The Second Owner is the registered proprietor with title absolute under title number DN125293 of part of the Land subject to the entries disclosed on the Charges Register of the said title but otherwise free from incumbrances

5. The Third Owner is the registered proprietor with title absolute under title number DN493818 of part of the Land subject to the entries disclosed on the Charges Register of the said title but otherwise free from incumbrances
6. The Council has resolved to grant planning consent for the Development subject to the prior completion of this Agreement to secure the benefits herein set out to mitigate against the impact of the Development

**NOW THIS DEED WITNESSES** as follows-

**1. Definitions**

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

<b>"1990 Act"</b>	means the Town and Country Planning Act 1990 as amended
<b>"Affordable Dwellings"</b>	means at least 35% of the total number of Dwellings (of which 5% of the total number of Affordable Dwellings are required to be suitable for disabled use meaning accessible and useable by wheelchair users) to be constructed on the Land as part of the Development including all parking spaces and residential curtilage associated with such Affordable Dwellings and used for Affordable Housing
<b>"Affordable Housing"</b>	means units of subsidised housing within the meaning of National Planning Policy Framework or any policy statement or circular that may supersede it
<b>"Affordable Rented Units"</b>	means homes available at a rent level of up to 80% of local market rent to include the service charge (where applicable) to be agreed in writing with the Council
<b>"the Application"</b>	means the application for outline planning permission submitted to the Council for the Development and registered by the Council and allocated reference number 14/1227/MOUT
<b>"Biodiversity Area"</b>	means the 18 metre strip of land along the northern part of the Development to be provided and maintained in

	accordance with the On Site Open Space Specification as an area to improve biodiversity
<b>"Chargee"</b>	means any mortgagee or chargee of the Registered Provider or of an Affordable Dwelling following any transfer or grant of a Shared Ownership Lease of an Affordable Dwelling by the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925
<b>"Commencement of Development"</b>	means the date on which any material operation (as defined in section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance demolition work archaeological investigations investigations for the purpose of assessing ground conditions remedial work in respect of any contamination or other adverse ground conditions erection of any temporary means of enclosure the temporary display of site notices or advertisements and similar expressions such as "Commence the Development" shall be interpreted in the same way
<b>"Common Housing Register"</b>	means in the case of Social Rented Units and Affordable Rent Units the register or list of applicants maintained by Devon Home Choice and in the case of Shared Ownership Units the register or list of applicants maintained by the Regional Homebuy Agent
<b>"Detailed Application"</b>	means an application for Detailed Approval
<b>"Detailed Approval"</b>	means approval of reserved matters submitted pursuant to the Planning Permission
<b>"Development"</b>	means the development of the Land for 'phased residential development (use class C3) of up to 45 dwellings with associated open space and infrastructure' as the same is more particularly described by the Application

<b>"Dispose Of"</b>	means a disposal by way of any transfer of a freehold interest or registrable leasehold interest in a Dwelling built pursuant to the Planning Permission
<b>"the Drawing"</b>	means the drawing annexed hereto and numbered 3003/002 Rev G
<b>"Dwelling"</b>	means any dwelling (including a house flat or maisonette) to be constructed on the Land pursuant to the Planning Permission
<b>"Eligible Persons"</b>	<p>means a person who is in housing need and unable to secure accommodation suitable for their needs in the open housing market within the District of East Devon ("the District") and who is registered on the Common Housing Register and who additionally satisfies one or more of the following criteria such criteria to be applied in the order of priority set out below</p> <ol style="list-style-type: none"> <li>(1) have been living in the District for the last three years, or</li> <li>(2) he is in full employment in the District working more than 16 hours per week, or</li> <li>(3) he has been resident in the District for periods totalling at least three of the last five years, or</li> <li>(4) he has a close family association with the District in that his mother father son daughter or sibling has been ordinarily resident in the District for a continuous period of five years immediately prior to the Affordable Dwelling in question being offered to them and where a caring dependency relationship can be demonstrated, or</li> <li>(5) he is ordinarily resident in the District</li> </ol>
<b>"Final Certificate"</b>	means the certificate issued by the Head of Planning following the Final Maintenance Inspection of the On Site

	Open Space confirming that the On Site Open Space has been maintained in accordance with the On Site Open Space Specification and that the plants and trees are in good health
<b>“Final Maintenance Inspection”</b>	means the inspection or inspections of the On Site Open Space conducted by the Head of Planning to ensure that the On Site Open Space has been maintained in accordance with the On Site 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
<b>“Habitat Mitigation Contribution”</b>	means the sum of £28,170 (Twenty Eight Thousand One Hundred and Seventy Pounds) towards mitigating the impact of the Development on the Pebblebed Heaths SAC / SPA
<b>“Head of Planning”</b>	means the Council’s head of planning services for the time being
<b>“Highway Works”</b>	means those works to form a new access and to narrow the carriageway to 4.8 metres at the wide point approximately 6.8 metres wide on the Sidmouth Road and create a 1.4/2 metre wide footway which will then link the Development to the town centre and all those works shown on the Drawing
<b>“Land”</b>	means the land principally at the former Gerway Nurseries Sidmouth Road Ottery St Mary as the same is shown for the purposes of identification only edged red on the Plan being the application site for the purposes of the Application
<b>“Local Connection”</b>	means someone living in the Parish of Ottery St Mary or failing that the District
<b>“Maintenance Period”</b>	means the period between the issue of the Practical Completion Certificate and the date the On Site 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 Planning’s discretion)

<b>"Management Company"</b>	means a company to be established or employed by the Owners the purpose of which will be (amongst other things) to manage and maintain the Open Space in accordance with the provisions in the Sixth Schedule hereto or as may be agreed in writing between the Owners and the Council
<b>"Management Scheme"</b>	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 Open Space in accordance with the Open Space Specification which may include at the Owners' own expense creation or employment of the Management Company
<b>"Monitoring Charge"</b>	means the sum of £2160 towards the Council's costs of monitoring and administering this Agreement
<b>"Nomination Agreement"</b>	means the agreement or an agreement substantially in the form of the nomination agreement set out in the Fifth Schedule to this Agreement and which governs the ability of the Council to nominate occupiers for the Affordable Dwellings
<b>"Obligations"</b>	means the planning obligations and restrictions contained in the Schedules to this Agreement
<b>"Occupation"</b>	means occupation of a Dwelling (except for the purposes of marketing) on a residential basis and "Occupy" or "Occupied" or "Occupancy" shall where the context so requires have the same meaning
<b>"On Site Open Space"</b>	means an area of at least 350sqm of informal public open space to be provided in the Development together with any other area of the Development available to the public but which do not form part of the curtilage of any Dwelling and the Biodiversity Area
<b>"On Site Open Space Specification"</b>	means the specification and the scheme for the detailed layout and the programme for the provision of all elements of and the maintenance of the On Site Open Space and the Biodiversity Area within the Development to be submitted to

	and approved in writing by the Council and once approved shall not be amended other than by agreement between the Owners and the Council
<b>"Open Market Unit"</b>	means a Dwelling to be constructed on the Land other than the Affordable Dwellings and reference to Open Market Units shall refer to any such unit in the plural
<b>"Open Space Contribution"</b>	means the sum of £96,553 (Ninety Six Thousand Five Hundred and Fifty Three Pounds) towards the provision, maintenance or enhancement of public open space within the vicinity of the Development
<b>"Owners"</b>	means where the context so requires the First Owner the Second Owner and the Third Owner
<b>"Perpetuity"</b>	means the period of 80 years from the date of this Agreement
<b>"the Plan"</b>	means the plan attached to this Agreement and numbered 130406 L01 01 Rev E
<b>"Planning Permission"</b>	means the outline planning permission subject to conditions substantially in the form of the draft annexed hereto granted pursuant to the Application and the expression the Planning Permission shall include all approvals (including approval of reserved matters) granted pursuant to it
<b>"Practical Completion Certificate"</b>	means the certificate or certificates issued by the Head of Planning once he is satisfied that the On Site Open Space has been completed
<b>"Primary School Education Contribution"</b>	means the sum of £127,817 (One Hundred and Twenty Seven Thousand Eight Hundred and Seventeen Pounds) as a financial contribution towards improved or additional primary school education facilities at the primary school which will provide primary school education for residents of the Development and being the sum that has been calculated by the County Council as required to enable the





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14 01 29 First issue - DCC

 Application boundary

Land at Gerway Nurseries, Ottery St Mary		E
Location Plan		DCC
130406 L01 01	1:1250 @ A3	MAY 2014

**CliftonEmerydesign**

Ground Floor Number 1, Broomfield Office Park, Fern Oak Close, Exeter, EX3 2JL  
T: 01392 300000 W: www.cliftonemerydesign.co.uk E: info@cliftonemerydesign.co.uk

DRAWING STATUS: **PLANNING**

This drawing is the property of CliftonEmerydesign and is not to be used for any other purpose without the written consent of CliftonEmerydesign. It is to be used for the purpose for which it was prepared and is not to be used for any other purpose without the written consent of CliftonEmerydesign.



Amended

## DRAFT DECISION

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



### TOWN AND COUNTRY PLANNING ACT 1990

#### GRANT OF PLANNING PERMISSION

<b>Applicant:</b>	Waddeton Park Ltd	<b>Application No:</b>	14/1227/MOUT
<b>Address:</b>	Former Gerway Nurseries Sidmouth Road Ottery St Mary EX11 1PN	<b>Date of Registration:</b>	16 May 2014
<b>Agent:</b>	PCL Planning Ltd	<b>Date of Decision:</b>	
<b>Address:</b>	Mr R Bailey 1st Floor 3 Silverdown Office Park Fair Oak Close Clyst Honiton Exeter EX5 2UX		
<b>Proposal:</b>	Phased residential development (use class C3) of up to 45 dwellings with associated open space and infrastructure (means of access only to be determined)		
<b>Location:</b>	Former Gerway Nurseries Sidmouth Road Ottery St Mary EX11 1PN		

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

1. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.  
(Reason - To comply with section 92 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 building (s), 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. A statement of compliance and details of all mitigation necessary to ensure that the development is undertaken in accordance with the submitted Phase 1 habitats survey

## DRAFT DECISION

and accompanying detailed species reports, shall be submitted to and agreed in writing by the Local Planning Authority prior to the commencement of development. The development shall proceed in accordance with the agreed statement and mitigation measures.

(Reason - To ensure the continued ecological status of the site in accordance National Guidance and Policy EN6 ( Wildlife Habitats and Features) of the adopted East Devon Local plan.)

4. Accompanying the submission of all reserved matter applications, tree protection details (broadly in accordance with the Report by Land Mark Trees referenced SLP/GRW/AIA/01a - dated 9/05/2014), to include the protection of hedges and shrubs together with a shade cast assessment shall be submitted to and approved in writing by the Planning Authority. These shall adhere to the principles embodied in BS 5837:2012 and shall indicate exactly how and when the trees will be protected during the site works. Provision shall also be made for supervision of tree protection by a suitably qualified and experienced arboricultural consultant and details shall be included within the tree protection statement. The development shall be carried out strictly in accordance with the agreed details.

In any event, the following restrictions shall be strictly observed:

(a) No burning shall take place

(b) No trenches for services or foul/surface water drainage shall be dug within the crown spreads of any retained trees (or within half the height of the trees, whichever is the greater) unless agreed in writing by the Local Planning Authority. All such installations shall be in accordance with the advice given in Volume 4: National Joint Utilities Group (NJUG) Guidelines For The Planning, Installation And Maintenance Of Utility Apparatus In Proximity To Trees (Issue 2) 2007.

(c) No changes in ground levels or excavations shall take place within the crown spreads of retained trees (or within half the height of the trees, whichever is the greater) unless agreed in writing by the Local Planning Authority.

(Reason - To ensure retention and protection of trees on the site 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), D4 (Landscape Requirements) and D5 (Trees on Development Sites) of the East Devon Local Plan.)

5. No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority. The development shall be carried out at all times in strict accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.  
(Reason - To ensure that an appropriate record is made of archaeological evidence that may be affected by the development in accordance with Policy EN8 (Proposals affecting sites which may potentially be of archaeological importance) of the adopted East Devon Local plan.).
6. The development hereby permitted shall be undertaken in accordance with the submitted Flood Risk Assessment prepared by Teignconsult (reference number 373/FRA2 V4 - 09.05.2014)

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(Reason - To secure the development in accordance with the submitted Flood Risk Assessment and ensure that suitable mitigation is provided. In accordance with National Planning Guidance.)

7. 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.)
8. A Construction and Environment Management Plan (CEMP) shall be submitted to 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 details in respect of at least the following matters :
  - Air Quality,
  - Water Quality,
  - Lighting,
  - Noise and Vibration,
  - Pollution Prevention and Control,
  - Any Road Closures,
  - Hours during which Delivery and Construction traffic will Travel to and from the site
  - Compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases
  - Areas on-site where delivery vehicles and construction traffic will load or unload together with confirmation that no construction traffic or delivery vehicles will park on the County highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority
  - Details of wheel washing facilities and obligations
  - The proposed route of all construction traffic exceeding 7.5 tonnes
  - Details of the amount and location of construction worker parking.
  - Photographic evidence of the condition of adjacent public highway prior to commencement of any work
  - All 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 in accordance with Good Practice and guidance in the National Planning Policy Framework.)

9. In the event of any contamination of soil and/or ground or surface water be discovered during excavation of the site or development, the Local Planning Authority shall be contacted immediately. Site activities in the area affected shall be temporarily suspended until such time as a method and procedure for addressing the contamination is agreed upon in writing with the Local Planning Authority and/or other regulating bodies.

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(Reason - To ensure that any contamination existing and exposed during the development is identified and remediated in accordance with Good Practice and guidance in the National Planning Policy Framework.)

10. Visibility splays shall be provided, laid out and maintained for that purpose at the site access in accordance with the attached diagram 3003/002 Rev:G where the visibility splays provide intervisibility between any points on the X and Y axes at a height of 0.6 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway (identified as X) shall be 2.4 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 43 metres in both directions.  
(Reason - To provide adequate visibility from and of emerging vehicles in accordance with Policy TA7 (Adequacy of Road Network and Site Access) of the East Devon Local Plan.)
11. No part of the development hereby approved shall be commenced until details of the treatment of the visibility splays required by condition 1 above and the means of defining the boundary between the visibility splay and the remainder of the application site have been submitted to and approved by the Local Planning Authority.  
(Reason - To ensure that the visibility splays are provided to a standard acceptable to the Local Planning Authority in accordance with Policy TA7 (Adequacy of Road Network and Site Access) of the East Devon Local Plan.)
12. The site access shall be constructed, laid out and maintained thereafter in accordance with the attached diagram 3003/002 Rev: G.  
  
The site access road shall be widened and maintained thereafter to not less than 5.5 metres for the first 20 metres back from its junction with the public highway and shall be provided with 10 metre kerb radii at the junction  
(Reason - To provide a satisfactory access to the site, to protect the pedestrian priority on the footway and to minimise congestion of the access in accordance with Policy TA7 (Adequacy of Road Network and Site Access) of the East Devon Local Plan.)
13. The existing access shall be effectively and permanently closed in accordance with details which shall previously have been submitted to and approved by the Local Planning Authority as soon as the new access is capable of use  
(Reason - To prevent the use of a substandard access and to minimise the number of accesses on to the public highway in accordance with Policies D1 (Design and Local Distinctiveness) and TA7 (Adequacy of Road Network and Site Access) of the East Devon Local Plan.)
14. No other part of the development hereby approved shall be commenced until the, access, parking facilities, visibility splays, turning area and access drainage have been provided and maintained in accordance with details that shall have been submitted to, and approved in writing by, the Local Planning Authority and retained for that purpose at all times  
(Reason - To ensure that adequate facilities are available for the traffic attracted to the site in accordance with Policy TA7 (Adequacy of Road Network and Site Access) of the East Devon Local Plan.)

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15. In accordance with details that shall previously have been submitted to, and approved by, the Local Planning Authority, provision shall be made within the site for the disposal of surface water so that none drains on to any County Highway  
(Reason - In the interest of public safety and to prevent damage to the highway in accordance with Policy TA7 (Adequacy of Road Network and Site Access) of the adopted East Devon Local Plan.)
16. The development hereby approved shall not be carried out otherwise than in accordance with a phasing programme which shall previously have been submitted to and approved by the Local Planning Authority in writing.  
(Reason -To ensure the proper development of the site in accordance with Policies D1 (Design and Local Distinctiveness) and TA7 (Adequacy of Road Network and Site Access) of the East Devon Local Plan.)
17. No part of the development hereby permitted shall be first occupied before 1st April 2015.  
(Reason -To allow the necessary improvements to foul sewerage network to be programmed by the Drainage Authority in accordance with National Planning Policy Guidance.)

### 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.

This permission shall be read in accordance with the signed Section 106 Agreement dated .....

The plans relating to this application are listed below:

3003/002 REV G	Proposed Site Plan	02.09.14
130406 L01 01	Location Plan	21.05.14



Service Lead - Planning

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.

## **DRAFT DECISION**

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



	Development to proceed
<b>"Provided"</b>	means in the context of the provision of Affordable Dwellings on the Land substantial completion of the Affordable Dwellings fitted out so that they are immediately available for residential occupation AND the transfer of the Affordable Dwellings to a Registered Provider in accordance with the terms of a Sale Contract
<b>"Registered Provider"</b>	means a registered provider of social housing as defined in section 80 of the Housing and Regeneration Act 2008 and registered as a non-profit organisation in accordance with section 115(1)(a) of that Act as approved by the Council
<b>"Remedial Notice"</b>	means the notice or notices issued by Head of Planning either prior to or during the Maintenance Period (if appropriate) requiring the Owners to carry out any works that he considers to be necessary for the On Site Open Space and / or the Biodiversity Area 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
<b>"Sale Contract"</b>	means a contract for the sale and purchase of the Affordable Dwellings and the land on which they are to be built entered into between the Owners and a Registered Provider
<b>"Secondary School Education Contribution"</b>	means the sum of £123,120 (One Hundred and Twenty Three Thousand One Hundred and Twenty Pounds) as a financial contribution towards improved or additional secondary school education facilities at The King's School Ottery St Mary which will provide second school education for residents of the Development and being the sum that has been calculated by the County Council as required to enable the Development to proceed or in the event the County Council have not secured the capital resources necessary to expand The King's School as evidenced by the County Council having a binding commitment to proceed with the

	proposed extension at the date of Commencement of Development then the Owners shall pay in the alternative the financial sum of £15,580 (Fifteen Thousand Five Hundred and Eighty Pounds) as a financial contribution towards the mitigation of potentially having to transport secondary school children who were unable to attend school at The King's School to attend the next nearest secondary school in Honiton
<b>"Shared Ownership Lease"</b>	means a long shared ownership lease (as defined in section 622 of the Housing Act 1985 or successor provision) with a Registered 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 pays rent on the remaining unsold equity and where additional share of the equity can be purchased provided that no more than 80% of the equity can be purchased
<b>"Shared Ownership Units"</b>	means those Affordable Dwellings to be let by way of Shared Ownership Lease and the expression Shared Ownership Units shall be construed accordingly
<b>"Social Rented Units"</b>	means housing available to rent on an assured tenancy or assured shorthold tenancy at a rent level not more than the Homes and Communities Agency guideline target rents recommended for the area and the type of accommodation (as may be set from time to time through the National Rent Regime) and the expression Social Rented Unit shall be construed accordingly
<b>"Staircasing Receipts"</b>	means any monies received by the Owner or Registered Provider (as appropriate) in respect of a Shared Ownership Unit as a result of the leaseholder exercising a right to increase their share of the equity (and any part of such monies)
<b>"Working Days"</b>	means a day other than a Saturday, Sunday or Public Bank

## Holiday in England

### **2. Construction of this Agreement**

- 2.1 Where reference is made to any clause paragraph schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule or recital in this Agreement
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeably in that manner
- 2.4 Where more than one person is obliged to observe or perform an Obligation the Obligation can be enforced against all such persons jointly and against each individually unless there is an express provision otherwise
- 2.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validly from it
- 2.6 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and references to any local authority shall include the successors to its various statutory functions

### **3. Legal Basis**

- 3.1 This Agreement is made as a deed pursuant to Section 106 of the 1990 Act
- 3.2 The Obligations imposed upon the Owners under this Agreement create planning obligations pursuant to section 106 of the 1990 Act and are enforceable by the Council and/or the County Council as the local planning authorities against the Owners and their successors in title

### **4. Conditionality**

- 4.1 This Agreement is conditional upon the Planning Permission being granted pursuant to the Application

- 4.2 If the Planning Permission granted pursuant to the Application should expire before Commencement of Development or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect

**5. The Owners' Covenants with the Council**

The Owners covenant with the Council to observe and perform the Obligations contained in the First Schedule

**6. The Owners' Covenants with the County Council**

The Owners covenant with the County Council to observe the Obligations contained in the Second Schedule

**7. The County Council's Covenant with the Owners**

The County Council covenants with the Owners to observe the covenants contained in the Third Schedule

**8. The Council's covenants with the Owners**

The Council covenants with the Owners to observe the covenants contained in the Fourth Schedule

**9. Miscellaneous**

- 9.1 Upon the completion of this Agreement the Owners shall pay the reasonable legal costs of the Council and the County Council incurred in the negotiation preparation and execution of this Agreement

- 9.2 No provisions of this Agreement are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to this Agreement except that the application of that Act shall not prevent all or any of the future successors in title or to the statutory functions of any of the parties to this Agreement from being able to benefit from or to enforce any of the Obligations in this Agreement

- 9.3 This Agreement shall be registerable as a local land charge by the Council

- 9.4 Where the agreement approval consent or expression of satisfaction is required by one party from another party under the terms of this Agreement such agreement

approval consent or expression of satisfaction shall not be unreasonably withheld or delayed

9.5 Any such agreement approval consent or expression of satisfaction shall unless otherwise stated in this Agreement be given on behalf of the Council by the Head of Planning

9.6 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party and shall be deemed to have been served the day after it has been sent

9.7 The Council will upon the written request of the Owners at any time after the Obligations 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

9.8 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement

9.9 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to Commencement of Development

9.10 No person shall be liable for any breach of any of the Obligations after they shall have parted with their interest in the part of the Site where the breach has occurred but without prejudice to liability for any subsisting breach arising prior to parting with such interest

9.11 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 Planning Permission) granted (whether or not on appeal) after the date of this Agreement

9.12 No owner or occupier of a Dwelling or their mortgagee (whether or not a mortgagee in possession) shall be liable for any breach of the Obligations given pursuant to this Agreement SAVE THAT this clause shall not apply in respect of the Affordable Dwellings

9.13 Any financial contribution payable pursuant to this Agreement shall be Index-Linked in accordance with Clause 11 hereto

9.14 No mortgagee of the Land (as opposed to a mortgagee of a Dwelling) shall be liable for any breach of the Obligations unless a mortgagee in possession and no mortgagee shall be liable for any pre-existing breach SAVE THAT this clause shall not apply in respect of any of the Land upon which the Affordable Dwellings are constructed nor any purchasers from a mortgagee in possession who shall be bound by the terms of this Agreement

9.15 All financial contributions payable pursuant to this Agreement have been calculated on the basis that the Development will deliver 45 Dwellings and in the event the Development delivers less than 45 Dwellings the amount of the financial contributions payable pursuant to this Agreement shall be reduced pro rata

#### 10. 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

#### 11. Indexation

Where any provision of this Agreement provides for any sum to be paid by the Owners it shall be increased only in accordance with the indexation provisions of this clause and at the date or dates upon which the increased sum is calculated the following formula shall be used

$$C = \text{£Y} \times \frac{B}{A}$$

where

**A** is the value of the index specified in the provision concerned or if none is specified the BCIS All In Tender Price Index last published before the date hereof

**B** is the value of such index last published before the said calculation

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

£Y is the sum to which this formula is applied

provided that if the said index shall cease to exist there shall be substituted such other index of building costs as shall be specified by the Council acting reasonably

**12. 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

**13. 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 Land 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

**14. Delivery**

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

**15. Arbitration**

Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing in any way arising out of or connected with the subject matter of this Agreement shall be referred to the decision of a single arbitrator to be agreed between the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force but WITHOUT PREJUDICE to the ability of the Council and / or County Council to take such action as is deemed appropriate to secure compliance with the terms of this Agreement

**16. Provision of Information**

The Owners shall provide such information (or allow access to the same) as is reasonably requested by the Council or the County Council to assist and enable the Council or the County Council to determine whether the Obligations herein expressed have been or are being complied with

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

## **FIRST SCHEDULE**

### **Obligations by the Owners to the Council**

#### **1. Affordable Housing**

**1.1** Prior to Commencement of the Development (and as part of a Detailed Approval) the Owners and the Council shall agree the location type and tenure of the Affordable Dwellings and shall not Commence the Development until the Detailed Approval has been given

**1.2** To give at least 10 Working Days written notice to the Council as soon as 50% and 75% Occupancy is reached of the Open Market Units

**1.3** (i) To construct the Affordable Dwellings in accordance with the Detailed Approval pursuant to paragraph 1.1 above and so as to be indistinguishable from Open Market Units and to Code for Sustainable Homes Level 3 and the Homes and Communities Agency's Design and Quality Standards applicable at the time of construction and thereafter to transfer the completed Affordable Dwellings to a Registered Provider in accordance with sub-paragraph (iii) hereto

(ii) Subject to the paragraphs below the Owners and/or a Registered Provider as appropriate shall not at any time permit the Affordable Dwellings to be occupied other than as Affordable Housing by an Eligible Person and their dependents and who have a Local Connection

(iii) To have Provided 50% of the Affordable Dwellings to the Registered Provider prior to completion of 50% of the Open Market Units and to have Provided all the Affordable Dwellings to the Registered Provider prior to completion of 75% of the Open Market Units

(iv) To give one month's written notice to the Council of the date when the Affordable Dwellings (or any of them) shall be available for Occupation



- (v) To ensure that the Affordable Dwellings will remain as such in Perpetuity subject to the provisions of paragraph 1.4 below
- (vi) To ensure that all the Affordable Dwellings 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 Dwellings without a Registered 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
- (vii) To provide 10% of the Affordable Dwellings as Social Rented Units 60% of the Affordable Dwellings as Affordable Rented Units and 30% of the Affordable Dwellings as Shared Ownership Units unless agreed otherwise in writing by the Council and together of which 5% shall be suitable for disabled use meaning accessible and useable by wheelchair users
- (viii) 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

1.4 The Chargee prior to seeking to dispose of any Affordable Dwelling(s) pursuant to any default under the terms of its mortgage or charge shall give prior notice in writing to the Council of its intention to dispose and

- (i) In the event that the Council responds within six weeks from receipt of the notice indicating that arrangements for the transfer of the Affordable Dwelling(s) can be made in such a way as to safeguard them as Affordable Dwelling(s) then the Chargee shall cooperate with such arrangements and use its reasonable endeavours to secure such transfer
- (ii) If the Council or any other person cannot within six weeks of the date of service of its response under paragraph 1.4 (i) secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 1.4 the Chargee shall be entitled to dispose of the Affordable Dwelling(s) as Open Market Unit(s) free of the restriction set out in this paragraph 1

PROVIDED THAT at all times the rights and obligations in paragraph 1.4 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 interests of the Chargee in respect of monies outstanding under the charge or mortgage

1.5 Where the number of Dwellings to be constructed on the Land differs from the 45 permitted by the Planning Permission either pursuant to the Detailed Approval or by virtue of any other amendment or modification thereto with the result that the number of Dwellings is increased or reduced then the number of Affordable Dwellings to be provided under paragraph 1.3 shall be recalculated so as to ensure that at all times there shall be provided no less than 35% of the Dwellings as Affordable Dwellings of which 10% shall be Social Rented Units 60% Affordable Rented Units and 30% Shared Ownership Units

1.6 In relation to a Shared Ownership Unit the obligations of this paragraph 1 of the First Schedule shall not apply where the owner of 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) and 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

1.7 In the event of any Shared Ownership Units being released from the Affordable Housing restrictions herein contained by virtue of the Owner exercising their option to purchase 100% of the equity in the said unit the Owner shall provide the District Council with details of Staircasing Receipts from the said Shared Ownership Unit and in co-operation with the District Council reach agreement 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 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

## **2. Monitoring Charge**

2.1 Prior to the Commencement of Development to pay to the Council the Monitoring Charge and for the avoidance of doubt the provisions of Clause 10 shall not apply to this sum

## **3. Contributions**

3.1 Prior to the Commencement of Development to pay to the Council the Habitats Mitigation Contribution and not to permit or cause Commencement of Development until the Habitats Contribution has been paid to the Council

3.2 Prior to the Occupation of any of the Dwellings to pay to the Council 50% of the Open Space Contribution and not to permit or cause Occupation of any of the Dwellings until the Habitats Contribution has been paid to the Council

3.3 Prior to the Occupation of 50% of the Dwellings to pay to the Council the remaining 50% of the Open Space Contribution and not to permit or cause Occupation of 50% of the Dwellings until the remaining 50% of the Open Space Contribution has been paid to the Council

#### 4. On Site Open Space and Biodiversity Area

4.1 Prior to Commencement of the Development (and as part of a Detailed Application) the Owners and the Council shall agree the location dimension and boundaries of the On Site Open Space and the Biodiversity Area

4.2 Prior to Commencement of the Development (and as part of a Detailed Application) the Owners shall submit to the Council for written approval the On Site Open Space Specification

4.3 To provide the areas of On Site Open Space and the Biodiversity Area in accordance with the programme and detail approved by the Council pursuant to paragraph 4.1 and at all times in accordance with the approved On Site Open Space Specification

4.4 Within fourteen (14) days of completion of the On Site Open Space and the Biodiversity Area pursuant to paragraph 4.3 above the Owners shall notify the Head of Planning in writing of details of their designated contact for queries regarding the On Site Open Space and the Biodiversity Area and requesting an inspection following which the Head of Planning shall issue either the Practical Completion Certificate or a Remedial Notice which shall be complied with within 28 days following which the Owners shall request a further inspection by the Head of Planning following which the Head of Planning shall issue a Practical Completion Certificate or a Remedial Notice and such process is to be repeated until the Practical Completion Certificate is issued

- 4.5 Following the issue of the Practical Completion Certificate the Owners shall maintain the On Site Open Space and the Biodiversity Area in accordance with the On Site 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 to comply with any Remedial Notice reasonably served by the Council
- 4.6 If the Owners do not comply with the requirements of any Remedial Notice to the Council's satisfaction as required by this paragraph 4 of this Schedule the Council may after giving the Owners 14 days' written notice of the works it intends to carry out and the Owners failing to carry out the works within that period enter upon the Land and themselves carry out those works and the cost of these works shall be paid by the Owners to the Council
- 4.7 One month prior to the expiry of the Maintenance Period (or such shorter period as agreed to pursuant to paragraph 4.5 above) the Head of Planning will carry out the Final Maintenance Inspection following which the Head of Planning shall either issue the Final Certificate for the On Site Open Space and the Biodiversity Area or a Remedial Notice which shall be complied with within 28 days following which the Owners shall request a further inspection by the Head of Planning following which the Head of Planning shall issue the Final Certificate or a Remedial Notice and such process is to be repeated until the Final Certificate is issued
- 4.8 Following the issue of the Final Certificate for the On Site Open Space and the Biodiversity Area and in any event no later than Occupation of 90% of the Dwellings to transfer the On Site Open Space and Biodiversity Area to the Management Company in accordance with the Sixth Schedule hereto and thereafter the On Site Open Space and the Biodiversity Area shall be maintained in perpetuity in accordance with the maintenance regime set out in the On Site Open Space Specification

## **SECOND SCHEDULE**

### **Covenants by the Owners to the County Council**

1. Prior to Occupation of the first Dwelling to pay to the County Council 50% of the Primary School Education Contribution and the Secondary School Education Contribution
2. Prior to Occupation of more than 50% of the Dwellings to pay to the County Council the balance of the Primary School Education Contribution and the Secondary School Education Contribution
3. Prior to Commencement of Development to enter into an agreement under sections 278 and 38 of the Highways Act 1980 (or as may be necessary) with the County Council and all other parties deemed necessary by the County Council and in a format reasonably required by the County Council to secure and deliver the Highway Works
4. Not to allow the Occupation of any Dwelling until the Highway Works have been completed to the reasonable satisfaction of the County Council

### **THIRD SCHEDULE**

#### **Covenants by the County Council to the Owners**

1. To use the financial contributions paid pursuant to this Agreement for the purposes contained within this Agreement
2. If a financial contribution or any part thereof has not been spent or committed by the County Council within 10 years from the date it was paid then the County Council shall refund the financial contribution or uncommitted part thereof together with interest from the date of original payment to the date of repayment at the rate of the higher of either 0% or (if greater) at one per cent below Barclays Bank Plc base rate from time to time in force thereon to the person by whom the payment was made and shall upon the written request of the said person make available such information as the said person might reasonably request

### **FOURTH SCHEDULE**

#### **Covenants by the Council to the Owners**

1. To use the financial contributions paid pursuant to this Agreement for the purposes contained within this Agreement
2. If a financial contribution or any part thereof has not been spent or committed by the Council within 10 years from the date it was paid then the Council shall refund the financial contribution or uncommitted part thereof together with interest from the date of original payment to the date of repayment at the rate of the higher of either 0% or (if greater) at one per cent below Barclays Bank Plc base rate from time to time in force thereon to the person by whom the payment was made and shall upon the written request of the said person make available such information as the said person might reasonably request

## FIFTH SCHEDULE

### Draft Nomination Agreement

#### NOMINATION AGREEMENT IN RESPECT OF LAND AT FORMER GERWAY NURSERIES, SIDMOUTH ROAD OTTERY ST MARY EX11 1PN

THIS NOMINATION AGREEMENT is made the                      day of                      2013

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 [XX] units which are subject to the  
Transfer to the Registered Provider dated  
[XX XX 2013] and which shall be made

available as Affordable Housing (as defined in the Section 106 Agreement) and which shall comprise Affordable Rented Units Social Rented Units and Shared Ownership Units as defined and delivered pursuant to the Section 106 Agreement;

"Common Housing Register"

means in the case of Affordable Rented Units and Social Rented Units the register or list of applicants maintained by Devon Home Choice and in the case of Shared Ownership Units the register or list of applicants maintained by the Regional HomeBuy Agent;

"Designated Person"

means a person who is an Eligible Person and who has a Local Connection

"District"

means the administrative area of EDDC

"EDDC"

means East Devon District Council

"Eligible Person"

means a person who is in housing need and unable to secure accommodation suitable for their needs in the open housing market within the District and who is registered on the Common Housing Register and who additionally satisfies one or more of the following criteria such criteria to be applied in the order of priority set out below

- (1) have been living in the District for the last three years, or
- (2) he is in full employment in the District working more than 16 hours per week, or
- (3) he has been resident in the District for periods totalling at least three of the last five years, or
- (4) he has a close family association with

	<p>the District in that his mother father son daughter or sibling has been ordinarily resident in the District for a continuous period of five years immediately prior to the Affordable Dwelling in question being offered to them and where a caring dependency relationship can be demonstrated, or</p> <p>(5) he is ordinarily resident in the District</p>
"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);
"Local Connection"	means someone living in the Parish of Ottery St Mary or failing that the District
"Nomination Period"	means the period of eighty (80) years from the date of this Agreement;
"Nomination Right"	<p>means the right referred to in the Section 106 Agreement and conferred in clause 5 of this Nomination Agreement for EDDC to</p> <p>(a) nominate Designated Persons to occupy the Affordable Dwellings during the Nomination Period; or</p> <p>(b) allow a Registered Provider to allocate Designated Persons to occupy the Affordable Dwellings in accordance with Devon Home Choice or Regional Homebuy Agent during the Nomination Period;</p>
"Parties"	means [insert RP name] and EDDC and "Party" shall be construed accordingly;
"Section 106 Agreement"	means the agreement dated [insert date] and made pursuant to Section 106 Town and



Country Planning Act 1990 between (1) East Devon District Council, (2) Devon County Council, (3) Waddeton Park Limited (4) Terry Adams Residential LLP (5) William McKenna Lindon Travers which makes provision for affordable housing on land at former Gerway Nurseries, Sidmouth Road Ottery St Mary EX11 1PN

- 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 Dwellings available for sale to or rent by (as appropriate) Designated 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 Designated 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 Designated 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 Designated 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 Designated Persons to occupy the Affordable Dwelling.

### **Offer of accommodation to Designated Persons**

- 5.5 The Registered Provider shall within ten working days of receipt of the names of the three Designated Persons pursuant to clauses 5.3 or 5.4 above have the reasonable right of interview and (on reasonable grounds) rejection of any prospective Designated Person so nominated by EDDC.
- 5.6 Where the Registered Provider:
- (a) does not reject all of the prospective Designated Persons nominated by EDDC;
  - or
  - (b) where it does reject a Designated 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 Designated Person
- 5.7 Where EDDC has nominated a Designated Person(s) the Registered Provider shall as soon as practicable notify EDDC if:
- (a) the Registered Provider rejects any Designated Person(s) nominated by EDDC;
  - or
  - (b) if any Designated 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 Designated 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 Designated Persons nominated to an Affordable Dwelling by EDDC are rejected by the Registered Provider and such reasons are considered reasonable by EDDC;

or

(b) a Designated 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 Designated 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 Designated Person the Registered Provider may let the Affordable Dwelling free from the Nomination Rights to any Designated 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 MORTGAGEE EXCLUSION

11.1 Nothing in this Agreement shall bind

11.1.1 any mortgagee or charges of a Registered Provider holding a charge on such Affordable Dwelling(s) nor any receiver appointed pursuant to the Law of Property Act 1925 any of whom may have first complied with their obligations contained in paragraph 1.4 of Schedule 1 of the Section 106 Agreement deal with or dispose of any Affordable Dwelling(s) free from the covenants and obligations set out in this Agreement

11.1.2 apply to any Affordable Dwelling(s) which are managed transferred leased or otherwise disposed of by any mortgagee referred to in 11.1.1 above or by any receiver appointed pursuant to the Law of Property Act 1925 to the intent (for the avoidance of doubt) that any person deriving title through under or from such mortgagee or receiver and all successors in title thereafter shall not be bound by the covenants and obligations set out in

this Agreement provided that the obligations contained in paragraph 1.4 of Schedule 1 of the Section 106 had first been complied with

- 11.1.3 cease to apply to any Affordable Dwelling(s) which a Registered Provider disposes of pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under Section 16 of the Housing Act 1996 or any similar or substitute right as applies to the Affordable Dwelling(s) or any of them from time to time
- 11.1.4 cease to apply to any Affordable Dwelling(s) which a Registered Provider sells to a tenant pursuant to a voluntary grant scheme under Section 21 of the Housing Act 1996 or any amendment or replacement thereof
- 11.1.5 cease to apply to any Affordable Dwelling(s) in respect of which a shared ownership lease has been granted or where any other shared ownership arrangements equity percentage arrangements or shared ownership trust (as the same are defined in s70 Housing and Regeneration Act 2008) have been entered into but only where a Registered Provider has disposed of 100% of the equity in such units / under the terms of such lease arrangements or trust

## SIXTH SCHEDULE

### Management Company Provisions

The Owners hereby covenant,

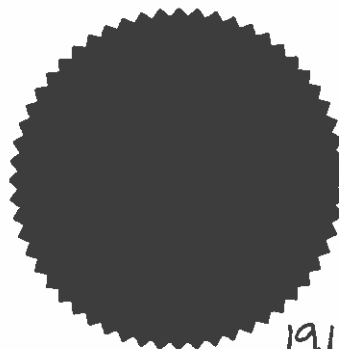
1. Not to Dispose Of any Dwelling or Occupy or permit the Occupation of any of the Dwellings until such time as the Owners have obtained the Council's approval to the Management Scheme for the Dwellings permitted by the Detailed Approval and following the Council's approval of the Management Scheme the 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.

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 )

[Redacted Signature]

Authorised Signatory



19123

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

[Redacted Signature]

County Solicitor

A Duly Authorised Officer

Document Number

45695



SIGNED as a DEED by  
WADDETON PARK LIMITED  
Acting by Terence Charles Adams, a director

[Redacted Signature]

Director

Witness Signature

Witness Name

Witness Address

Witness Occupation

SIMON SEAR-PARKINS

Waterman House

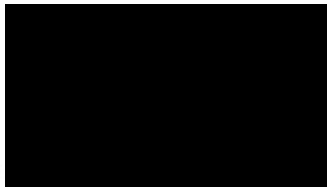
Winfance Taunton ME1AP

Chartered Surveyor



SIGNED as a DEED by  
TERRY ADAMS RESIDENTIAL LLP  
acting by two members

)  
)  
)



Member



Member

SIGNED as a Deed by  
WILLIAM MCKENNA LINDON TRAVERS  
in the presence of :

)  
)  
)

Witness Signature

Witness Name

Ms Susan W. Jones

Witness Address

20 Albion Street, London

Twickenham, Surrey TW20 6BT

Witness Occupation

Accountant