

DATED _____ 20[]

NORTH DEVON DISTRICT COUNCIL

and

[]

PLANNING OBLIGATION BY AGREEMENT

UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990

Relating to

[]

Legal Services
North Devon Council
PO Box 379
Barnstaple
EX32 2GR

Planning Application Ref: **PD/[]/[]**

File Ref: **LS/[]/[]**

DCC Ref: []

THIS PLANNING OBLIGATION BY AGREEMENT is made the day of
Two Thousand and []

PARTIES

- (1) **NORTH DEVON DISTRICT COUNCIL** of Lynton House, Commercial Road, Barnstaple, Devon EX31 1DG (“**District Council**”)
- (2) **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter, EX2 4QD (“**County Council**”)
- (3) [] of [] (“ the **[First] Owner**”)
- (4) [] of [] (“ the **[Second] Owner**”)
- (5) [] (Co. Regn. No. []) of [] (“**the Mortgagee**”)
- (6) [] (Co. Regn. No. []) of [] (“**the Applicant**”)
- (7) [] (Co. Regn. No. []) of [] (“**the Developer**”)

BACKGROUND

- A The District Council is the Local Planning Authority for the District of North Devon for the purposes of the 1990 Act for the area in which the Application Land is situated.
- B The County Council is the Education Authority and the Highways Authority for the area in which the Application Land is situated.
- C The **[First] Owner** is the Freehold owner of the Application Land comprised in Title No. DN[] at the Land Registry shown edged [] on the Location Plan (being **[the whole of/a part of]** the land comprised in the said title).
- D The **[Second] Owner** is the Freehold owner of the Application Land comprised in Title No. DN[] at the Land Registry shown edged [] on the Location Plan (being the **[the whole of/a part of]** the land comprised in the said title).
- E The Mortgagee has an interest in the Application Land by virtue of a legal charge dated [] and referred to at entries nos [] and [] in the Charges Register of title number DN[].
- F The Owner has submitted the Application to the District Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

G The parties are satisfied that the restrictions and provisions contained in this Deed are necessary to make the Development acceptable in planning terms, are directly related to the Development and are fairly and reasonably related in scale and in kind to the Development.

NOW THIS DEED WITNESS AS FOLLOWS

1 Interpretation

1.1 In this Agreement unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

1990 Act means the Town and Country Planning Act 1990 and all subsequent amendments thereto

Application means the planning application made to the District Council for Planning Permission on the Application Land registered on [] under planning reference number []

Application Land means the land shown edged [] on the Location Plan

Chargee means a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Dwellings

Commence Development means the occurrence of 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 Deed 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, site survey works, laying out or pegging out works, erection of temporary means of enclosure, the temporary display of site notices or advertisements, and cognate expressions shall be construed accordingly

Development means the development as defined in the Application and the Planning Permission and includes any part or parts thereof

District means the administrative area of North Devon District Council

Dwelling means any dwelling (including a house, bungalow, flat or maisonette) forming part of the Development

Indexation Formula means increased in accordance with the following indexation formula: $C = \text{£Y} \times B/A$

Where:

A is the value of the BCIS Index last published before the date of this Deed;

B is the value of the BCIS Index last published before the relevant contribution has been paid;

C is the contribution to be paid; and

£Y is the amount of the relevant contribution as stated in this Deed

Index Linked means the payment of the sum specified together with any further amount due following application of the Indexation Formula to that sum

Location Plan means the plan showing the Application Land, annexed to this Agreement

Occupation means the occupation of a Dwelling or part of a Dwelling for residential purposes (which for the avoidance of doubt shall exclude occupation for the purposes of construction, fitting out, decoration, marketing and site security operations) and “Occupant”, “Occupy”, “Occupier” and “Occupied” shall be construed accordingly

Planning Permission means the planning permission issued pursuant to the Application

Proper Officer means the District Council’s [and the County Council’s] officer who may be nominated from time to time by the District Council [and the County Council] to perform the functions required by this agreement

Section 73 Permission means planning permission issued following any new planning application made in respect of the Development pursuant to section 73 of the 1990 Act

2 Construction of this Deed

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 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 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally 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 validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and:
- (a) in the case of the Owner this includes successors in title in respect of their interests in each and every part of the Application Land; and
 - (b) in the case of the District Council **and/or the County Council** the successor to **its/their respective** statutory functions.
- 2.7 Any covenant in this Deed whereby a party is not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done.
- 2.8 The clause headings contained in this Deed are indicative of the meaning and intent of the clauses to which they respectively refer and are intended to assist in the interpretation of this Deed and may be taken into account accordingly.

3 Legal Basis

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act and, save as this Deed may be modified or discharged pursuant to Section 106A of the 1990 Act, all other enabling powers
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed are planning obligations pursuant to Section 106 of the Act which are enforceable by the District Council **and/or the County Council** as local planning authority against the Owner and their respective successors in title, and bind the respective freehold interests of the Owner in the Application Land.

4 Conditionality

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and

- (ii) the Commencement of Development

save for the provisions of clauses 6 – 14 **and 15** which shall come into effect immediately upon completion of this Deed.

5 The Owner's and the District Council's **and the County Council's Covenants**

5.1 The Owner covenants with the District Council to observe and perform the obligations on their part as set out in Schedule 1 and the District Council covenants with the Owner to observe and perform the obligations on its part as set out in that Schedule.

5.2 **The Owner covenants with the County Council to observe and perform the obligations on their respective parts as set out in Schedule 2, and the County Council covenants with the Owner to observe and perform the obligations on its part as set out in those Schedules.**

6 Miscellaneous

6.1 The Owner shall, prior to the execution of this Deed, pay the District Council's **and/or the County Council's** reasonable legal costs in connection with the preparation and completion of this Deed.

6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

6.3 The contents of this Deed shall be registerable by the District Council as a Local Land Charge pursuant to section 106(11) of the 1990 Act.

6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council **and/or the County Council** under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction (if given) shall be given on behalf of the District Council **and/or the County Council** by the Proper Officer in writing, and any notices served by the Owner shall be deemed to have been properly served if sent by recorded delivery post to the principal address or registered office (as appropriate) of the relevant party.

6.5 Where the agreement, approval, consent or expression of satisfaction is required by the District Council **and/or the County Council** from the **Owner** under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed, and any notices served by the District Council **and/or the County Council** shall be deemed to have been properly served if sent by recorded delivery

to the principal address or registered office (as appropriate) of the relevant party.

- 6.6 Insofar as any clause or clauses of this Deed 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 Deed.
- 6.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 6.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after he shall have parted with his entire interest in the Application Land or the part in respect of which the breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Application Land in accordance with a planning permission (other than the Planning Permission or any approval of reserved matters pursuant to the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 6.10 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the District Council **and/or the County Council** under all statutes by-laws statutory instruments orders and regulations in the exercise of their respective functions as a local authority and nothing herein contained or implied shall be taken to be a covenant or warranty or representation on the part of the District Council **and/or the County Council** that the Owner proposals are lawful.
- 6.11 No compensation shall be payable by the District Council **and/or the County Council** in respect of any provision of this Deed.
- 6.12 Nothing in this Deed is or amounts to or shall be construed as a planning permission within the meaning of Section 336 of the 1990 Act
- 6.13 No individual owner, occupier, Registered Provider, mortgagee of a single Dwelling or Chargee shall be liable for any breach of the obligations contained in this Deed (except for in the case of an Affordable Dwelling for a breach the obligations contained in Schedule 1 to this Agreement where the breach relates to their Affordable Dwelling) but this clause 6.13 shall not release any developer or owner of the Application Land who sold the

completed residential dwelling to the plot purchaser for its obligations hereunder.

- 6.14 Nothing (contained or implied) in this deed shall fetter or restrict the statutory rights, powers, discretions and responsibilities of the District Council **and/or the County Council**.

7 Change in Ownership

The Owner agrees with the District Council **and/or the County Council** to give the District Council **and/or the County Council** written notice as soon as reasonably practicable of any change in ownership of any of its or their interests in the Application Land occurring before all the obligations under this Deed have been discharged, such notice to give details of the transferee's full name and registered office (if a company) or usual address (if not) together with the area of the Application Land or unit of occupation purchased by reference to a plan.

8 Settlement of Disputes

- 8.1 Any dispute arising out of the provisions of this Deed shall be referred to a person having appropriate qualifications and experience in such matters ("the Expert") for the determination of that dispute PROVIDED THAT the provisions of this clause shall be without prejudice to the right of any party to seek the resolution of any dispute arising out of the provisions of this Deed by referring the matter to the courts or to the right of the District Council to take action in accordance with Section 106(6) of the 1990 Act, and the referral of any such dispute to the Expert shall not prejudice prevent or delay the recourse of any party to the courts or to the provisions of Section 106 (6) of the 1990 Act for the resolution of any dispute arising out of the provisions of this Deed.
- 8.2 The Expert shall be appointed jointly by the relevant parties to the dispute or in default of agreement then by a person nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of any of the parties.
- 8.3 The decision of the Expert shall be final and binding upon the relevant parties (subject to the right of the relevant parties to refer the matters to the court) and the following provisions shall apply:
- 8.4 The charges and expenses of the Expert shall be borne equally between the relevant parties unless the Expert shall otherwise direct.
- 8.5 The Expert shall give the relevant parties an opportunity to make representations and counter-representations to the Expert before the Expert shall make their decision.

- 8.6 The Expert shall be entitled to obtain opinions from others if the Expert so wishes.
- 8.7 The Expert shall make their decision within the range of any representations made by the relevant parties themselves.
- 8.8 The Expert shall comply with any time limit or other directions agreed by the relevant parties on or before the appointment of the Expert.

9 Compliance Monitoring Contribution

The Owner shall, prior to the execution of this Deed, pay to the District Council the sum of £[] ([] POUNDS) as a contribution towards the District Council's costs of monitoring the implementation of this Deed.

10 Interest

If any payment due by the Owner under this Deed is paid late, interest will be payable from the date payment is due to the date of payment, at the Interest Rate.

11 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value-added tax properly payable.

12 Jurisdiction

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

13 Delivery

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

14 Waiver

No waiver (whether express or implied) by any party to this Deed of any breach or default in performing or observing any of the provisions of this Deed 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.

15 Mortgagee Clause

The Mortgagee hereby consents to the execution of this Agreement by the Owner and agrees that the Application Land shall be bound by the restrictions and

obligations contained in this Deed and the Mortgagee agrees to observe and perform the restrictions and obligations contained in this Deed provided that the Mortgagee shall have no liability under this Agreement unless it shall have become entitled to enter the Application Land or any part of it as mortgagee in possession or as a successor in title to the Owner.

16 Section 73 Applications and Future Permissions

16.1 In the event any Section 73 Permission is granted after the date of this agreement:

16.1.1 the obligations in this Agreement (in addition to continuing to bind the land in respect of the permission) shall relate to and bind the development of the Application Land pursuant to such Section 73 Permission; and

16.1.2 the definitions of "Application", "Development" and "Planning Permission" shall be construed to include reference to the planning application for the Section 73 Permission, the development permitted by the Section 73 Permission and the Section 73 Permission respectively

PROVIDED THAT

16.2 Nothing in this clause shall fetter the discretion of the Council in determining the planning application for the Section 73 Permission and the appropriate planning obligations required in connection with the determination of the same;

16.3 to the extent that any of the obligations in this Deed have already been discharged at the date that a Section 73 Permission is granted they shall remain discharged for the purposes of the Section 73 Permission.

SCHEDULE 1
OWNER'S COVENANTS WITH THE DISTRICT COUNCIL

Part A
GP Surgery Contribution

1 Definitions

1.1 In this Part A unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

GP Surgery Contribution means a contribution in the sum of £[] ([] HUNDRED POUNDS) Index Linked and to create additional capacity at [] to accommodate the need generated by the development

2 The Owner covenants not to occupy more than []% of the Dwellings until such time as the GP Surgery Contribution has been paid to the District Council.

3 The GP Surgery monies shall be paid to NHS Devon CCG or an equivalent body.

Part B

Biodiversity Net Gain

1 Definitions

1.1 In this B unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

Agreed Receptor Site means an area of land that falls outside of the Application Land upon which a Biodiversity Offsetting Scheme will be implemented via the Biodiversity Net Gain Management and Monitoring Plan as approved by the District Council; and “Receptor Sites” shall be construed accordingly

Area Habitat Biodiversity Unit (AHBU) means a Biodiversity Unit that relates to area habitats (which may include: woodland, grassland, wetland, coastal, intertidal or other habitat types) as defined by the Biodiversity Metric User Guide

Biodiversity Audit Report means a written report on the auditing of the Biodiversity Offsetting Scheme which shall be prepared by the Owner in accordance with the timetable for its submission as set out in the BNG Design Stage Report approved by the District Council following the surveying of habitats and entering their condition and distinctiveness into the Biodiversity Metric and shall highlight any actions which must be undertaken to achieve the Total Net % Change required by the Biodiversity Offsetting Scheme

Biodiversity Impact Assessment means a written report detailing the use of the Biodiversity Metric to calculate the biodiversity impact of the Development measured in Biodiversity Units

Biodiversity Loss means a negative Area Habitat Biodiversity Unit (AHBU), Hedgerow Biodiversity Unit (HBU) or River Biodiversity Unit (RBU) score when compared to the Biodiversity Unit Baseline

Biodiversity Metric means the mechanism with reference to biodiversity metric approved by the Government’s Department for Environment Food and Rural Affairs (“DEFRA”) current at the date of this Deed to quantify impacts on biodiversity that allows a Biodiversity Loss and/or a Biodiversity Net Gain affecting different habitats to be compared and ensures the biodiversity offsetting proposed is sufficient to compensate for any residual losses of biodiversity or provide the required biodiversity net gain for any development scheme

Biodiversity Metric User Guide means the latest Government metric available in the most recent survey season prior to the submission of the Application unless an alternative is agreed by the District Council prior to the said submission

Biodiversity Net Gain means a positive Area Habitat Biodiversity Unit (AHBU), Hedgerow Biodiversity Unit (HBU) or River Biodiversity Unit (RBU) score when compared to the Biodiversity Unit Baseline

Biodiversity Net Gain Design Stage Report/BNG Design Stage Report means the report submitted to the District Council as part of the Application which includes a fully completed Biodiversity Metric to assess the Biodiversity Unit Baseline

Biodiversity Net Gain Management and Monitoring Plan means a plan for the Agreed Receptor Site and/or on-site mitigation which shall include details of its provision; any offsetting measures such as improvement works required, in order to demonstrate how it will achieve the required Biodiversity Net Gain; its management and maintenance for not less than thirty (30) years from the date of implementation of the Biodiversity Offsetting Scheme; and the methodology format and frequency of written monitoring reports to be provided to the District Council together with access and inspection arrangements to facilitate such monitoring; which plan shall have been submitted to and approved in writing by the District Council

Biodiversity Offsetting Scheme means a scheme to compensate for any Biodiversity Loss and deliver the required percentage of Biodiversity Net Gain for the Application, either through on-site mitigation on the Application Land and/or by off-site offsetting and/or by payment of an Offsetting Contribution. The scheme shall include the timing of the implementation of the scheme and submission of the relevant details including the Biodiversity Net Gain Management and Monitoring Plan and/or payment of the Offsetting Contribution as the case may be.

Biodiversity Unit means the unit of biodiversity as measured by the Biodiversity Metric and expressed as an Area Habitat Biodiversity Unit (AHBU), Hedgerow Biodiversity Unit (HBU) and / or River Biodiversity Unit (RBU)

Biodiversity Unit Baseline means the Biodiversity Unit value of the Application Land prior to the Development

Conservation Covenant means an agreement meeting the requirements contained in section 117 of the Environment Act 2021

Hedgerow Biodiversity Unit (HBU) means a Biodiversity Unit that relates to 'hedgerows and lines of trees' linear habitats as defined by the Biodiversity Metric User Guide

Offsetting Contribution means the payment of a sum of money to the District Council to be used to offset the loss of Biodiversity Units as part of a Biodiversity Offsetting Scheme, to be calculated by the Owner at the point of payment in accordance with paragraph 2.5 of this Part B, the value of such contribution to be based on the local habitat market and using a broker approved by the District Council

River Biodiversity Unit (RBU) means a biodiversity unit that relates to rivers and streams as defined by the Biodiversity Metric User Guide

Total Net % Change means the combined on-site and off-site Biodiversity Net Gain or Biodiversity Loss on the Application Land as a percentage of the on-site Biodiversity Unit Baseline

2 Owner's covenants

The Owner covenants:

- 2.1 Not to Commence Development (unless otherwise approved in writing by the District Council) until:
 - 2.1.1 a Biodiversity Offsetting Scheme has been submitted to and approved in writing by the District Council (such approval not to be unreasonably withheld or delayed) which ensures that the implementation of the Development will result in a Biodiversity Net Gain in accordance with the National Planning Policy Framework and the District Council's Local Plan (including any relevant associated SPDs); and
 - 2.1.2 the methodology and timetable for the production of each Biodiversity Audit Report has been submitted to and approved in writing by the District Council which report shall be produced following monitoring of the Biodiversity Offsetting Scheme conducted by the Owner between April and October of the year in which it is due and which is to be undertaken annually for the first five years from the year of implementation of the Biodiversity Offsetting Scheme and thereafter once every five years on the anniversary of the date of the first Biodiversity Audit Report or the date upon which such report fell due, whichever is the earlier, and which shall be provided to the District Council within one month of its production and prior to any subsequent changes in management of the Biodiversity Offsetting Scheme being made PROVIDED THAT a variation to any of these requirements may be agreed in writing by the District Council.
- 2.2 The Biodiversity Offsetting Scheme shall include the matters set out in either paragraph 2.3.1 or paragraph 2.3.2. If a scheme defined by 2.3.2 is chosen then payment of the Offsetting Contribution must be paid to the District Council prior to [INSERT TRIGGER].
- 2.3 The Biodiversity Offsetting Scheme shall include either:
 - 2.3.1 the following:
 - (a) the identity of an Agreed Receptor Site(s);
 - (b) a Biodiversity Net Gain Management and Monitoring Plan; and

(c) the provision of contractual terms (which will consist of a planning obligation entered into by all parties with an interest in the Receptor Site(s) pursuant to section 106 of the 1990 Act; or a Memorandum of Understanding with the District Council if the District Council is the freehold owner of the Receptor Site; or a Conservation Covenant) to secure the delivery of the Biodiversity Offsetting Scheme; OR

2.3.2 provision for an Offsetting Contribution to be paid to the District Council which shall not be less than £[] ([]) exclusive of Indexation.

2.4 If paragraph 2.3.1 above applies, to:

2.4.1 provide the District Council with no less than ten (10) Working Days' notice in writing of the implementation of the approved Biodiversity Offsetting Scheme;

2.4.2 to implement the approved Biodiversity Offsetting Scheme in accordance with the time limits set out therein (unless otherwise agreed in writing by the District Council); and

2.4.3 not to carry out any changes to the approved Biodiversity Offsetting Scheme without the prior written consent of the District Council

PROVIDED ALWAYS THAT no building forming part of the Development shall be Occupied until the Biodiversity Offsetting Scheme has been implemented.

2.5 If paragraph 2.3.2 above applies, not to [Commence the Development] until the Offsetting Contribution has been paid to the District Council.

3 District Council's covenants

The District Council covenants with the Owner to use the Biodiversity Offsetting Contribution only for the purposes of enhancing and securing the long-term management of biodiversity within the District Council's administrative area in order to provide specific compensation for the onsite habitat lost to development.

Part C
Recreation Contribution

1 Definitions

1.1 In this Part C unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

BCIS Index means the Building Costs All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation

Recreation Contribution means the sum of £[] ([] HUNDRED POUNDS) Index Linked to be spent on the scheme set out in this Part C

- 2 The Owner covenants not to Commence the Development until such time as the Recreation Contribution has been paid to the District Council.
- 3 In the event of the Owner failing to settle any account or accounts that may be properly and duly rendered within fourteen days of despatch to the Owner then the sum due shall accrue daily interest at the Interest Rate.
- 4 The District Council covenants with the Owner to allocate the Recreation Contribution only towards []
- 5 In the event that the scheme set out in paragraph 4 above is undeliverable for whatever reason then the Owner shall agree alternative schemes in writing with the Proper Officer
- 6 The District Council covenants that in the event that the Recreation Contribution is not spent in full upon the matters set out in paragraphs 3 or 4 above within ten (10) years of the date of it being paid in full the uncommitted balance of the Recreation Contribution shall be refunded by the District Council to the person or persons who paid the Recreation Contribution together with interest at the Interest Rate from the date of payment to the District Council until repayment by the District Council.

Part D On Site Public Open Space

1 Definitions

1.1 In this Part D unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

Landscape and Ecological Management Plan/LEMP means the Landscape and Ecological Management Plan for the Development which shall include but not be limited to details of the delivery of on site mitigation in respect to biodiversity losses and off site compensation/contributions to provision in accordance with:

(www.northdevonbiosphere.org.uk/uploads/1/5/4/4/1544892/offsetting_strategy_v5.pdf) or other such peer reviewed methodologies to be agreed in writing with the Proper Officer

Local Equipped Area of Play/LEAP means a Local Equipped Area of Play of not less than [] square metres within the Informal Public Open Space that shall include at least 5 (five) pieces of play equipment suitable for play by young children together with seating, a litter bin and fencing

Management Company means the company approved from time to time in writing by the District Council with responsibility for ensuring compliance with the On Site Public Open Space Management Scheme and the [\[Surface Water Drainage System Maintenance Scheme\]](#)

Off Site LEMP Contribution means the compensation/contribution towards off site mitigation in respect of biodiversity losses payable in accordance with the approved LEMP

On Site Public Open Space means the provision of the On Site Public Open Space including the Informal Public Open Space, the LEAP and the Wet Woodlands

On Site Public Open Space Management Scheme means the plan and specification for the layout and equipping of the On Site Public Open Space and its future management and maintenance to be submitted under this Part D

Surface Water Drainage System means any infrastructure for the drainage of surface water on the Application Land which (a) is not a private soakaway within the curtilage of an individual Dwelling or (b) has not been vested in South West Water Services Limited or a SUDS approval body

Surface Water Drainage System Maintenance Scheme means a scheme for the future management and maintenance of any Surface Water Drainage System to be submitted under this Part D

2 ON SITE PUBLIC OPEN SPACE

Unless otherwise agreed between the Owner and the District Council the Owner covenants as follows:

- 2.1 not to Commence Development until the Owner has submitted the On Site Public Open Space Management Scheme to the District Council and no Dwelling shall be Occupied until it has been approved in writing by the District Council such approval not to be unreasonably withheld or delayed;
- 2.2 the LEAP shall be provided prior to the Occupation of the []th Dwelling;
- 2.3 the Owner shall make each area of the On Site Public Open Space available for use by the general public from the date it is completed and fit for public use and shall carry out or procure the carrying out of the management and maintenance arrangements set out in the approved On Site Public Open Space Management Scheme in perpetuity or until such time (if ever) that the Owner and the District Council agree by deed that any part of that land shall be released from this obligation;
- 2.4 unless the Owner agrees with the District Council or other public body the terms on which that body will accept a transfer of the On Site Public Open Space the Owner shall transfer the On Site Public Open Space to the Management Company prior to the Occupation of the []th Dwelling and the Management Company shall thereafter manage and maintain the On Site Public Open Space in accordance with the approved On Site Public Open Space Management Scheme; and
- 2.5 for the avoidance of doubt in paragraphs 2.3 and 2.4 above the Owner shall mean the owner for the time being of the On Site Public Open Space.

3 SURFACE WATER DRAINAGE SYSTEM

Unless otherwise agreed in writing between the Owner and the District Council the Owner covenants as follows:

- 3.1 no Occupation of any Dwelling shall take place until the Owner has submitted to and received approval in writing from the District Council for the Surface Water Drainage System Maintenance Scheme such approval not to be unreasonably withheld or delayed;
- 3.2 the Owner shall carry out or procure the carrying out of the management and maintenance arrangements set out in the approved Surface Water Drainage System Maintenance Scheme in perpetuity or until such time (if

ever) that the Owner and the District Council agree by deed that any part of the Surface Water Drainage System shall be released from this obligation;

- 3.3 unless the Owner agrees with the District Council or other public body the terms on which that body will accept a transfer of the Surface Water Drainage System the Owner shall transfer the Surface Water Drainage System to the Management Company prior to the Occupation of the []th Dwelling and the Management Company shall thereafter manage and maintain the Surface Water Drainage System in accordance with the approved Surface Water Drainage System Maintenance Scheme; and
- 3.4 for the avoidance of doubt in paragraphs 3.2 and 3.3 above the Owner shall mean the owner for the time being of the Surface Water Drainage System.

4 LANDSCAPE AND ECOLOGICAL MANAGEMENT PLAN

Unless otherwise agreed in writing between the Owner and the District Council the Owner shall:

- 4.1 submit to the District Council for its written approval the LEMP prior to the Commencement of Development;
- 4.2 not Commence Development until the LEMP has been approved in writing by the District Council;
- 4.3 carry out all on site mitigation in respect of biodiversity losses strictly in accordance with the approved LEMP or any further amended LEMP approved in writing by the District Council; and
- 4.4 on Occupation of the []th Dwelling pay the District Council the Off Site LEMP Contribution.

Part E

Affordable Housing

1 Definitions

1.1 In this Part E unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

Adjoining Rural Parishes means the parishes of []

Affordable Dwellings means a Dwelling to be provided as Affordable Housing together with its curtilage and any parking space or garage allocated to it and reference to 'Affordable Dwelling' shall mean any one of them

Affordable Housing means Affordable Housing as defined by Annex 2 of the National Planning Policy Framework July 2021 (or any other statement or circular which may supersede or amend it) for sale or rent to meet the needs of eligible households whose needs are not met by the market and in the Development to comprise **[TENURES]**

Affordable Housing Land means the land or any part thereof on which the Affordable Dwellings are or are to be constructed

Affordable Housing Provisions means the provisions relating to the Affordable Housing referred to in this Part E

Affordable Housing Scheme means a written scheme for the provision of Affordable Housing as part of the Development, such scheme to be submitted to the District Council's Proper Officer in accordance with Part E and to include:

- (A) the tenure of the Affordable Dwelling(s);
- (B) the number of bedrooms (including number of persons);
- (C) internal floor space (sqm);
- (D) any phasing details if appropriate;
- (E) anticipated start dates and completion dates;
- (F) the name of the Registered Provider;
- (G) details of any Service Charges; and
- (H) such other information as may be reasonably required by the District Council

Affordable Rent means a rent capped at the Local Housing Allowance unless it is demonstrated to the Proper Officer that 80% of the Open Market Rent of the property is lower as calculated by a Valuer. The rent is subject to review to existing tenants of the relevant Dwelling in accordance with the Regulator of Social Housing's National Rent Standard from time to time, or such guidance, policy and/or National Rent Regime as may be in place at the time of the relevant review

Affordable Rent Dwelling means an Affordable Dwelling to be let in accordance with this Part E at a rent not exceeding the Affordable Rent

Age Restricted Dwellings means Dwellings which are intended to be used for age-restricted housing to those of age 55 years or over in accordance with the Planning Permission

Annual Update means the North Devon and Torridge Affordable Housing Research Annual Update published by the District Council from time to time

Assured Tenancy means an assured tenancy or an assured shorthold tenancy under the Housing Act 1988 as amended by the Housing Act 1996 or other such similar form of periodic tenancy permitted under any statutory modification

Average Open Market Valuation means the mean average of the three Open Market Valuations to be provided by Valuers in respect of the Discounted Price and if a range of valuations is provided by a Valuer then the midpoint of the range is to be used to calculate the average valuation and such valuations shall not be older than six months from the date that they are submitted

Average Value means the average value by house size and Zone as published in the Annual Update

Devon Home Choice means the method or body agreed by the District Council for the allocation of Affordable Housing for rent to a person or persons in Housing Need in the District or any subsequent replacement system

Discounted Price means the fixed price at the date of this Agreement, at which a DMS Dwelling is to be sold on any subsequent sale which is to be calculated by multiplying the Average Open Market Valuation of the DMS Dwelling as at the date of the offer for sale by the following fixed percentages: **[Values to be determined by the District Council at the time of the planning application and included within the Instruction Pro-Forma to Legal]**

- (A) One bedroom DMS Dwellings – []%
- (B) Two bedroom DMS Dwellings – []%
- (C) Three bedroom DMS Dwellings – []%

(D) Four bedroom DMS Dwellings – []%

Discounted Market Sales Dwelling(s) or DMS Dwelling(s) means an Affordable Dwelling where 100% of the equity is to be sold at the Initial Sale Price or Discounted Price (as applicable)

Eligible Purchasers means, in relation to Shared Ownership Dwellings and DMS Dwellings, persons who are in Housing Need and have a Local Connection

Eligible Renters means in relation to Rented Housing persons who are in Housing Need and have a Local Connection

Estate Agent means an estate agent with at least five years' experience of valuing residential properties in the District

Grant Funded means funding from Homes England to support the delivery of Affordable Housing

Help to Buy Agent means such organisation(s) as may be designated by Homes England or a successor body

Homes England means the central government agency (formerly the Housing Corporation and Homes and Communities Agency) which provides funding to registered providers of housing and shall include any successor in function howsoever named or any organisation which is performing a similar function

Home Exchange Service means a national service which assists tenants of rented Affordable Housing to exchange their homes under mutual exchange such as HomeSwapper or House Exchange

Housing Need means a person who is:

(A) homeless or threatened with homelessness or living in accommodation, which in the opinion of the District Council is insecure or unsuitable (this may be on the grounds of cost, overcrowding, unfitness or lack of basic amenities or because of a person's infirmity, physical disability, mental disability, or specific social or care needs);

AND

(B) is unable to purchase or rent suitable accommodation at Open Market Values in the District, taking into account the household's income, capital and other financial circumstances.

Initial Sale Price means the amount fixed at the date of this Agreement for which a DMS Dwelling may be sold on first sale as follows; **[Values to be determined by the District**

Council at the time of the planning application and included within the Instruction Pro-Forma to Legal]

- (A) One bedroom DMS Dwellings – £78,000
- (B) Two bedroom DMS Dwellings – £102,000
- (C) Three bedroom DMS Dwellings – £102,000
- (D) Four bedroom DMS Dwellings – £156,000

Intermediate Housing means Affordable Housing made available for sale or rent as Shared Ownership Dwellings, DMS Dwellings, Intermediate Rent Dwellings or Affordable Rent Dwellings

Intermediate Rent means a rent capped at the Local Housing Allowance unless it is demonstrated to the Proper Officer that 80% of the Open Market Rent of the property is lower as calculated by a Valuer. The rent is subject to review to existing tenants of the relevant Dwelling in accordance with the Regulator of Social Housing's National Rent Standard from time to time, or such guidance, policy and/or National Rent Regime as may be in place at the time of the relevant review

Intermediate Rent Dwelling means an Affordable Dwelling to be let in accordance with this Part E at a rent not exceeding the Intermediate Rent

Letting Notice means a written notice which contains details of the property to be let and which shall include unless otherwise agreed with the District Council:

- (A) the name and address of the landlord and Owner;
- (B) address of the property;
- (C) weekly or monthly rent
- (D) amount and breakdown of any service charge per week, month or annum;
- (E) details of any additional charges;
- (F) any age or other occupancy restrictions;
- (G) property type;
- (H) property size;
- (I) heating type;

- (J) details of mains services in the property;
- (K) availability of parking space/garage;
- (L) any disabled adaptations;
- (M) provision of any support services;

and which is delivered to the District Council, clearly addressed and marked for the urgent attention of the Proper Officer

Local Connection means a household with a local connection to the Parish, Adjoining Rural Parishes, the District or the County (as appropriate) as follows:

- (A) at least one adult in the household was resident continuously in the qualifying area for a minimum of five years immediately prior to Occupation; or
- (B) at least one adult of the household was resident in the qualifying area for five years within the previous ten years immediately prior to Occupation; or
- (C) at least one parent, guardian, child or sibling of at least one adult in the household, has been resident in the qualifying area for a minimum of five years immediately prior to Occupation; or
- (D) at least one adult in the household has been in continuous employment for at least 16 hours a week in the qualifying area for at least five years immediately prior to Occupation.

Local Housing Allowance means the rents applicable to [the Application Land and Dwelling size](#) by the Valuation Office Agency of H.M. Revenue and Customs (or any successor body responsible for setting the applicable rate)

Marketing Criteria means the criteria set out in this Part E

Marketing Period means the minimum periods which the Affordable Dwellings are required to be marketed for the purposes of the Marketing Criteria as follows:

[Urban Areas]

Rented Housing:

- (A) new build – two weeks
- (B) re-lets - one week

Shared Ownership Dwellings or DMS Dwellings:

- (A) new build – 12 weeks
- (B) re-sales – eight weeks

[Rural Areas]

Rented Housing:

- (A) new build – four weeks
- (B) re-lets - three weeks

Shared Ownership Dwellings or DMS Dwellings:

- (A) new build – 12 weeks
- (B) re-sale – eight weeks

[The parts of Fremington and Braunton indicated as rural on the Designated Protected Areas maps]

Rented Housing:

- (A) new build – two weeks
- (B) re-lets - one week

Shared Ownership Dwellings or DMS Dwellings:

- (A) new build – 12 weeks
- (B) re-sales – eight weeks

and in any case the periods set out above are to be without interruption and are to be calculated from the date of first advertising the availability for sale or rent at a price to reflect the restrictions imposed by this Deed to those who comply with the Marketing Criteria

National Rent Regime means the rent policy set out for Social Rent within the Policy Statement on Rents for Social Housing published by the Regulator for Social Housing as is current at the date of letting or is otherwise agreed in writing by the District Council's Proper Officer

Occupation means occupation of a Dwelling or part of a Dwelling for residential purposes (which for the avoidance of doubt shall exclude occupation for the purposes of construction, fitting out, decoration, marketing and site security operations) and cognate expressions shall be construed accordingly

Off-Site Affordable Housing Contribution means a financial contribution in the sum of £[] ([] HUNDRED POUNDS) Index Linked to be payable by the Owner to the District Council to be used by the District Council for the provision of off-site Affordable Housing in the Parish, Adjoining Rural Parishes or the District. In some circumstances, as determined by the Council, commuted sums may be pooled and used in order to enable the provision of Affordable Housing in the District.

OR (where outline only and total number of dwellings not yet known):

means a financial contribution to be payable by the Owner to the District Council calculated in accordance with paragraph 2.2 below where the requirement of [] % of the Dwellings does not yield a whole number of Affordable Dwellings and such contribution to be used by the District Council for the provision of Affordable Housing in the Parish, Adjoining Rural Parishes or the District. In some circumstances, as determined by the Council, commuted sums may be pooled and used in order to enable the provision of Affordable Housing in the District.

Open Market means an open market for the sale or rent of real property assuming willing sellers and buyers and assuming that none of the obligations or restrictions contained in this Deed applies

Open Market Dwelling means a Dwelling constructed pursuant to the Planning Permission that is not an Affordable Dwelling and not subject to the terms of this Part E

Open Market Rent means rent at a level which is set by the Open Market and is not subject to any of the restrictions which are contained in this Deed

Open Market Value means the value of a Dwelling to be calculated in accordance with paragraphs (A) to (F) below, being the estimated amount for which in the absence of this Deed residential units of equivalent location, specification, size, state of repair and condition, which are not restricted for use as Affordable Housing, should exchange on the date of valuation between a willing seller and a willing buyer in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion on the following assumption:

- (A) No discount to be allowed for bulk sales or on the basis that more than one residential unit is being sold to the same purchaser;
- (B) It is sold with vacant possession and good and marketable title;
- (C) The valuation is for the unrestricted leasehold for which, for the avoidance of doubt, ignores any use as Affordable Housing;
- (D) The residential unit is newly built, decorated and serviced and fit for immediate Occupation;

- (E) The valuation is for the sale of an individual unit and not part of a larger sale;
- (F) All roads, footpaths, landscaping and open space have been laid out and completed and all other residential units have been built, sold and Occupied

and 'Open Market Valuation' shall be construed accordingly

Parish means the parish of []

Registered Provider/RP means a registered provider of social housing (as defined in Section 80 of the Housing and Regeneration Act 2008) registered with the Regulator of Social Housing as a non-profit or profit-making organisation in accordance with section 115 (1) (a) of that Act (or any re-enactment or modification thereof), nominated by the Owner and submitted within the Affordable Housing Scheme and approved by the Proper Officer

Regulator of Social Housing means the executive non-departmental public body sponsored by the Ministry of Housing, Communities and Local Government or successor which is responsible for regulating the providers of social housing and sets social rent levels

Relevant Disposal means the grant or transfer of any interest in an Affordable Dwelling that carries with it the right to Occupy the Affordable Dwelling (excluding a charge or mortgage and which, for the avoidance of doubt, excludes any transfer to an RP

Rented Housing means Affordable Housing let at an Affordable Rent, Social Rent or Immediate Rent and 'Rented Housing Unit' shall be construed accordingly

Service Charges means the direct costs associated with the ongoing management and maintenance of the external fabric of the common parts of the buildings accommodating Affordable Housing Dwellings which, for the avoidance of doubt, will not include charges for service which Occupiers of the Affordable Dwellings are unable to access

Shared Ownership means Affordable Housing where an Eligible Purchaser can buy a share in a Dwelling up to a maximum of [100%/80% in designated protected areas] and pays a rent to the freehold owner in proportion to the share of the equity retained by that owner pursuant to a lease based on the appropriate form of Shared Ownership Lease

Shared Ownership Dwelling means an Affordable Dwelling sold on the basis of a Shared Ownership Lease in accordance with this Part E

Shared Ownership Lease means a lease for Shared Ownership Housing in the form as published by Homes England (from time to time) as amended to comply with this Deed or as approved by the District Council's Proper Officer

Social Rent means a rent set at no higher than formula rent (subject to the rent flexibility level) determined by the National Rent Regime

Social Rent Dwelling means an Affordable Dwelling to be let in accordance with this Part E at a rent not exceeding the Social Rent

Staircased Dwelling means an Affordable Dwelling which is a Shared Ownership Dwelling for which the tenant has purchased 100% of the leasehold or freehold equity as the context requires under the terms of the tenant's Shared Ownership Lease

Staircasing means the exercise by a tenant of a Shared Ownership Dwelling of the right to increase his or her share of the equity in the Affordable Dwelling and 'Staircase' and 'Staircased' shall be construed appropriately

Staircasing Payment means a payment made by the tenant under a Shared Ownership Lease to the Landlord for the purchase of an additional share of the equity in the Shared Ownership Dwelling

Valuer means an Estate Agent or a member of the Royal Institution of Chartered Surveyors who is practising in the District

Wheelchair Accessible and Adaptable Dwelling means a Social Rent Dwelling designed and equipped to enable access and use by people with reduced mobility which complies in all respects with Part M4(3)(2)(b) of the Building Regulations 2015 Approved Document M Volume 1

Zone means the value zones as set out in the Affordable Housing Supplementary Planning Document (SPD) as current at the date of this Agreement

2 Provision of Affordable Housing

2.1 Subject to the provisions of this Schedule, **[number] or []%** of the Dwellings shall be provided as Affordable Housing.

2.2 BELOW IS ONLY USED WHEN AFFORDABLE DWELLINGS % DOES NOT PROVIDE A WHOLE NUMBER

2.2 **Where the calculation of 30% of the Dwellings as Affordable Housing does not yield a whole number of Affordable Dwellings, the Owner shall:**

- a) pay to the District Council Off-Site Affordable Housing Contribution related to the fraction calculated in accordance with paragraph **Error! Reference source not found.** of this Part E; or
- b) provide an additional Affordable Dwelling on site.

2.3 The tenure of the Affordable Dwellings shall be as follows:

2.3.1 at least 75% (rounded up to give a whole number of Dwellings) of the Affordable Dwellings shall be Social Rent Dwellings; **[inc any Age Restricted Dwellings and Wheelchair User Dwellings as appropriate depending on the instructions in the pro-forma]**

2.3.2 the remaining percentage of the Affordable Dwellings shall be provided as **[tenure type]**.

ONLY USE 2.4 BELOW IF A SCHEME IS YET TO BE PROVIDED

2.4 The Owner shall not Commence Development until the Affordable Housing Scheme has been submitted to the District Council and agreed in writing by the Proper Officer (and in considering whether to agree the Affordable Housing Scheme the Proper Officer may have regard to the views of any RPs interested or likely to be interested in acquiring the Affordable Dwellings).

2.5 Unless otherwise agreed in writing and approved by the District Council's Proper Officer and pursuant to paragraph 2.4 above the Affordable Dwellings shall be provided as set out in the table below:

Number of bedrooms	Percentage or number of overall Affordable Housing provision
1	30-35% or [] Dwellings
2	35-40% or [] Dwellings
3	20-25% or [] Dwellings
4	5-10% or [] Dwellings

2.6 The Affordable Dwellings are to be distributed throughout the Development in clusters with no more than **[6 (six) to 10 (ten)]**.

- 2.7 Subject to the provisions of this Schedule:
- 2.7.1 Social Rent Dwellings shall only be Occupied by Eligible Renters by way of an Assured Tenancy at a Social Rent;
 - 2.7.2 Affordable Rent Dwellings shall only be Occupied by Eligible Renters by way of an Assured Tenancy at an Affordable Rent;
 - 2.7.3 Intermediate Rent Dwellings shall only be Occupied by Eligible Renters by way of an Assured Tenancy at an Intermediate Rent;
 - 2.7.4 Shared Ownership Dwellings shall only be Occupied by Eligible Purchasers in accordance with a Shared Ownership Lease; and
 - 2.7.5 DMS Dwellings shall only be Occupied by Eligible Purchasers.

3 Construction and Disposal of the Affordable Dwellings

[USE IF UP TO 150 DWELLINGS]

- 3.1 The District Council requires that:
- 3.1.1 **no more than 50% of the Open Market Dwellings shall be occupied until 50% of the Affordable Housing Dwellings have been completed in accordance with the Affordable Housing Scheme, having been connected to all main services, made available and fit for residential Occupation and advertised in accordance with paragraph [] and []**
 - 3.1.2 **no more than 75% of the Open Market Dwellings shall be occupied until 100% of the Affordable Housing Dwellings have been completed in accordance with the Affordable Housing Scheme, having been connected to all main services, made available and fit for residential Occupation and advertised in accordance with paragraph [] and []**

OR

[USE IF 150 DWELLINGS OR MORE]

- 3.2 **The District Council requires that:**
- 3.2.1 **no more than 25% of the Open Market Dwellings shall be occupied until 50% of the Affordable Housing Dwellings have been completed in accordance with the Affordable Housing Scheme, having been connected to all main services, made**

available and fit for residential Occupation and advertised in accordance with paragraph 4;

3.2.2 no more than 50% of the Open Market Dwellings shall be occupied until 75% of the Affordable Housing Dwellings have been completed in accordance with the Affordable Housing Scheme, having been connected to all main services, made available and fit for residential Occupation and advertised in accordance with paragraph 4

3.2.3 no more than 75% of the Open Market Dwellings shall be occupied until 100% of the Affordable Housing Dwellings have been completed in accordance with the Affordable Housing Scheme, having been connected to all main services, made available and fit for residential Occupation and advertised in accordance with paragraph 4

3.3 The Affordable Dwellings shall be constructed in accordance with the agreed Affordable Housing Scheme and using the same materials as the Open Market Dwellings, so as to be materially indistinguishable from the Open Market Dwellings and to any enhanced standards of construction as set out by Homes England from time to time.

3.4 All Affordable Dwellings shall be constructed and completed to at least the same internal and external basic specifications as the Open Market Dwellings of an equivalent type and size.

3.5 Notwithstanding paragraph 3.1 of this Schedule, once the Affordable Housing Scheme identifies that the Affordable Dwellings will be transferred to a Registered Provider then no more than 50% of the Open Market Dwellings shall be offered for sale or occupation nor sold or occupied until such time as the Owner has transferred the AffordableDwellings to an RP on the following terms:

3.5.1 the transfer shall be of the unencumbered freehold title or leasehold title (with a minimum term of 125 years) of the Affordable Dwellings and their curtilages (save for any encumbrances (not being financial charges existing prior to the date of this Deed) with full title guarantee and vacant possession;

3.5.2 the transfer shall grant all rights and easements (if any) as are required to give pedestrian and vehicular access between the Affordable Dwellings and the public highway and as are required to connect all sewers, drains pipes cables and all other conducting media serving the Affordable Dwellings to the relevant networks AND

any such transfer to an RP shall not be deemed to be a Relevant Disposal; and

3.5.3 the transfer shall require the RP to comply with the provisions of this Deed.

4 Marketing, Allocation and Occupation of Affordable Dwellings

4.1 Subject to paragraph 4.2 below, no person shall Occupy an Affordable Dwelling unless:

4.1.1 they are in Housing Need and have a Local Connection at the time of first Occupation of the Affordable Dwelling;

4.1.2 they have been nominated in accordance with paragraph 4.3 below;

4.1.3 the Marketing Criteria has been met in accordance with paragraph 4.3; and

4.1.4 they occupy the Affordable Dwelling as their sole residence.

4.2 Where the owner of an Affordable Dwelling is an RP the Affordable Dwelling may also be occupied in accordance with any nomination and management agreement in effect between the District Council and that RP from time to time.

4.3 The District Council and the Owner agree that all advertising and nominations / allocations of Affordable Housing to **Eligible Renters and Eligible Purchasers** shall be in accordance with:

4.3.1 for Rented Housing – through Devon Home Choice and in accordance with the UK Government’s current “Allocation of Accommodation” guidance for Local Authorities in England and with a minimum of eight weeks’ notice and a maximum of six months’ notice before the anticipated date of completion of the Affordable Dwelling for Rent to be given to the District Council’s Proper Officer by the Owner;

4.3.2 for Rented Housing - any mutual exchange through a Home Exchange Service;

4.3.3 for Shared Ownership which is Grant Funded - through the Help to Buy Agent;

4.3.4 for Shared Ownership which is not Grant Funded via advertising on the RP’s website and for allocation via the Registered Provider nominating their own purchasers following the due process of

checking the latest affordability and shared ownership criteria required by Homes England or any subsequent guidance that should be published locally by the District Council, and at least one of the following:

- (a) on at least one nationally recognised online house sales portal; and/or
- (b) with an Estate Agent.

4.3.5 for DMS Dwellings in accordance with the District Council's Discounted Market Sales Housing Allocation Procedure

4.4 In the event that any of the schemes listed in paragraph 4.3 above shall cease to operate (and not be replaced by a subsequent replacement scheme), the District Council shall be responsible for nominations and allocations of persons in Housing Need.

5 Shared Ownership Dwellings

5.1 Where an Affordable Dwelling is shown within the Affordable Housing Scheme as intended to be a Relevant Disposal:

5.1.1 the Shared Ownership Dwelling shall only be disposed of by way of a Shared Ownership Lease, that shall give the purchaser the right (but no obligation) to acquire additional equity shares;

5.1.2 the initial share of the equity in the Shared Ownership Dwelling that a purchaser may purchase shall be restricted to 25%-75% of the equity (or percentage as otherwise agreed by the Proper Officer) in the Shared Ownership Dwelling as per the Shared Ownership Lease;

5.1.3 the Shared Ownership Lease shall **[cap Staircasing at 80% of the leasehold or freehold equity] [allow Staircasing up to 100% of the leasehold or freehold equity]**

5.1.4 the annual rent payable shall not exceed CPI (Consumer Price Index) + 1% of the Open Market Value of the equity retained by the landlord or as per the latest rent standard guidance.

5.2 The Shared Ownership Lease shall provide that Occupation of the Affordable Dwelling is restricted to the Eligible Purchaser(s) and members of their household and that the lease can be assigned only to persons who comply with the requirements of paragraphs of this Part E.

6 Discounted Market Sales Housing Dwellings

- 6.1 No Affordable Dwelling identified within the Affordable Housing Scheme as a DMS Dwelling shall be sold or disposed of for a consideration that exceeds:
 - 6.1.1 the Initial Sale Price on the first sale; or
 - 6.1.2 the Discounted Price set at all subsequent sales.
- 6.2 On any sale of a DMS Dwelling, the Owner will require any purchaser to enter into a restrictive covenant to comply with 4.1 and 6.1 of this Schedule.
- 6.3 On each occasion that the Owner offers a DMS Dwelling for a Relevant Disposal the Owner shall, in accordance with the District Council's DMS Housing Allocation Procedure:
 - 6.3.1 notify the District Council (such notification to be given on or before the advert required below and not more than six months before and not less than eight weeks before the anticipated completion or sale date of that or those dwellings);
 - 6.3.2 provide (at their own cost) for the DMS Dwelling to be advertised (and readvertised as necessary) by:
 - (a) the Owner; or
 - (b) the District Council; or
 - (c) any third party that the District Council should choose until such time as the DMS Dwelling is allocated to an Eligible Purchaser (and in addition, if desired, advertise the proposed disposal in a local paper or with an estate agent including a statement that the DMS Dwelling may only be occupied by an Eligible Purchaser);
 - 6.3.3 pay the proper and reasonable costs of the District Council or any third party that the District Council should choose to use from time to time to carry out such allocation checks necessary on those who apply for the DMS Dwelling; and
 - 6.3.4 give first priority to purchase the DMS Dwelling to any persons the District Council or any third party that the District Council should choose to use from time to time may nominate to the Owner provided that they are Eligible Purchasers and have the resources to buy the DMS Dwelling.
- 6.4 The Owner covenants not to let or permit the letting of any DMS Dwelling other than:

- 6.4.1 in compliance with paragraph 6.5 below;
 - 6.4.2 with the written consent of the District Council;
 - 6.4.3 to Eligible Renters;
 - 6.4.4 at a rent, which does not exceed the Local Housing Allowance; and
 - 6.4.5 on the basis of an Assured Tenancy for a fixed term of not less than six (6) months unless otherwise agreed with the District Council.
- 6.5 The Owner covenants not to let nor permit the letting of any DMS Dwelling unless a Letting Notice has been served in writing upon the District Council and the District Council has given its consent in writing.
- 6.6 The District Council shall provide a response within 15 Working Days of receipt of the Letting Notice confirming whether it gives consent to the proposed letting (such consent not to be unreasonably withheld or delayed).

7 Staircasing Payments

- 7.1 In respect of any Shared Ownership Dwellings owned and managed by an RP any Staircasing Payment received by the RP shall be applied by the RP to the provision of additional Affordable Housing within the District.

8 Chargee's Duty

- 8.1 The Affordable Housing Provisions shall not be binding on a Chargee of the whole or any part of the Affordable Dwellings or the Affordable Housing Land (as applicable) or any persons or bodies deriving title through such Chargee PROVIDED THAT:
- 8.1.1 such Chargee shall first give written notice to the District Council of its intention to dispose of the Affordable Dwelling(s) and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Dwelling(s) to a Registered Provider or to the District Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
 - 8.1.2 if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the relevant Affordable Dwelling(s) free from the obligations in this Deed which provisions shall determine absolutely.

9 Limit of Liability

9.1 The Affordable Housing Provisions shall cease to apply in respect of any Affordable Dwelling in circumstances where an Occupier:

9.1.1 acquires a freehold or leasehold interest pursuant to a statutory right to acquire or right to buy or equivalent contractual right or voluntary scheme operated by the RP with agreement by the RP in consultation with the District Council; or

9.1.2 [Staircases out by acquiring a 100% equity share in an Affordable Dwelling ONLY APPLIES IN AN URBAN LOCATION]

and for the avoidance of doubt this paragraph 9 shall extend to include the Chargees, mortgagees and successors in title of those set out in paragraphs 9.1.1 and 9.1.2 above.

9.2 For the avoidance of doubt no clauses or obligations in this Deed prevent the Owner or RP increasing the number of Affordable Dwellings within the overall number of Dwellings permitted in the Development or providing **Social Rent Dwellings in place of Intermediate Housing for sale or rent.**

10 Off Site Affordable Housing Contribution

10.1 The District Council will advise the appropriate dwelling size and tenure that is applicable for the fraction depending on the final number of Dwellings as indicated by the Reserved Matters Application. This information shall be used to calculate the relevant Off-Site Affordable Housing Contribution using the latest Annual Update at the time of the Reserved Matters application and the following formula for the appropriate dwelling size in Zone [1-5]:

(a) If a Social Rented Dwelling: Fraction multiplied by [Average Value minus (Average Value multiplied by 0.35)] or;

(b) If a Shared Ownership Dwelling: Fraction multiplied by [Average Value minus (Average Value multiplied by 0.65)]

10.2 The Owner covenants to pay the Off-Site Affordable Housing Contribution to the District Council as follows:

10.2.1 50% prior to the Occupation of 50% of the Open Market Dwellings;
and

10.2.2 100% prior to the Occupation of 75% of the Open Market Dwellings.

- 10.3 The Owner shall not Occupy or permit the Occupation of more than 50% of the Open Market Dwellings until 50% of the Off-Site Affordable Housing Contribution has been paid to the Council.
- 10.4 The Owner shall not Occupy or permit the Occupation of more than 75% of the Open Market Dwellings until all of the Off-Site Affordable Housing Contribution has been paid to the District Council.

11 Marketing Criteria

The Owner covenants with the District Council as follows:

Urban - means the entire parish of Barnstaple, and the parts of Ilfracombe, South Molton, Braunton, Fremington and Tawstock indicated as urban on the Designated Protected Areas maps

- 11.1 Prior to the Affordable Dwellings being allocated the Owner shall actively market the availability of the Affordable Dwellings to **Eligible Renters or Eligible Purchasers** with a Local Connection to the Parish/Adjoining Rural Parishes/District in accordance with the requirements of paragraph 4 above of for the Marketing Period.
- 11.2 For the avoidance of doubt, where there is more than one willing **Eligible Renter or Eligible Purchaser** the preference shall be afforded in the following order of priority in terms of Local Connection:
- 11.2.1 the District;
- 11.2.2 the County.

OR

Rural – the whole of the District excluding the Urban Areas and the Rural parts of Fremington and Braunton

- 11.1 Prior to the Affordable Dwellings being allocated the Owner shall actively market the availability of the Affordable Dwellings to **Eligible Renters or Eligible Purchasers** with a Local Connection to the Parish/Adjoining Rural Parishes/District in accordance with the requirements of paragraph 4 above of for the Marketing Period.
- 11.2 For the avoidance of doubt, where there is more than one willing **Eligible Renter or Eligible Purchaser** the preference shall be afforded in the following order of priority in terms of Local Connection:
- 11.2.1 the Parish;

11.2.2 Adjoining Rural Parishes

11.2.3 the District.

OR

Designated Protected Areas – the Rural Parts of Fremington and Braunton

11.3 Prior to the Affordable Dwellings being allocated the Owner shall actively market the availability of the Affordable Dwellings to **Eligible Renters or Eligible Purchasers** with a Local Connection to the Parish/Adjoining Rural Parishes/District in accordance with the requirements of paragraph 4 above of for the Marketing Period.

11.4 For the avoidance of doubt, where there is more than one willing **Eligible Renter or Eligible Purchaser** the preference shall be afforded in the following order of priority in terms of Local Connection:

11.4.1 the Parish;

11.4.2 Adjoining Rural Parishes

11.4.3 the District.

12 General Provisions

12.1 In respect of the active marketing of any Affordable Dwelling, in addition to the requirements set out in paragraph 4 above, the Owner shall be expected to use reasonable endeavours to undertake the following steps to advise people of the availability of the Affordable Dwelling:

12.1.1 notifying the clerk of the relevant town or parish council and the relevant District Council ward member;

12.1.2 Use of social media platforms; and

12.1.3 Newsletters.

SCHEDULE 2
OWNER'S COVENANTS WITH THE COUNTY COUNCIL

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

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

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

