

**DATED**

8

March

**2012**

**Agreement relating to land opposite the Oriental Promise**

**London Road, Whimble, Devon**

**Section 106 of the Town and Country Planning Act 1990**

**East Devon District Council (1)**

**and**

**Devon County Council (2)**

**and**

**Wainhomes (South West) Holdings Limited (3)**

**and**

**South West Water Limited (4)**

**and**

**Michael Trevor Jarvis and Christine Margaret Anning (5)**

**Ashfords**

**Solicitors**

**Ashford House  
Grenadier Road  
Exeter EX2 4NP**

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1	Affordable Housing Table
2	Nomination Agreement
3	Phase 1 Infrastructure Contributions
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5	Draft Planning Permission

**THIS AGREEMENT** is made the *eightth* day of *March* 2012

**BETWEEN:**

**PARTIES:**

- (1) **EAST DEVON DISTRICT COUNCIL** of Knowle Sidmouth Devon EX10 8HL ("EDDC")
- (2) **DEVON COUNTY COUNCIL** of County Hall Topsham Road Exeter EX2 4QD ("DCC")
- (3) **WAINHOMES (SOUTH WEST) HOLDINGS LIMITED** (Company number 04187073) whose registered office is at Owlsfoot Business Centre, Sticklepath, Okehampton Devon EX20 2PA (the "Developer")
- (4) **MICHAEL TREVOR JARVIS** of 2 Riverside Close, Honiton, Devon and **CHRISTINE MARGARET ANNING** of 4 Salisbury Avenue, Feniton, Honiton. Devon (together the "Owners")
- (5) **SOUTH WEST WATER LIMITED** (Company No: 02366665) whose Registered Office is at Peninsula House Rydon Lane Exeter Devon EX2 7HR ("Sewerage Undertaker")

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. RECITALS**

- 1.1. The Owners are the proprietors of the Land which is free from encumbrances other than those disclosed in the Office Copy Entries DN162997
- 1.2. By agreements dated 18 May 2000 and 18 October 2011 the Developer has an option to purchase the Land
- 1.3. EDDC is the Local Planning Authority for the purposes of the Act for the district within which the Land is situate
- 1.4. DCC is:
  - 1.4.1. the County Planning Authority and a Local Planning Authority for the purposes of the Act
  - 1.4.2. the Local Education Authority for the purposes of the Education Act 1996
  - 1.4.3. the Highway Authority for the purposes of the Highways Act 1980
  - 1.4.4. the Waste Disposal Authority for the purposes of the Environmental Protection Act 1990 and the Environment Act 1995for the area within which the Land is situated
- 1.5. The Sewerage Undertaker is the sewerage undertaker for the area within which the Land is situated
- 1.6. By the Planning Application the Developer has applied to EDDC for planning permission for the Development
- 1.7. EDDC has resolved to grant planning permission subject to completion of this Agreement
- 1.8. The parties to this Agreement have agreed to enter into it for the purpose of facilitating and regulating the Development and use of the Land

- 1.9. DCC wishes to ensure that any development upon the Land minimises reliance upon the use of the private car as a means of travel and the provisions of Schedule 4 is intended to secure that this aim is achieved

## **2. INTERPRETATION**

- 2.1. Words denoting the singular only shall include the plural and vice versa
- 2.2. Where the Owners are not a body corporate then unless a context requires otherwise neuter words shall include the masculine or feminine gender (as the case may be)
- 2.3. Words denoting one gender shall include all genders and words denoting persons shall include firms and corporations and vice versa
- 2.4. References to any party in this Agreement shall include that party's successors in title and assigns
- 2.5. References to a body exercising statutory powers and/or functions in this Agreement shall unless otherwise specified include any successor in function
- 2.6. 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
- 2.7. References to any statute or statutory provision includes a reference to:
- 2.7.1. that statute or statutory provision as from time to time amended extended re-enacted or consolidated and
- 2.7.2. all statutory instruments or orders made pursuant to it
- 2.8. Unless the context otherwise requires references to any clause sub-clause paragraph schedule appendix drawing or plan (or any part of them) is to a clause sub-clause paragraph schedule appendix drawing or plan (or any part of them) to this Agreement
- 2.9. The headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement

## **3. DEFINITIONS**

<b>Act</b>	means the Town and Country Planning Act 1990 as amended
<b>Affordable Dwellings</b>	shall mean 40% of the Dwellings which shall be made available as Affordable Housing in accordance with this Agreement and "Affordable Dwelling" shall mean one of them
<b>Affordable Housing</b>	means the Dwellings forming part of the Development which shall be constructed on the Land and which shall be used for the purpose of providing accommodation to people whose income does not allow them to rent or to buy at normal market prices within the administrative area of EDDC such housing to be occupied by households in need of affordable housing in the administrative area of EDDC in accordance with this Agreement
<b>Affordable Housing Plan</b>	means the plan accompanying the Affordable Housing Table showing the location of the Affordable Housing

<b>Affordable Housing Table</b>	means a table in the form annexed to Schedule 1 (or such revised table as may be submitted by the Owner and approved in writing by EDDC) setting out the location, design, size, and tenure of the Affordable Dwellings.
<b>Affordable Rental Tenancy</b>	means an assured tenancy (including a shorthold tenancy) whereby an Affordable Dwelling is let to a Designated Person at a rent which does not exceed the maximum rent which an RP is permitted to charge in accordance with the Tenancy Standard prescribed by the Regulator.
<b>Affordable Rented Dwellings</b>	means an Affordable Dwelling built to Scheme Design Standards which may only be occupied under an Affordable Rental Tenancy
<b>Appendices</b>	means the appendices to this Agreement and Appendix shall mean any one of them
<b>Appropriate Percentage</b>	means in relation to each Affordable Dwelling the proportion of the Market Value of that dwelling represented by the Initial Sale Price
<b>Approved Registered Providers (Approved RP')</b>	means a provider of affordable housing (or as many such providers as the Owners may propose) and EDDC may approve operating in the area of the Council which has the authority and sufficient resources to acquire the Affordable Housing or part of it in accordance with this Agreement for letting at an Affordable Rent, .
<b>Available for Occupation</b>	means in respect of any Affordable Dwelling means that the Dwelling and its curtilage is complete and connected to services and fit for occupation
<b>Biomass Boilers</b>	means boilers for water and space heating that are fuelled by material that is derived from living or recently living biological organisms and which may include crops grown specifically for energy plant material by-products and waste from livestock farming food processing and preparation and domestic organic waste
<b>Building Regulations</b>	means building regulations made under the Building Act 1984 or any superseding legislation which regulates the construction standard of the Dwellings
<b>Code for Sustainable Homes</b>	means the Code for Sustainable Homes published by the Department for Communities and Local Government on 13 December 2006 and notwithstanding any other provision of this Agreement shall not include any updated or subsequent revision alteration or superseding document
<b>Code for Sustainable Homes Certificate(s)</b>	means an interim certificate at the design stage in accordance with the Code for Sustainable Homes and Technical Guidance and any other certificate required under the Code for Sustainable Homes and Technical Guidance to ensure compliance with the

	Code and Technical Guidance Provided That and for the avoidance of any doubt the Owners shall not be required to comply with any higher standard than the standard required under Building Regulations prevailing at the date of construction (provided always that the standard meets Code for Sustainable Homes Level Three as required by this Agreement)
<b>Code for Sustainable Homes Level 3</b>	means Star Rating/Level 3 in the Code for Sustainable Homes and Technical Guidance rating system contained in the Code for Sustainable Homes and Technical Guidance
<b>Commencement of the Development</b>	<p>means the date that the Development is begun within the meaning of Section 56 (4) of the Act pursuant to the Planning Permission provided that for the purposes of this Agreement the following shall not be deemed to constitute Commencement of the Development</p> <ul style="list-style-type: none"> <li>(a) any construction of access and service roads and service diversions or service infrastructure</li> <li>(b) site surveys and investigations including archaeological investigations</li> <li>(c) demolition of existing buildings and site clearance (including tree and hedgerow works)</li> <li>(d) assessments of ground conditions and contamination (including excavation) and remedial action in respect of any contamination</li> <li>(e) ecological attenuation works flood and noise attenuation</li> <li>(f) marking out and pegging out operations and the erection of temporary hoardings and fences or other means of enclosure for site security</li> <li>(g) earth moving works that take place for the sole purpose of achieving the correct ground levels across the Land</li> </ul>
<b>Cranbrook Section 106 Agreement</b>	means the agreement under section 106 of the Act dated 29 October 2010 relating to the New Community and made between EDDC (1) and DCC (2) Taylor Wimpey Developments Ltd (3) Hallam Land Management Ltd (4) Persimmon Homes (South West) Ltd (5) Redrow Homes Ltd (6) The Owners (7) and Chargees (8)
<b>DCC</b>	means Devon County Council or successor in title or successor in function
<b>Design Quality Standard</b>	shall mean the requirements of the standards specified in the Housing Corporation's publication Design and Quality Standards (or in accordance with such superseding guidance as shall be issued by the HCA)
<b>Designated Person(s)</b>	means in relation to the letting of Affordable Rented Dwellings an individual who at all material times prior to the Occupation of the Affordable Dwelling in question is on the Register for Devon Home Choice or on a list for any RP managing homes in East Devon and is eligible under the relevant priority band for an offer

of the relevant Affordable Dwelling under the Council's Allocation scheme or under the Section 167 of the Housing Act 1996 and in relation to the disposal of an Intermediate Affordable Dwelling any such person, or a person listed on the region's Homebuy Agents Register with in either case priority being given to such persons with a Parish Connection followed by persons with an East Devon Connection

**Detailed Approval**

means either approval of reserved matters or a planning permission granting approval of the details required in respect of the Development and a Detailed Application shall be an application for Detailed Approval

**Developer**

means the Developer and any other person carrying out the Development from time to time

**Development**

means the proposed development of the Land pursuant to the Planning Permission

**Discounted Sale or Lease**

means a freehold sale or lease granted for a period of not less than 99 years where the amount paid on first sale does not exceed the Initial Sale Price and which contains a restriction preventing any future sale prices exceeding the Appropriate Percentage of the Market Value of that Dwelling at the time of the resale.

**District Heating Facility**

means a district heating facility that is capable of supplying water and space heating from Biomass Boilers within the vicinity of the Development

**Dwelling**

means a dwelling constructed or to be constructed on the Land pursuant to the Planning Permission and a Detailed Approval

**East Devon Connection**

an East Devon Connection shall be deemed to have been shown by someone demonstrating one or more of the following:

1. a minimum continuous period of residence by a prospective owner or occupier of five years in the District immediately prior to the Nomination Date and whose existing accommodation is substandard or unsuitable for their present needs; or
2. employment in the District for a continuous period of at least five years; or
3. current employment in the District in an agricultural related activity, the emergency services, as a professional healthcare or social worker or as a qualified primary or secondary school teacher; or
4. a person who has moved away but has strong established and continuous links with the District by reason of birth or family and still have a parent or guardian living there.

**East West Link**

means an all purpose highway running from the eastern boundary of the Land at Point A on the Long Term Access Plan to the western boundary of the Land at Point B on that Plan (which for the avoidance of doubt shall mean to the lines at which

the Land in title DN162997 meets the land in title numbers DN519478 and DN88204 ("Adjoining Titles") which will enable the future developers of the land in the Adjoining Titles to construct a highway linking the land in the two Adjoining Titles or such other route as agreed in writing with the Proper Officer.

**EDDC**

means East Devon District Council or successor in title or successor in function

**Equity Mortgage**

means an interest free equity loan or mortgage granted on first sale and being for the difference between the Market Value and the Initial Sale Price for the Affordable Dwelling and expressed as a percentage and which if repaid when the property is sold shall be at the same percentage of the Market Value at the time of resale or such reduced percentage where the level of equity owned has changed through Staircasing.

**Equity Mortgagee**

means the mortgagee under an Equity Mortgage

**Equity Percentage  
Arrangement**

means arrangements under which on the first relevant disposal

(a) the owner of a freehold or leasehold interest in a dwelling ("seller") conveys it to an individual ("buyer"),

(b) the buyer in consideration of the conveyance-

(i) pays the seller the Initial Sale Price and

(ii) agrees to pay the seller other sums calculated by reference to difference between the Initial Sale Price and Market Value expressed as a percentage of the value of the interest at the time when each sum is to be paid, and

(c) the liability to make any payment required by the arrangement (apart from the Initial Price) is secured by an Equity Mortgage.

And any such arrangement on any subsequent sale

**Exempt Payment**

means any payment received by the Equity Mortgagee for the redemption of an Equity Mortgage on the sale of an Affordable Dwelling in circumstances where a new Equity Mortgage is to be granted immediately to a Designated Person (or any person who is purchasing pursuant to paragraph 18 of Schedule 1) who is purchasing that Affordable Dwelling

**First Occupation**

means first occupation of any Dwelling comprised in the Development but does not include temporary occupation for the purposes of construction fitting out or marketing and First Occupier and First Occupy shall be construed accordingly

**HCA**

means the Homes and Communities Agency (being the successor body to the Housing Corporation) being the national Government agency responsible for (among other things) funding new affordable housing or any successor body or bodies

**HomeBuy Dwelling**

means a Dwelling to be let under a long leasehold or shared ownership terms and which is to be the equivalent of the

Government's Standard New Build HomeBuy Product or any similar or successor product as approved by the HCA and Homebuy Dwelling shall mean any one of them

**Index**

means the Retail Price Index All Items (excluding mortgage interest payments) published by the Office for National Statistics other than where specific alternative provision is made within this Agreement in relation to a payment or contribution.

**Index Linked**

means any increase to the sum to be paid which unless the contrary intention appears in this agreement arises by applying to that sum the percentage increase (if any) in the Index between the monthly Index figure for September 2011 and the monthly Index figure last published immediately preceding the date of actual payment of the said sum

**Initial Sale Price**

means the sum which represents no more than 80% of the Market Value of the Affordable Dwelling at the time of the sale

**Intermediate Affordable  
Dwellings**

means housing at prices and rents above those of an Affordable Rental Tenancy, but below market price or rents. These can include Discounted Sale or Lease, Shared Ownership Lease, Equity Percentage Arrangements, or other low cost homes for sale and Intermediate Rent Tenancies provided always that they are in accordance with Planning Policy Statement 3

**Intermediate Rent Tenancy**

means an assured tenancy at a rent below a market rent which does not exceed:-

(i) in relation to a letting by an Owner who purchased an Affordable Dwelling as a Designated Person or who is the Mortgagee of such an Owner; that Owner's outgoings in relation to the aggregate of repayments to that Mortgagee, any rent on the retained equity, any service charge and any property or contents insurance and

(ii) in relation to a letting by any other Owner; at a level in accordance with the published Local Housing Allowance for the relevant property type and in the relevant Rent market area together with any relevant service charge.

**Land**

means the land edged red on Plan 1 being the land registered under title number DN162997.

**LEAP**

means a local equipped area for play which is to be designated and equipped in accordance with the Open Space Specification and is for children of early school age and which is to contain an enclosed activity zone of 400 square metres and at least 5 pieces of play equipment which shall be positioned so as to provide a suitable buffer and shall be at such a distance from the nearest Dwelling as is approved by EDDC pursuant to Detailed Approvals

**LEAP Contribution**

means the sum of £40,500 Index Linked for the construction laying out and equipping of the LEAP in accordance with the LEAP specification

<b>LEAP Specification</b>	means a specification for the LEAP within the Development which is to be agreed in writing between the Owners and EDDC for the laying out and provision of play equipment in the LEAP the cost which shall not be less than the sum of £40,500 (Forty Thousand Pounds)
<b>Local Housing Allowance</b>	means the local housing allowance for the Broad Market Rent Area encompassing the Land published by the Valuation Office Agency in effect at the date of any tenancy or rent review
<b>Long Term Access Plan</b>	means plans 2 and 3 which together comprise "Long Term Access Plan"
<b>Market Value</b>	means the open market value of any Affordable Dwelling on the assumption that that the price, ownership and occupation of that Dwelling was not restricted by this Deed as determined by the RICS Red Book or in default of a relevant provision in the RICS Red Book by agreement between the Owner and EDDC
<b>Mortgage Default Payment</b>	means any receipt received by or payment made to the Equity Mortgagee under an Equity Mortgage following the exercise of a power of sale by a mortgagee with higher priority which is not an Exempt Payment.
<b>New Community</b>	means the area of land surrounding the Land on which it is proposed to construct a new community known as Cranbrook, including the land for which consent has been granted under planning permission reference 7/22/03/P1900/0079.
<b>Nominations Agreement</b>	means an agreement to be entered into in the form attached at Appendix 2 between EDDC and a Registered Provider (as appropriate) such agreement to contain the procedures for nominating Designated Persons to the Affordable Dwellings acquired by that Registered Provider
<b>Northern Access</b>	means a footpath to the boundary of the Land at the point marked D on the Long Term Access Plan (which for the avoidance of doubt shall mean to the line at which the Land in title DN162997 meets the land in title numbers DN509922 ("Adjoining Title North") which will enable the future developers of the land in the Adjoining Title North to construct a footpath/cycleway linking the land in the Adjoining Title North or such other route as agreed in writing with the Proper Officer
<b>Occupation</b>	means use of any Dwelling or part of a Dwelling for residential occupation by a single household (and "Occupied" shall be construed accordingly
<b>Open Market Dwellings</b>	shall mean those Dwellings which are not Affordable Dwellings
<b>Open Space</b>	means the LEAP and any other areas of open space shown on the Detailed Approval

<b>Open Space Specification</b>	means a specification for the provision and maintenance of the Open Space within the Development to be submitted to and approved in writing by EDDC
<b>Parcel Group C</b>	has the meaning given in Appendix 19 of the Cranbrook Section 106 Agreement (being that part of the New Community surrounding the Land)
<b>Parish Connection</b>	<p>a Parish Connection shall be deemed to have been shown by someone demonstrating one or more of the following:-</p> <ol style="list-style-type: none"> <li>1 a person who has been ordinarily resident in the parish of Rockbeare for a continuous period of three years immediately prior to the Affordable Dwellings in question being offered to them or for a continuous period of five years at some time in the past.</li> <li>2 a person who is not resident within the parish of Rockbeare but who has been employed in the parish on a permanent basis for a continuous period of three years and who need to live closer to their employment.</li> <li>3 a person who can demonstrate a close family connection to the parish of Rockbeare in that the person's mother father son or daughter has been ordinarily resident in the parish for a continuous period of five years immediately prior to the Affordable Dwellings in question being offered to them and where a caring dependency relationship can be established</li> </ol>
<b>Perpetuity Period</b>	means the period of Eighty Years from the date of this Deed.
<b>Phase 1 Infrastructure Contribution</b>	means the sum of £167,262.70 as a contribution towards those items of infrastructure listed in Appendix 3 which will benefit the Development and which are to be delivered pursuant to the Cranbrook Section 106 Agreement
<b>Phase 2 Infrastructure Contribution</b>	means the sum of £367,457.20 as a contribution toward those items of infrastructure listed in Appendix 4 required to meet the additional needs created by development in excess of 2,900 dwellings (of which the Development forms part) and which are not being provided pursuant to the Cranbrook Section 106 Agreement
<b>Plan 1</b>	means the plan of the Land annexed to this Agreement and marked "Plan 1"
<b>Plans 2 and 3</b>	together means the Long Term Access Plan annexed to this Agreement and marked Plan 2 and Plan 3
<b>Planning Application</b>	means the outline planning application including access arrangements, details of layout and scale for the development of 55 dwellings submitted to EDDC and given reference number 11/1898/MOUT
<b>Planning Permission</b>	means planning permission for the Development in the form annexed hereto at Appendix 5

H.M. LAND REGISTRY		TITLE NUMBER
		DN 162997
ORDNANCE SURVEY PLAN REFERENCE	SY0295	Scale 1/2500
COUNTY DEVON	DISTRICT EAST DEVON	© Crown copyright 19

DN 162997

SY0295

Scale  
1/2500

COUNTY DEVON

DISTRICT	EAST DEVON
WHIMPLE	PARISH

© Crown copyright 19

NOTE: AREAS ON THIS PLAN ARE EXPRESSED  
IN ACRES-AND-HECTARES.

5489  
6-26

**A Duly Authorised Officer**

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

This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 07 October 2011 at 18:02:21. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.

This title is dealt with by Land Registry, Plymouth Office

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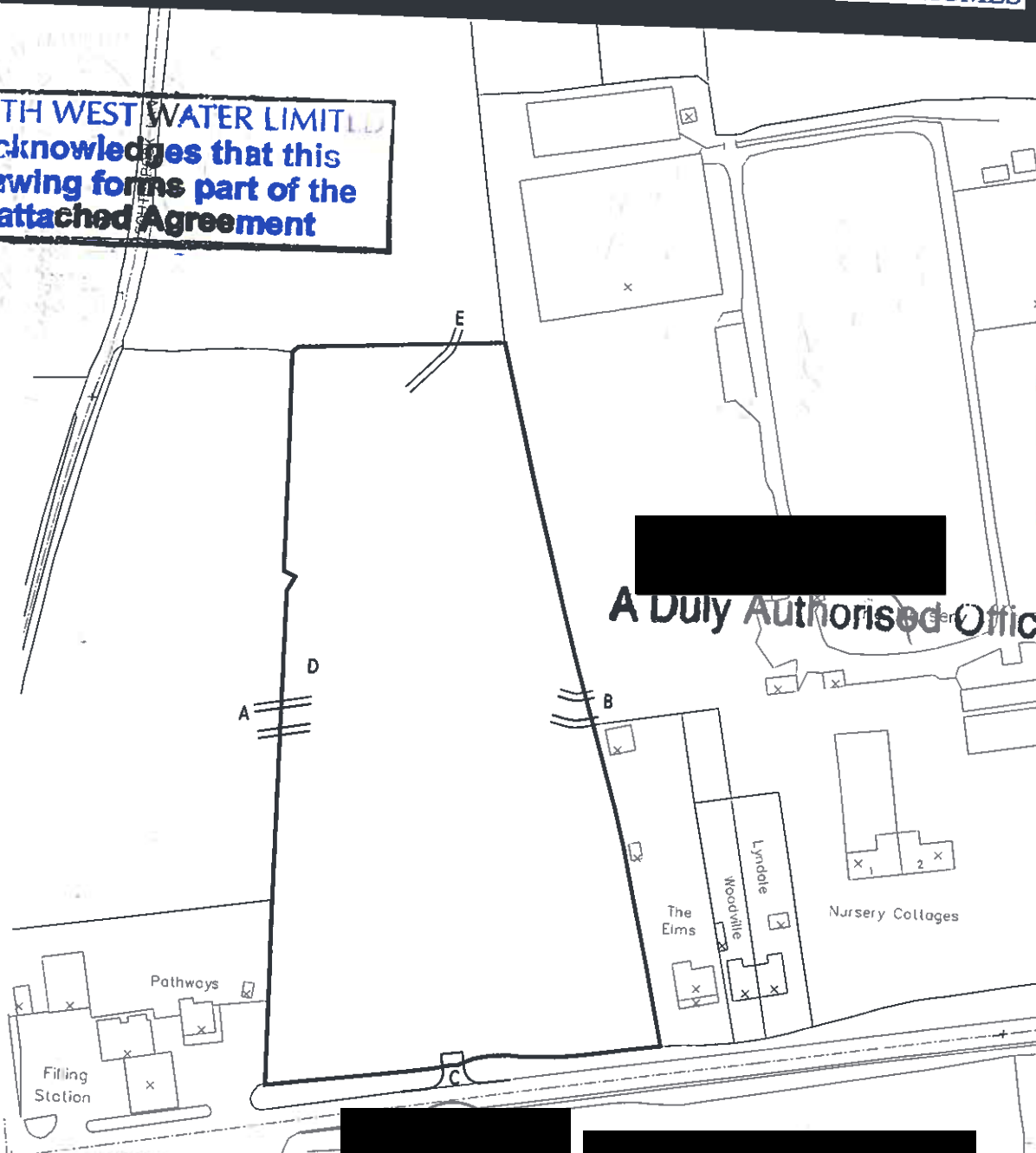


ROCKBEARE



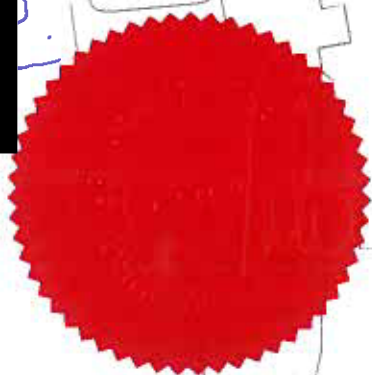
**SOUTH WEST WATER LIMITED**  
**acknowledges that this**  
**drawing forms part of the**  
**attached Agreement**

**A Duly Authorised Officer**



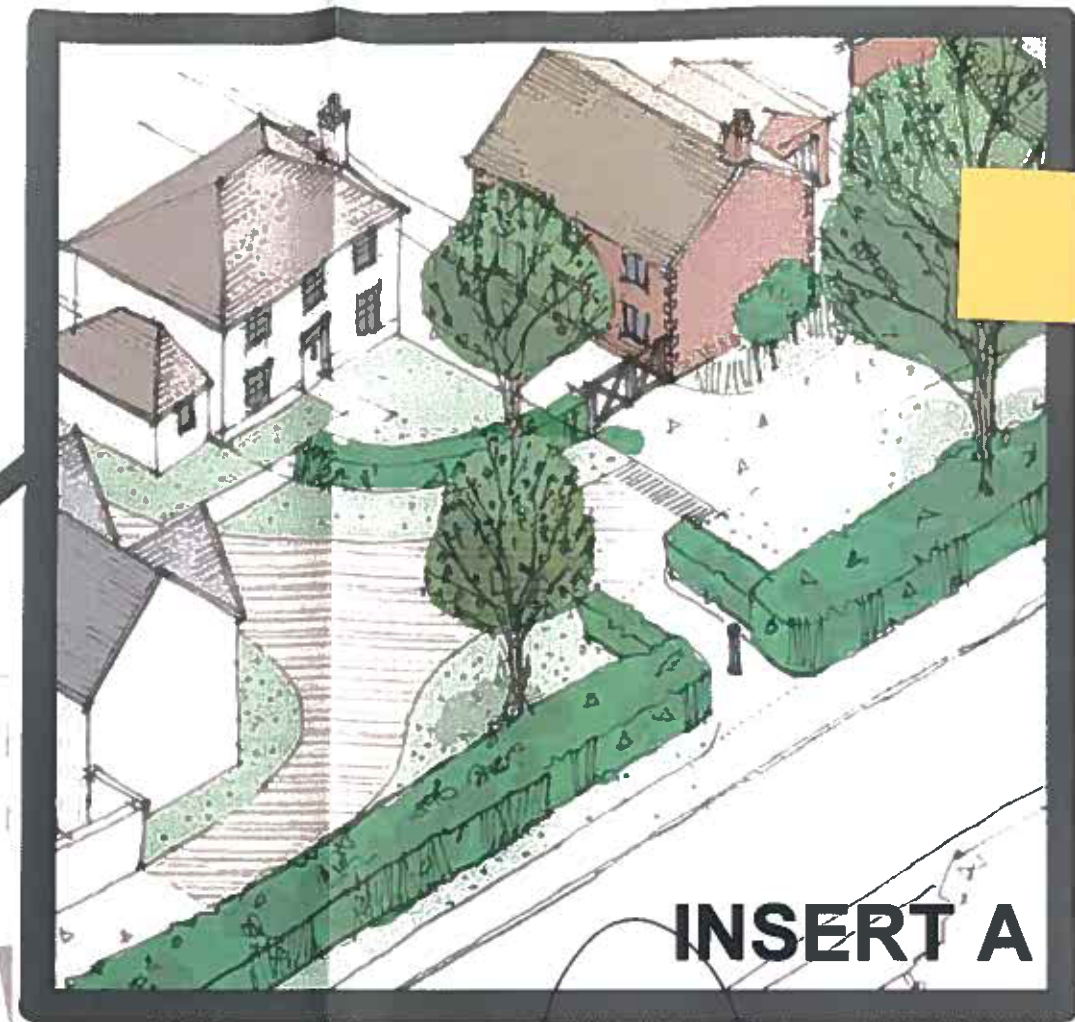
KEY

- A FUTURE CONNECTION WEST
- B FUTURE CONNECTION EAST
- C INITIAL SITE ACCESS TO BE STOPPED UP IN FUTURE
- D PROPOSED LOCATION OF "LEAP"
- E PROPOSED FOOTPATH LINK TO THE NORTH
- APPLICATION BOUNDARY



PLAN 2

*[Signature]*  
A Duly Authorised Officer



**INSERT A**

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

**Scale: 1:500 @ A3**

**LONG TERM ACCESS PLAN - PART 2**  
**LAND OPPOSITE THE ORIENTAL PROMISE, ROCKBEARE**

*PLAN 3*

<b>Proper Officer</b>	<p>means</p> <ul style="list-style-type: none"> <li>(i) in relation to DCC the Executive Director of Environment, Economy &amp; Culture of the council or such other officer from time to time with responsibility for highways</li> <li>(ii) in relation to EDDC that council's Head of Housing and Social Inclusion or such other officer as EDDC may notify in writing to the Owner for the purpose of this Deed.</li> </ul>
<b>Registered Provider (RP)</b>	means a Registered Provider of Social Housing registered under the Housing and Regeneration Act 2008 with the HCA (or any successors in function) which shall include any organisation accredited by the HCA for the purposes of managing Affordable Housing in accordance with the standards of the HCA and who shall either be selected by the Owners and approved by EDDC and (if grant aid is offered) approved by the HCA
<b>Regulator</b>	means the Government agency established pursuant to the Housing & Regeneration Act 2008 being responsible for the regulation of Registered Providers
<b>Reorganisation Order</b>	means any order made by EDDC pursuant to a Corporate Governance Review establishing a Town Council for The New Community
<b>Residual Owner</b>	means the owner of the freehold and/or the retained equity under a Shared Ownership Lease.
<b>RP Sale Price</b>	means the maximum price that the RP can afford to pay to purchase each Affordable Dwelling on the basis that the purchase will be funded from the rental income from letting that Affordable Dwelling without recourse to and subsidy from the HCA, EDDC or the RP's own recycled capital receipts.
<b>Schedules</b>	means the schedules to this Agreement and Schedule shall mean any one of them
<b>Sewerage Evaluation Contribution</b>	means the sum (plus any VAT at the rate applicable at the date of payment) payable to the Sewerage Undertaker towards the carrying out of a detailed evaluation of the existing sewerage network, to identify upgrading and/or improvement works necessitated by the Development.
<b>Sewerage Network Contribution</b>	means the sum or sums determined as payable to the Sewerage Undertaker following its detailed evaluation (plus any VAT at the rate applicable at the date of payment), required to enable the Sewerage Undertaker to execute the upgrading and/or improvement works to the sewerage network, necessary to accommodate the increased foul sewage flows and loads associated with the Development.
<b>Shared Ownership Lease</b>	means a lease (of not less than 99 years) of an Affordable Dwelling in the general form of the Regulator's model forms as

most recently published from time to time (or such other form as may be agreed between EDDC and the Owner) under which the tenant:

(i) purchases a percentage of the equity of the dwelling with a right to purchase an increased percentage which, except in the case of an Shared Ownership Lease granted by an RP shall not exceed 80% ; and

(ii) pays a rent to the Owner ("Residual Owner") in relation to the share of the equity retained by the Owner under a scheme approved by EDDC whereby in the case of any scheme .where the Residual Owner is not a Registered Provider the rent does not exceed £1 per annum

**Southern Access**

means the access between the Land and the B3174 at the point marked C on the Long Term Access Plan or such other route as agreed in writing with the Proper Officer

**Staircase Out**

means where a tenant under a shared ownership lease purchases an increased share of the equity up to and including the whole of the equity and accordingly becomes the freehold owner of the dwelling or the owner under an Equity Percentage Arrangement redeems the Equity Mortgage

**Staircasing Payment**

means any payment made by a tenant under a Shared Ownership Lease or Equity Percentage Arrangement in exercise of its right to Staircase Out

**Technical Guidance**

means the Code for Sustainable Homes Technical Guide dated November 2010 issued by the Department for Communities and Local Government and for the avoidance of doubt shall not include any subsequent revision alteration or superseding guidance

**Town Council**

means a Town Council for the New Community

**Traffic Regulation Orders**

means an Order or Orders under the Road Traffic Regulation Act 1984

**Tranche**

means the two parts of the Land to be designated by the Owners for the purposes of the build programme under paragraphs 2 to 6 of Schedule 1 and "Tranche 1" shall mean the first such designated area and "Tranche 2" shall mean the remainder of the Land.

**Transfer**

means a transfer of the freehold interest of Affordable Dwellings to an Approved RP which shall be for the consideration specified in Schedule 1 the form of such transfer to be previously agreed between the Owners and the Approved RP

**Travel Plan**

means a travel plan (to include the appointment of a Travel Plan Co-ordinator) as agreed between the Owners and EDDC after consultation with DCC

**Travel Plan Co-ordinator**

means a person or organisation employed by the Owner (or procured through an agreement with the developers of the New Community) whose main duties and responsibilities are to be set out in the Travel Plan

**4. STATUTORY POWERS**

- 4.1. This Agreement is made pursuant to section 106 of the Act section 111 of the Local Government Act 1972 Section 2 of the Local Government Act 2000 the Highways Act 1980 and all other enabling powers

**5. CONDITIONALITY**

- 5.1. The Clauses listed in Table 5.1 below shall take effect on the date of this Agreement and any other provisions needed to interpret and give effect to those clauses shall take effect upon the date of this Agreement

Table 5.1

1	Recitals	
2	Interpretation	
3	Definitions	
4	Statutory Powers	
5	Conditionality	
6	Enforcement	
8.1	Covenants by EDDC: Issue of permission	
10	Consents	
11	Confirmation of Compliance	
13	Notices	
15	Severance	
16	Dispute Resolution	
17	Fees	
18	Late Payment of Sums	

- 5.2. Save as provided for in clause 5.1 this Agreement is conditional upon the grant of Planning Permission and Commencement of the Development
- 5.3. If the Planning Permission expires without Commencement of the Development or is quashed as a result of any legal proceedings in the

Courts or is revoked without the consent of the Owners this Agreement shall cease to have effect

- 5.4. Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission other than the Planning Permission granted after the date of this Agreement

## 6. ENFORCEMENT

- 6.1. The Owners covenant on behalf of themselves and their successors in title with EDDC and or DCC (as set out in this clause 6) to comply with their obligations as set out in the clauses and schedules to this Agreement
- 6.2. Each covenant contained in a clause or schedule to this Agreement is a planning obligation for the purposes of section 106 of the Act and is enforceable by EDDC and DCC as specified in this Agreement and each obligation or covenant shall apply to the whole of the Land unless otherwise stated in this Agreement
- 6.3. 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 them jointly and against each individually unless there is a express provision otherwise
- 6.4. This Agreement also creates rights which are enforceable by EDDC and DCC as specified in this Agreement
- 6.5. The Clauses and Schedules listed in Table 6.5 below are enforceable only by EDDC and for the avoidance of doubt except for the provisions set out in clause 6.6 and 6.7 all other provisions are enforceable by both EDDC and DCC

Table 6.5

Clause		
17	Fees: EDDC	
Schedule		
1	Affordable Housing	
2	Payment of Contributions	
5	Open Space and LEAP	
7	Public Realm	
8	Sustainability Provisions	

- 6.6. The Clauses and Schedules listed in Table 6.6 below are only enforceable by DCC and for the avoidance of doubt except for the provisions set out in clause 6.5 all other provisions are enforceable by both EDDC and DCC

Table 6.6

Clause		
17	Fees : DCC	
Schedule		
3	Long Term Access Arrangements	
4	Travel Plans	

- 6.7. The obligations set out in Schedule 6 Foul Sewerage are enforceable by the Sewerage Undertaker.
- 6.8. Save as provided below each of the Owners shall only be responsible for complying with the terms of this Agreement so long as that individual Owner shall retain an interest (within the meaning of Section 106 of the Act) in the Land or in any part thereof which is the subject of the obligations attached to the part of the Land in which their respective interests subsist and so that having parted with their respective interests in the Land or the relevant part the subject of the particular obligation any subsequent breach of the terms of this Agreement shall be enforced by EDDC or DCC (as appropriate and subject to the terms of clause 1) against the persons who are then the owner or occupiers of the Land or any part thereof in respect of which the obligation subsists but nothing in this clause shall release an Owners in respect of any breach occurring before it/they has/have parted with all or any part of its/their respective interest in the Land
- 6.9. Subject to the following provisions of this Clause no third party other than successors in title to the Owner and any person or body succeeding to any of the statutory functions of EDDC and DCC shall have any right to enforce the terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise even if the terms are expressed to be for their benefit and nor shall any third party have by virtue of that Act or otherwise a right of veto over any future variation of this Agreement
- 6.10. Where in this Agreement any covenant is given in favour of the Owners, that covenant shall be:-
- 6.10.1. In relation to the repayment of any money to the Owners for the benefit of the person by whom the money was paid to EDDC, DCC or the Sewerage Undertaker as the case may be and to no other person
- 6.10.2. In relation to any other obligation for the benefit of the Owners of the residual interests in the land, and not for the benefit of the purchaser of any individual dwelling or dwellings.
- 6.11. Nothing in this agreement other shall be enforceable against any statutory undertaker by virtue of that undertaker having acquired any part of the Land or any interest in the Land for operational purposes.

## 7. COVENANTS BY THE OWNERS

- 7.1. The Owners hereby covenant with EDDC (in respect of the provisions in this Agreement specified in Clause 6.5) and separately with DCC (in respect of

the provisions of this Agreement specified in Clause 6.6) for themselves and their successors in title and assigns:

- 7.1.1. Not to develop the Land pursuant to the Planning Permission other than in compliance with the provisions of this Agreement
- 7.1.2. Not to cause or permit the Commencement of Development or First Occupation of any Dwelling in excess of any threshold of Commencement or First Occupation contained within this Agreement (unless the obligations required in advance of such threshold have first been complied with)

## **8. COVENANTS BY EDDC**

8.1. EDDC hereby covenants with the Owner as follows:

- 8.1.1. Having regard to the covenants on the part of the Owners herein contained to grant the Planning Permission for the Development in the form and format annexed hereto at Appendix 5 on the same day this Agreement is completed
- 8.1.2. Not to use suffer or permit the financial contributions paid to it by the Owners pursuant to this Agreement to be used for any purpose other than those specified in this Agreement BUT the Owners acknowledge that the Phase1 Infrastructure Contribution has been committed by the commencement of the infrastructure works for the New Community.
- 8.1.3. In the event that upon the expiration of ten years after the date on which the East West Link is connected to the adjoining roads in the New Community there should be any unexpended balance of the Phase 2 Infrastructure Contribution EDDC shall repay the said unexpended balance to the Owners together with any interest accrued thereon at the base rate of Natwest Bank Plc within ten working days of receipt of any written request from the Owners to do so.
- 8.1.4. In respect of the Phase 2 Infrastructure Contribution to obtain the best value for money that is reasonably obtainable for the expenditure and (where appropriate) consider in good faith any reasonable proposals for the expenditure thereof that may be put to it by the Owners and to provide a breakdown of expenditure paid from the respective contributions upon receipt of any reasonable request thereof provided always that this clause does not restrict EDDC in applying the Phase 2 Infrastructure Contribution as it sees fit including contributing towards infrastructure envisaged by the Phase 2 Infrastructure Contribution that is provided by a third party in connection with the New Community.
- 8.1.5. To accept promptly the transfer of all areas of land within the Development offered to it by the Owners pursuant to the terms of this Agreement
- 8.1.6. To comply in all respects with the covenants made by EDDC and contained in the Schedules
- 8.1.7. To ensure the collection of household and commercial refuse on the Land pursuant to its duties under sections 45 and 45A of the Environmental Protection Act 1990 (or any subsequent replacement or amending provision) notwithstanding that any roads upon which refuse collection vehicles may need to travel are not adopted as highways maintainable at public expense Provided That any such roads are

constructed to at least base course and in compliance with the relevant specification at that stage of the development as agreed between the Owners and DCC

- 8.1.8. If the Owners pay to EDDC the LEAP Contribution pursuant to Schedule 5 to equip the LEAP

## **9. COVENANTS BY DCC**

9.1. DCC hereby covenants with the Owner as follows:

- 9.1.1. Not to use suffer or permit the financial contributions received by DCC pursuant to this Agreement to be used for any purpose other than those specified in this Agreement BUT the Owners acknowledge that the Phase1 Infrastructure Contribution has been committed by the commencement of the infrastructure works for the New Community.
- 9.1.2. In the event that upon the expiration of ten years after the date on which the East WestLink is connected to the adjoining roads in the New Community there should be any unexpended balance of the Phase 2 Infrastructure Contribution DCC shall repay the said unexpended balance to the Owners together with any interest accrued thereon at the base rate of Natwest Bank Plc within ten working days of receipt of any written request from the Owners to do so.
- 9.1.3. In respect of the Phase 2 Infrastructure Contribution to obtain the best value for money that is reasonably obtainable for the expenditure and (where appropriate) consider in good faith any reasonable proposals for the expenditure thereof that may be put to it by the Owners and to provide a breakdown of expenditure paid from the respective contributions upon receipt of any reasonable request thereof provided always that this clause does not restrict DCC in applying the Phase 2 Infrastructure Contribution as it sees fit including contributing towards infrastructure envisaged by the Phase 2 Infrastructure Contribution which is provided by a third party in connection with the New Community.
- 9.1.4. To accept promptly the transfer of all areas of land within the Development offered to it by the Owners pursuant to the terms of this Agreement
- 9.1.5. To comply in all respects with the covenants made by DCC in the Schedules

## **10. CONSENTS**

- 10.1. The Developer enters into this Agreement to consent to the terms of the Agreement and hereby acknowledges that its interest in the Land shall be bound by the terms of the Agreement

## **11. CONFIRMATION OF COMPLIANCE**

- 11.1. EDDC or DCC as appropriate shall upon receipt of a written request from the Owners and without unreasonable delay at any time after any of the planning obligations under this Agreement have been fulfilled issue written confirmation thereof

## **12. PROTECTION OF REGISTERED PROVIDER'S MORTGAGEES AND CERTAIN PURCHASERS**

- 12.1. After the date of any transfer or lease of any Affordable Housing Dwelling or Dwellings to an RP as provided for in this Agreement, the covenants contained in Schedule 1 of this Agreement shall:
- 12.1.1. not bind any mortgagee of an RP holding a charge on such Affordable Housing Dwelling or Dwellings nor any receiver appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to an RP any of whom may deal with or dispose of any Affordable Housing Dwelling or Dwellings free from the covenants and obligations set out in Schedule 1 of this Agreement
  - 12.1.2. cease to apply to any Affordable Housing Dwelling or Dwellings which are managed transferred leased or otherwise disposed of by any mortgagee referred to in 12.1.1 above or by any receiver appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to a RP 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 Schedule 1 of this Agreement
  - 12.1.3. cease to apply to any Affordable Housing Dwelling or Dwellings which an RP disposes of pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under Section 16 of the Housing Act 1996 or any similar or substitute right as applies to the Affordable Housing Dwellings or any of them from time to time
  - 12.1.4. cease to apply to any Affordable Housing Dwelling or Dwellings which a RP sells to a tenant pursuant to a voluntary grant scheme under Section 21 of the Housing Act 1996 or any amendment or replacement thereof
  - 12.1.5. cease to apply to any Affordable Housing Dwelling or Dwellings in respect of which a shared ownership lease has been granted or where any other shared ownership arrangements equity percentage arrangements or shared ownership trust (as the same are defined in s70 Housing and Regeneration Act 2008) have been entered into but only where a RP has disposed of 100% of the equity in such dwellings under the terms of such lease arrangements or trust
- 12.2. Where part of the Land lies within the curtilage of a completed Open Market Dwelling or commercial or institutional dwelling the residential occupier of that Dwelling or as appropriate landlord and/or end user/operator shall not be bound by the terms of this Agreement once that completed Dwelling has been purchased from the Owner or their successors in title provided always that the exemption provided for by this clause does not apply in relation to the sustainability provisions contained in Schedule 8
- 12.3. Where part of the Land lies within the curtilage of a completed Affordable Housing Dwelling the residential occupier of that Affordable Housing Dwelling or their mortgagee and/or chargees shall not be bound by the terms of this Agreement (save for the obligations contained in Schedule 1) once that completed Dwelling has been purchased from the Owners or their successors in title save that such residential occupier shall supply such

details to EDDC of the occupation of the Affordable Housing Dwelling as EDDC shall request in writing from time to time

12.4. After the date on which the purchaser of an Intermediate Affordable Dwelling exercises a right to Staircase Out as provided for in this Agreement, the covenants contained in Schedule 1 of this Agreement shall cease to apply to that Affordable Dwelling.

### **13. NOTICES**

13.1. The Owner shall notify EDDC and DCC in writing of the date of Commencement of Development within five working days of its occurring

13.2. Any notice served pursuant to the terms of this Deed shall be in writing and shall be deemed to be sufficiently served or delivered if delivered or posted by first class post to the addresses listed in 13.3 and 13.4

13.3. The address for service for any notice or written communication is:

13.3.1. For EDDC Head of Legal Licensing and Democratic Services, EDDC, Knowle, Sidmouth, Devon, EX10 8HL copied to Burges Salmon LLP, One Glass Wharf, Avon Street, Bristol, BS2 0ZX (Ref: G Soloman) or such other legal advisors as may from time to time be appointed by EDDC and notified to the Owners

13.4. For DCC County Solicitor, County Hall, Topsham Road, Exeter, EX2 4QD and copied to Ashfords Solicitors, Ashford House, Grenadier Road, Exeter, EX1 3LH

13.5. EDDC and DCC hereby covenant to serve all notices approvals consents and written communication to the Owners at their Registered Office

13.6. A notice approval consent or written communication under this Agreement shall be deemed to have been served as follows:

13.6.1. if personally delivered at the time of delivery

13.6.2. if posted at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority

13.6.3. It will be sufficient to prove service pursuant to this Clause if it is proved that personal delivery was made or that the envelope containing the notice approval consent or written communication was properly addressed and delivered into the custody of the postal authority in a registered or recorded delivery envelope

### **14. VALUE ADDED TAX**

14.1. All payments specified to be made under this Agreement are specified as exclusive of VAT

### **15. SEVERANCE**

15.1. If any provision of this Agreement shall be held to be invalid illegal or unenforceable by any Court the validity legality and enforceability of the remaining provisions of this Agreement shall not in any way be deemed to be affected as a result thereof

### **16. DISPUTE RESOLUTION**

16.1. Any dispute or failure to agree a matter arising out of the provisions of this Agreement shall be referred to a person having appropriate qualifications

and experience in such matters (the Expert) appointed jointly by the relevant parties to the dispute (the relevant parties) or in default 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 relevant parties

16.2. The decision of the Expert shall be final and binding upon the relevant parties and the following provisions shall apply:

16.2.1. The charges and expenses of the Expert shall be borne equally between the relevant parties unless the Expert shall otherwise direct

16.2.2. The Expert shall be requested to give the relevant parties an opportunity to make representations and counter representations to him before making his decision

16.2.3. The Expert shall be entitled to obtain opinions from others if he so wishes

16.2.4. The Expert shall be requested to make his decision within the range of any representations made by the relevant parties themselves

16.2.5. The Expert shall be requested to comply with any time limit or other directions agreed by the relevant parties on or before his appointment

## **17. FEES**

17.1. Upon completion of this Agreement the Owners shall pay to EDDC the balance of EDDC's legal costs in preparing amending and completing this Agreement and the Owners shall pay to DCC DCC's legal costs in preparing amending and completing this Agreement

17.2. Upon completion of this Agreement the Owners shall pay to SWW the costs in connection with this Agreement

17.3. The Developer covenants with the Owners to satisfy the Owners obligations under this Clause 17 and indemnifies the Owners in respect of any demand made of the Owners by EDDC or DCC under this clause.

## **18. LATE PAYMENT OF SUMS**

18.1. In relation to any sum payable by the Owner under this Agreement which is not Index Linked to the date of payment if the Owner fail to pay such sum when such payment falls to be paid then EDDC and DCC (as appropriate) shall have the right to charge interest on such unpaid sums from the date such payment should have been made at the rate of 4% per annum above the base rate of the Bank of England at that time

## **19. TREATMENT OF CONTRIBUTIONS REPAID TO THE OWNER**

19.1. The Owner (which for the purpose of this Clause has the same meaning as in Clause 6.10.1) shall pay 85% any refund of any contribution it receives from EDDC, DCC or the Sewerage Undertaker under this Deed to Michael Trevor Jarvis and Christine Margaret Anning, with 42.5% going to each of them unless they may otherwise direct.

## **Schedule 1**

### **1. Affordable Housing**

- 1.1 The Owners shall submit the Affordable Housing Table in the form annexed to this Schedule together with the Affordable Housing Plan to EDDC for approval, contemporaneously with the submission of its Detailed Application for approval of reserved matters.
  - 1.2 Affordable Dwellings shall comprise the 22 Dwellings described in the Affordable Housing Table and that Table shall identify which Tranche each of the Affordable Dwellings and Open Market Housing are in.
  - 1.3 The 15 Affordable Dwellings described as "Affordable Rent" in column 7 of the Affordable Housing Table shall subject to paragraph 9 below be Affordable Rented Dwellings and those 7 Affordable Dwellings described as "Intermediate" in column 7 of the Affordable Housing Table shall be Intermediate Affordable Dwellings.
  - 1.4 The Owners shall upon completion of each Tranche of the Development and at all times subsequently dispose of the Intermediate Affordable Dwellings as Intermediate Affordable Dwellings and shall let the Affordable Rented Dwellings on Affordable Rental Tenancies
  - 1.5 Tranche 1 shall include not less than 12 Affordable Dwellings and Tranche 2 shall include not less than 22 Affordable Dwellings minus the number of Affordable Dwellings provided under Tranche 1.
  - 1.6 The Owners shall not (other than with the written approval of EDDC):-
    - 1.6.1 cause or permit First Occupation of more than 15 of the Open Market Dwellings in Tranche 1 until 11 Affordable Rented Dwellings have been and have entered into a contract to sell the Affordable Rented Dwellings in that Tranche to an a to an Approved RP for a consideration that does not exceed the RP Sale Price and 4 Intermediate have been constructed and issued with an NHBC CML (or equivalent) notice confirming the Affordable Dwellings are fit for occupation ;
    - 1.6.2 cause or permit First Occupation of more than 25 of the Open Market Dwellings until all the Affordable Rented Dwellings have been constructed and issued with an NHBC CML (or equivalent) notice confirming the Affordable Dwellings are fit for occupation and the Owners have entered into a contract to sell the Affordable Rented Dwellings in that Tranche to an a to an Approved RP for a consideration that does not exceed the RP Sale Price and 3 Intermediate have been constructed and issued with an NHBC CML (or equivalent) notice confirming the Affordable Dwellings are fit for occupation
- OR if paragraph 1.9 below applies in respect of each Tranche the Owners have made the Affordable Dwellings in that Tranche Available for Occupation by Designated Persons as Intermediate Affordable Dwellings.
- 1.7 The Affordable Dwellings shall for the Perpetuity Period not be Occupied or permitted to be Occupied by the Owners other than as Affordable Housing and in accordance with this Schedule and shall not be let or disposed of other than to a Designated Person save in each case where the Owner for the time being has purchased that Dwelling under the provisions of paragraph 1.27 below.
  - 1.8 The Owners shall prior to the commencement of the construction of the Affordable Rented Dwellings in each Tranche Offer the Affordable Rental Dwellings in that Tranche for sale to one or more Approved RPs at the RP Sale

Price and at the same time shall provide EDDC's Proper Officer with a copy of the offer letter(s)

- 1.9 If at any time after six months of the Offer of the Affordable Rented Dwellings in each Tranche to at least three Approved RPs no Approved RP has confirmed in writing to the Owners that it is able and willing to purchase the Affordable Rented Dwellings or if an Approved RP who has accepted an Offer fails to exchange contracts for the purchase within four months of the Offer and no subsequent Approved RP has indicated it is willing to purchase the Affordable Rented Dwellings then paragraphs 1.11 to 1.27 below shall apply in to the provision of those Dwellings as Intermediate Affordable Dwellings..
- 1.10 After the Affordable Rented Dwellings have been transferred to an Approved RP the Nomination Arrangements contained in Appendix 2 shall apply to the Affordable Rented Dwellings unless EDDC and that Approved RP have entered into an agreement specifying alternative arrangements.
- 1.11 If any Affordable Dwelling is not transferred to an Approved RP pursuant to the above provisions the following provisions shall apply to its first and any subsequent allocation and letting:-
  - 1.11.1. The Owners shall give three months written notice to the EDDC's Proper Officer of the date when the Affordable Dwellings shall be Available for Occupation who shall be invited to submit to the Owners in writing a list of persons for each available Dwelling who are Designated Persons within 6 weeks of receipt of such notice.
  - 1.11.2. Any notice served under this paragraph in relation to the first letting of an Affordable Dwelling after it becomes Available for Occupation shall include details of the offer(s) made to the Approved RP under paragraph 1.8 and 1.9 above and state whether the Owners have exchanged contracts for the sale of the Affordable Dwellings (or any of them) to an RP.
  - 1.11.3. The Owners at their discretion shall offer an Equity Percentage Arrangement Discounted Sale or Lease or Shared Ownership Lease (as appropriate) to the persons on the list provided by EDDC's Proper Officer and shall grant an Equity Percentage Arrangement or Shared Ownership Lease or make a Discounted Sale or Lease (as appropriate) to one of those persons.

#### **Equity Percentage Arrangements**

- 1.12 If the Owner wishes to dispose of any Affordable Dwelling by way of an Equity Percentage Arrangement pursuant to this Schedule it shall first provide details of the arrangements to EDDC. The arrangements shall comply with the following structure:-
- 1.13 The sale shall be by way of freehold or long leasehold for a payment which does not exceed the Initial Sale Price.
- 1.14 The Equity Mortgage granted on first sale shall be for the difference between the Market Value and the Initial Sale Price for the Affordable Dwelling and expressed as of a percentage of the Market Value. The Equity Mortgage shall rank behind any mortgage entered into by the buyer for the purchase of the Affordable Dwelling.
- 1.15 The buyer shall not be required to pay any interest on the Equity Mortgage. If the buyer is required to pay a fixed or variable annual fee, such fee shall be capitalised and shall be deemed to form part of the Initial Sale Price

- 1.16 The buyer shall raise the funds needed to meet the Initial Sale Price from his/her own savings and a prior conventional mortgage as mentioned above.
- 1.17 The cost of redeeming the Equity Mortgage shall be the same percentage of the Market Value at the time of sale as at the original purchase date or if the buyer has exercised a right to Staircase the remaining percentage after taking into account the amount purchased.
- 1.18 The buyer shall be entitled to reduce the Equity Mortgage by means of Staircasing Payments.
- 1.19 The buyer shall be entitled to sell the Affordable Dwelling subject to the Equity Mortgage.
- 1.20 Unless the buyer has exercised a right to Staircase Out prior to offering an Affordable Dwelling for a subsequent sale the buyer shall not offer the Dwelling for sale other than on terms that the subsequent buyer will purchase the property under an Equity Percentage Arrangement with an initial payment not exceeding the Appropriate Percentage of the Market Value of that dwelling (i.e. the subsequent sale shall be at 80% of Market Value).
- 1.21 The Owner shall be entitled to combine an Equity Percentage Arrangement with a Shared Ownership Lease BUT in no case shall the capital that the purchaser is required to fund (including any capitalised rent or fee) exceed the Initial Sale Price
- 1.22 The controls over who can own and occupy the dwelling shall apply as set out in Paragraphs 1.7 of this Schedule above.

Non RP Shared Ownership Leases granted by a person who is not an RP

- 1.23 If the Owner wishes to dispose of any Intermediate Affordable Dwelling by way of a Shared Ownership Lease it shall first provide details of the arrangements to EDDC and such disposed shall not occur unless and until EDDC has approved such arrangements.

Recycling of Staircasing Receipts by Non RP Owners

- 1.24 The Equity Mortgagee or the Residual Owner (as the case may be) shall serve notice on EDDC on the occasion of one of the following events:
  - 1.24.1 within 10 working days of an application in writing from a borrower to make a Staircasing Payment or receiving a written notice from a mortgagee of a Mortgage Default Payment becoming due together with information on the estimated amount to be received and the contractual date set for completion
  - 1.24.2 within 10 working days of receiving being notified by the mortgagor under an Equity Mortgage of a request to transfer or grant a new Equity Mortgage which will give rise to an Exempt Payment together with information on the estimated amount to be received and the contractual date set for completion.
- 1.25 The Equity Mortgagee or the Residual Owner (as the case may be) shall pay to EDDC by electronic transfer:-
  - 1.25.1 any Staircasing Payment or Mortgage Default Payment it receives within 10 working days of the date of receipt (less the cost of the electronic transfer fee).
  - 1.25.2 any Exempt Payment it receives if those monies are not expended to grant a new Equity Mortgage on the relevant Affordable Dwelling within 10 working days of the date of receipt (less the electronic transfer fee).
- 1.26 The Equity Mortgagee or the Residual Owner (as the case may be) shall permit the owner for the time being of each Affordable Dwelling to dispose of that

Affordable Dwelling with the benefit of the Equity Mortgage either by the transfer of the Equity Mortgage to a Designated Person or by the grant of a new Equity Mortgage to the Designated Person on the same terms.

**Release of Intermediate Affordable Dwelling if no Designated Person can be identified to purchase**

- 1.27 If on any proposed disposal of an Intermediate Affordable Dwelling, other than the first disposal after build completion, EDDC's Proper Officer is unable to nominate a Designated Person willing and able to enter into a contract to purchase an Intermediate Affordable Dwelling within 6 weeks of the service of the notice under paragraph 1.11 above, or if a Designated Person nominated by EDDC has not exchanged contracts to buy that dwelling within 5 months of the service of such a notice then the Owner may sell that Intermediate Affordable Dwelling to any person he or she may select but the provisions of this Deed shall continue to apply to that purchaser.

## **SCHEDULE 2**

### **2. Payment of Contributions**

- 2.1. The Owners shall pay 50% of the Phase 1 Infrastructure Contribution i.e. £ 83,631.35 Index Linked to EDDC prior to First Occupation of the tenth (10<sup>th</sup>) Open Market Dwelling and they shall not permit First Occupation of the tenth (10<sup>th</sup>) Open Market Dwelling until 50% of the Phase 1 Infrastructure Contribution has been paid.
- 2.2. The Owners shall pay the balance of the Phase 1 Infrastructure Contribution (i.e. £83,631.35) Index Linked to EDDC prior to First Occupation of the twentieth (20<sup>th</sup>) Open Market Dwelling and they shall not cause or permit First Occupation of the twentieth (20<sup>th</sup>) Open Market Dwelling until the remaining 50% of the Phase 1 Infrastructure Contribution has been paid.
- 2.3. The Owners shall pay 50% of the Phase 2 Infrastructure Contribution (i.e. £183,728.60) Index Linked to EDDC prior to First Occupation of the tenth (10<sup>th</sup>) Open Market Dwelling and they shall not permit First Occupation of the tenth (10<sup>th</sup>) Open Market Dwelling until 50% of the Phase 2 Infrastructure Contribution has been paid.
- 2.4. The Owners shall pay the balance of the Phase 2 Infrastructure Contribution (i.e. £183,728.60) Index Linked to EDDC prior to First Occupation of the twentieth (20<sup>th</sup>) Open Market Dwelling and they shall not cause or permit First Occupation of the twentieth (20<sup>th</sup>) Open Market Dwelling until the remaining 50% of the Phase 2 Infrastructure Contribution has been paid..
- 2.5. It is hereby agreed between the parties that if the number of Dwellings in the Detailed Approval(s) is not 55 then the above payments shall be adjusted proportionately

### **SCHEDULE 3**

#### **3. LONG TERM ACCESS ARRANGEMENTS**

- 3.1. The Owners shall construct the East West Link to the standard required for adoption by DCC as a highway maintainable at the public expense.
- 3.2. The Owners shall not permit any Dwelling to be First Occupied on the Land before it has entered into a Section 38 Agreement with DCC for the construction and future dedication of the East West Link, (amongst other roads) as an all-purpose highway and the Northern Access and the Southern Access as footpaths/cycleways and has provided DCC with a bond for those works and the Owners acknowledge that such Section 38 Agreement will not have the effect of dedicating any roads or paths on the Land as highway until such time as those roads or paths are connected to an adopted highway by a route other than the Southern Access.
- 3.3. The Owners shall not permit more than twenty (20) Dwellings on the Land to be First Occupied before it has completed the construction of the East West Link to the point at which DCC is willing to issue a Part 1 Certificate and shall not permit more than forty-five (45) Dwellings to be First Occupied on the Land until it has completed the construction to the point at which DCC is willing to issue a Part 2 Certificate
- 3.4. The Owners shall not dedicate or allow the Southern Access to be dedicated as highway of any description unless and until DCC gives the Owners written notice that such dedication shall occur and the Owners shall dedicate the Southern Access as a footpath/cyclepath after connection of the East West Link to roads on an Adjoining Title, and until such dedication the Owners shall at their own expense:-
  - 3.4.1. maintain signs adjacent to the Southern Access stating that the Southern Access is not dedicated as a highway;
  - 3.4.2. include in the marketing material for the development a statement that the Southern Access is only a temporary access for motor vehicles;
  - 3.4.3. ensure that the purchasers of Dwellings are granted no more than temporary private vehicular rights of way over the Southern Access terminable by no less than 14 days written notice from DCC, such notice not to come into effect before permanent rights of vehicular access are available for the Land between the East West Link and an adopted highway; and
  - 3.4.4. after the service of the Notice referred to in 3.4.3 above carry out such works shown on the Long Term Access Plan as DCC may direct to prevent the use of the Southern Access by motorised vehicles
- 3.5. The Owners hereby grant DCC the right without further recourse to the Owners to:-
  - 3.5.1. by Notice(s) displayed on the Land declare that:-
    - 3.5.1.1. the East West Link is dedicated as highway and adopted for maintenance at the public expense
    - 3.5.1.2. the Southern Access is dedicated as a footpath/cycleway and adopted for maintenance at the public expense

3.5.1.3. the Northern Access is dedicated as a footpath/cycleway and adopted for maintenance at the public expense

3.5.2. remove any fence or boundary structure on the Land that would prevent the use of the East West Link by the public as an all-purpose highway

3.5.3. remove any fence or boundary structure on the Land that would prevent the use of the Northern Access by the public as a footpath/cycleway

3.5.4. construct any barriers expedient to prevent the use of the Southern Link by motorised vehicles

and in the event of DCC exercising any such right the Owner shall pay to DCC on demand any reasonable costs that DCC incurs in the exercise of those rights

3.6 For the avoidance of doubt there shall be no obligation on DCC to erect such notices as specified in paragraph 3.5

## **Schedule 4**

### **4. Travel Plans**

- 4.1. The Owners shall submit the Travel Plan to EDDC for its approval (in consultation with DCC) prior to the Commencement of the Development.
- 4.2. The Owners shall implement the Travel Plan in accordance with the provisions of the approved Travel Plan from First Occupation of any Dwelling on the Development.
- 4.3. The Travel Plan shall include the following elements:

**Background:** Explaining site, location, numbers of people, measures already in place, current share of travel methods if known and reason for producing the plan

**Objectives:** Stating what the plan is trying to achieve (e.g. reduction in single car users, increase in public transport use)

**Measures:** Detailing the proposed actions and measures for achieving the stated /Actions objectives

**Partnership Working Arrangements:** Including how the travel plan links with the Travel Plan produced by the developers of the New Community

**Targets:** Identifying targets against which the effectiveness of each measure will be reviewed. (Including short, medium and long term milestones)

**Monitoring:** Setting out arrangements for the review and monitoring of the plan on an ongoing basis to determine whether objectives are being met in line with the Section 106 Agreement

**Promotion:** Noting how the plan and measures will be promoted to the occupiers of the Dwellings

## **Schedule 5**

### **5. Open Space and LEAP**

#### **Open Space**

- 5.1. Prior to Commencement of the Development (and as part of Detailed Applications) the Owners and EDDC shall agree the location dimension and boundaries of the Open Space areas
- 5.2. Prior to Commencement of the Development (and as part of Detailed Applications) the Owners shall submit to EDDC for written approval the Open Space Specification
- 5.3. Prior to First Occupation of the 40<sup>th</sup> Dwelling the Owners shall lay out and complete to EDDC's reasonable satisfaction the areas of Open Space in accordance with the locations and to the dimensions approved by EDDC pursuant to paragraph 5.1 and in accordance with the approved Open Space Specification
- 5.4. The Owners shall maintain the Open Space in accordance with the Open Space Specification to the satisfaction of EDDC for a period of twelve months from the date on which EDDC certifies that the Open Space has been completed and during that period the Owners shall replace any grass plants shrubs trees (or any structures associated with them) which fail or die
- 5.5. If the Owners do not maintain the Open Space to EDDC's satisfaction as required by clause 5.4 of this Schedule EDDC may after giving the Owners 28 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 EDDC
- 5.6. On the expiration of the maintenance period referred to in clause 5.4 of this Schedule and in the event that a Town Council has been formed for the New Community which is willing and able to take on the responsibility for maintenance of the Open Space then the Owners may transfer the Open Space (or a part of it) to the Town Council provided always that the provisions of clauses 5.1 and 5.4 have been complied with prior to such transfer save that if such transfer occurs prior to the laying out of the Open Space in accordance with 5.2 the Owner hereby covenants with EDDC that they shall lay out and maintain the Open Space in accordance with clauses 5.3 and 5.4 notwithstanding that the Open Space land has already been transferred to the Town Council
- 5.7. In the event that the Open Space is not transferred to a Town Council the Owner shall continue to maintain the same in accordance with the Open Space Specification to the satisfaction of EDDC unless other arrangements are agreed between EDDC and the Owners for the maintenance of the Open Space
- 5.8. The Open Space Specification shall not be amended other than by agreement between the Owners and EDDC

#### **LEAP**

- 5.9. The Owners shall at its discretion provide a LEAP before First Occupation of the 40<sup>th</sup> Dwelling.

- 5.10. If the LEAP is to be provided by the Owners then it shall first agree with EDDC in writing the LEAP Specification and thereafter it shall construct and equip the LEAP in accordance with the agreed LEAP Specification
- 5.11. If on the date by which the Owners are required to complete the LEAP in accordance with paragraph 5.9 (i.e. prior to First Occupation of the fortieth (40th) Dwelling) the Owners have not constructed and equipped the LEAP in accordance with paragraph 5.10 the Owners shall pay to EDDC the LEAP Contribution and the Owners shall ensure that EDDC shall be permitted such rights as may be necessary in order to equip the LEAP subject to EDDC making good any consequential damage occasioned to the LEAP by EDDC its contractors servants or agents.
- 5.12. In the event that a Town Council has been formed for the New Community which is willing and able to take on the responsibility for maintenance of the LEAP then the Owners may transfer the LEAP to the Town Council provided always that the Owners have complied with all of their obligations under paragraphs 5.9 and 5.10 prior to such transfer
- 5.13. In the event that the LEAP is not transferred to a Town Council the Owners shall continue to maintain the same in accordance with the Open Space and LEAP Specification to the satisfaction of EDDC unless other arrangements are agreed between EDDC and the Owners for the maintenance of the LEAP

## **Schedule 6**

### **6. Foul Sewage**

- 6.1. The Sewerage Undertaker acknowledges that the Developer has paid the Sewerage Evaluation Contribution.
- 6.2. The Owners shall pay the Sewerage Network Contribution to the Sewerage Undertaker prior to the Commencement of the construction of more than 10 Dwellings.
- 6.3. The Owners covenants not to Commence the construction of more than 10 Dwellings within the Development until the Sewerage Network Contribution has been paid to the Sewerage Undertaker.
- 6.4. The Sewerage Undertaker covenants to use the Sewerage Evaluation Contribution for the investigative and detailed evaluation works to the existing sewerage network necessitated by the Development, and to use the Sewerage Network Contribution to carry out improvements to the existing sewerage network, required as a result of the Development.

### **GENERAL**

- 6.5. In the event that not all of the Sewerage Network Contribution is required for the works specified in this Schedule or, after a period of 5 years from receipt, there are funds remaining in the possession of the Sewerage Undertaker which have not been committed to the projects specified within this Schedule, all remaining uncommitted funds shall be repaid to the Owners, (which for the purpose of this provision shall mean the person by whom they were paid), together with any interest which may have accrued from time to time.
- 6.6. The Sewerage Undertaker covenants to provide a written account of the use of all funds paid under this Schedule, within 30 days of a written request for the same from the Owners.
- 6.7. In the event that the Owners fail to settle any account properly and duly rendered in respect of this Schedule within 14 days of dispatch to the Owner, that sum due shall accrue interest at 2% above the Bank of England's base rate calculated on a daily basis.
- 6.8. The Developer covenants to pay the reasonable legal expenses of the Sewerage Undertaker in negotiating and settling this Deed in the agreed sum of £400.00.

## **Schedule 7**

### **7. Public Realm**

- 7.1. Prior to the Commencement of Development the Owners shall submit to EDDC for approval details of the items of street furniture it is intending to provide on the Land (such items to include seats bollards fences trees (both existing and proposed) hedges litter bins dog bins and street name boards and other signage) and the Owners shall obtain the written approval of EDDC to those details
- 7.2. The Owners shall provide the items of street furniture in accordance with the details approved by EDDC as soon as reasonably practicable

## **Schedule 8**

### **8. Sustainability Provisions**

- 8.1. The Owners shall not construct or cause or permit to be constructed any Dwelling (including the Affordable Dwellings) unless they achieve at least Code for Sustainable Homes Level Three.
- 8.2. Prior to Commencement of the Development an application for reserved matters approval shall be made to EDDC which shall be accompanied by details for approval by EDDC of the works proposed to satisfy the following requirements :-
  - 8.2.1. the Development shall incorporate the necessary infrastructure including pipes and other apparatus (including heat exchangers in each home) to be laid within both existing adopted highways and highways to be constructed (whether or not adopted or to be adopted) within the site of sufficient standard and specification to allow it to be connected to the District Heating Facility and the Owners shall provide such evidence to EDDC as reasonably required by EDDC from time to time that such infrastructure is of sufficient standard and specification to connect to the District Heating Facility.
  - 8.2.2. In the interim period prior to the substantial completion of Parcel Group C space and water heating shall be provided through a temporary on-site facility.
  - 8.2.3. No later than substantial completion of Parcel Group C, the Development shall connect to the District Heating Facility supplied by the District Heating Facility at Skypark or such other district heating facility/network in the vicinity of the site.
- 8.3. The Development shall be carried out in accordance with the details approved under 8.2 above.
- 8.4. Prior to First Occupation of each Dwelling a pre-assessment to confirm the Code of Sustainable Homes (and as soon as possible thereafter the relevant Code for Sustainable Homes Certificate(s) for each Dwelling) shall be provided to each new Owner and/or Occupier of the relevant Dwelling Provided That if the Code for Sustainable Homes are superseded and it is no longer possible to obtain a Code for Sustainable Homes Certificate(s) the Owner shall nevertheless be required to obtain a written certification from a suitably qualified surveyor that the Dwelling at least would have achieved the Code for Sustainable Homes Level Three.
- 8.5. The Owner shall provide a Design Certificate certifying that the standards set out above have been met.
- 8.6. EDDC may at any time satisfy itself that each Dwelling has been constructed in accordance with the Design Certificate subject to giving reasonable notice to the Owner.

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



18647.

*Corporate* ~~Chief Executive/Deputy Chief Executive/Head of~~  
Legal, Licensing and Democratic Services *Manager*

THE COMMON SEAL of )  
DEVON COUNTY COUNCIL was )  
hereunto affixed in the presence of )



**A Duly Authorised Officer**

DOCUMENT No. ....

43339

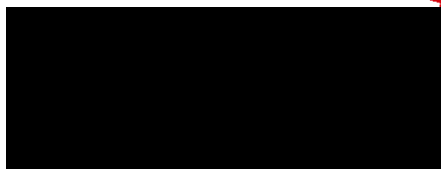
~~County Solicitor/Assistant County Solicitor~~

EXECUTED as a DEED by )  
WAINHOMES SOUTH WEST HOLDINGS )  
LIMITED acting by its attorneys )  
in the presence of )



3011

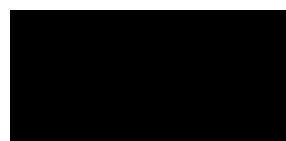
SIGNED as a DEED )  
by MICHAEL TREVOR JARVIS )  
in the presence of:- )



SIGNED as a DEED )  
by CHRISTINE MARGARET ANNING )  
in the presence of:- )



*Christine Margaret Anning*



SIGNED as a DEED by SOUTH )  
WEST WATER LIMITED )  
acting by a director and secretary  
or two directors

Director

~~Director~~/Secretary

## Appendix 1

### FORM OF AFFORDABLE HOUSING TABLE TO BE PROVIDED WITH EACH RESERVED MATTERS APPLICATION

#### Affordable Housing Schedule (15 Affordable Rent and 7 Intermediate Affordable Homes)

1	2	3	4	5	6	7
Plot No.	Type Ref.	Type	Bedrm's	Sq m	Sq ft	Tenure
TBA	3B/5P	House	3	67.4	726	Intermediate
TBA	3B/5P	House	3	67.4	726	Intermediate
TBA	3B/5P	House	3	67.4	726	Intermediate
TBA	3B/5P	House	3	67.4	726	Intermediate
TBA	4B/6P	House	4	104.6	1126	Affordable Rent
TBA	3B/5P	House		82	883	Affordable Rent
TBA	3B/5P	House		82	883	Affordable Rent
TBA	2B/4P	House	2	79.4	855	Affordable Rent
TBA	2B/3P	Coach	2	55.8	601	Intermediate
TBA	2B/4P	House	2	79.4	855	Affordable Rent
TBA	2B/4P	House	2	79.4	855	Affordable Rent
TBA	2B/4P	House	2	79.4	855	Affordable Rent
TBA	2B/4P	House	2	79.4	855	Affordable Rent
TBA	2B/3P	Coach	2	55.8	601	Intermediate
TBA	2B/3P	Apartment	2	64.7	696	Affordable Rent
TBA	2B/3P	Apartment	2	64.7	696	Affordable Rent
TBA	2B/3P	Apartment	2	64.7	696	Affordable Rent
TBA	2B/3P	Apartment	2	64.7	696	Affordable Rent
TBA	2B/3P	Apartment	2	64.7	696	Affordable Rent
TBA	2B/3P	Apartment	2	64.7	696	Affordable Rent
TBA	2B/3P	Coach	2	70.1	755	Affordable Rent
TBA	2B/3P	Coach	2	70.1	755	Intermediate

## APPENDIX 2

### NOMINATION ARRANGEMENTS FOR AFFORDABLE DWELLINGS BY AN RP

In this schedule "the Provider" refers to the Approved RP

#### DEFINITIONS AND INTERPRETATION

- 1 In this Schedule the following words and expressions shall (unless the context otherwise requires) have the following meanings:
  - 1.1 "Designated Person" any person or persons who at all material times immediately prior to the Occupation of the Affordable Dwellings is on the Housing Register or Housing Transfer List of the Council or any RP managing homes in East Devon and is eligible under the relevant priority band for an offer of the relevant Affordable Dwelling under the Council's Allocation scheme under section 167 of the Housing Act, 1996; with in each case priority being given to such a person with a Parish Connection followed by a person with an East Devon Connection
  - 1.2 "Parish Connection" a Parish Connection shall be deemed to have been shown by someone demonstrating one or more of the following:-
    - 1.2.1 a person who has been ordinarily resident in the parish of Rockbeare for a continuous period of three years immediately prior to the Affordable Dwellings in question being offered to them or for a continuous period of five years at some time in the past.
    - 1.2.2 a person who is not resident within the parish of Rockbeare but who has been employed in the parish on a permanent basis for a continuous period of three years and who need to live closer to their employment.
    - 1.2.3 a person who can demonstrate a close family connection to the parish of Rockbeare in that the person's mother father son or daughter has been ordinarily resident in the parish for a continuous period of five years immediately prior to the Affordable Dwellings in question being offered to them and where a caring dependency relationship can be established
  - 1.3 "the Perpetuity Period" The period of eighty years from the date of the Section 106 Agreement
  - 1.4 "the Initial Nomination Period" The period from completion of the Agreement until the first letting of each Affordable Dwelling
  - 1.5 "the Nomination Period" The period of ten years commencing after the initial letting of the Dwellings
  - 1.6 "the Subsequent Nomination Period" The period of time from the expiration of the Nomination Period to the expiration of the Perpetuity Period
  - 1.7 "the Primary Right" the right to nominate Designated Persons to occupy 100% of the Affordable Dwellings during the Initial Nomination Period in accordance with clause 3 below
  - 1.8 "the Secondary Right" the right to nominate Designated Persons to 100% of all relets of the Affordable Dwellings for the Nomination Period in accordance with clause 3 below

- 1.9 "East Devon Connection" an East Devon Connection shall be deemed to have been shown by someone demonstrating one or more of the following:
- 1.9.1 a minimum continuous period of residence by a prospective owner or occupier of five years in the District immediately prior to the Nomination Date and whose existing accommodation is substandard or unsuitable for their present needs; or
  - 1.9.2 employment in the District for a continuous period of at least five years; or
  - 1.9.3 current employment in the District in an agricultural related activity, the emergency services, as a professional healthcare or social worker or as a qualified primary or secondary school teacher; or
  - 1.9.4 a person who has moved away but has strong established and continuous links with the District by reason of birth or family and still have a parent or guardian living there.
- 1.10 "the Tertiary Right" The right to nominate Designated Persons to 75% of all relets in the Affordable Dwellings for the Subsequent Nomination Period in accordance with clause 3 below
- 1.11 "Approved Tenancies" Affordable Rent Tenancies in respect of the Affordable Rent Dwellings and Shared Ownership Leases in respect of the Intermediate Dwellings
- 1.12 "RPI" the United Kingdom General Index of Retail Price (All Items) or if the same shall cease to be published or if the basis upon which it is calculated is changed in any material respect (as to which the Council's decision shall be conclusive) such other index of inflation or the value of money as the Council shall designate in a notice to the Provider
- 1.13 References herein to any statute or Act of Parliament shall be deemed to include references to any statute, Act of Parliament or statutory instrument for the time being replacing re-enacting or modifying the same and whether or not enacted prior to the execution of this Agreement.
- 1.14 The expression "the Council" shall in the event of local government reorganisation include its successors in title
- 1.15 Unless the context otherwise requires neuter words shall include the masculine and the feminine and vice versa and singular words shall include the plural and vice versa
- 1.16 If there is a conflict between any of the provisions of this Schedule and the provisions of the First Schedule of this Agreement the provisions of that Schedule shall be taken to prevail for all purposes
- 1.17 Any notice or communication pursuant to this agreement shall be given by telephone followed by facsimile transmission
- 2 PRELIMINARY
- 2.3 The Provider has agreed for the duration of the Perpetuity Period to make the Affordable Dwellings available for Occupation by Designated Persons on Approved Tenancies
- 2.4 In furtherance of the better performance of the Council's obligations under Parts II Housing Act 1985 and Parts VI and VII Housing Act 1996 the Council and the Provider agree to enter into a programme for the nomination of Designated Persons to occupy the Affordable Dwellings as hereinafter appearing
- 3 PROGRAMME FOR NOMINATIONS

- 3.3 Subject as hereinafter stated the Provider grants to the Council for the Initial Nomination Period the Nomination Period and the Subsequent Nomination Period the Primary Secondary and Tertiary Rights respectively in respect of those Affordable Dwellings referred to in clauses 1.6, 1.7 and 1.8 whether vacant by reason of first availability for occupation on completion of construction or arising upon any subsequent re-letting or after initial occupation
- 3.4 The Provider shall endeavour to give to the Council:
- 3.4.1 Not less than six weeks notice in writing of the completion of construction of the Affordable Dwellings and
- 3.4.2 Not less than four weeks notice in writing of the Availability for Occupation upon re-letting of any Affordable Dwelling the subject of the Secondary or Tertiary Rights
- and the Council shall within 20 working days of receipt of notice pursuant to clause 3.2.1 above or (as the case may be) within 10 working days of notice pursuant to clause 3.2.2 above nominate to the Provider in priority order up to three prospective Designated Persons to occupy any of the Affordable Dwellings in respect of which the Council has received notice pursuant to paragraphs 3.2.1 or 3.2.2 above
- 3.5 The Provider shall within five working days have the reasonable right of interview enquiry and (on reasonable grounds) ultimate rejection of any prospective Designated Person so nominated by the Council provided that in the event of rejection of all three Designated Persons (in relation to any individual vacancy) or in the event that all three Designated Persons nominated fail to accept or refuse an offer of tenancy made by the Provider the Provider shall as soon as practicable so inform the Council and notify the same of its reasons for rejection (if applicable) and in the case of any of the Affordable Dwellings in respect of which the Council has nominated such person in response to a notice served pursuant to paragraph 3.2.1 above the Provider shall invite further nominations and the Council shall within 10 working days of notification nominate to the Provider a further three prospective Designated Persons in priority order and the Provider shall within 5 working days of such further notification inform the Council as to the identity of the Designated Person (if any) who shall occupy the Affordable Dwelling
- 3.6 Throughout the Initial Nomination Period the Nomination Period and the Subsequent Nomination Period the Provider will submit to the Council on an annual basis statistical evidence of the occupiers of the Affordable Dwellings (including voids, sales, re-sales, lets and re-lets) providing such information as the Council may reasonably require and the Provider is reasonably capable of providing
- 3.7 If within four weeks of the expiration of a notice served upon the Council pursuant to paragraphs 3.2 above the Provider shall fail to identify a Designated Person to occupy an Affordable Dwelling (whether by reason of the Provider's rejection of those persons nominated by the Council pursuant to the Primary Secondary or Tertiary Rights or otherwise) the Provider may let the Affordable Dwelling to a person in housing need living in East Devon. but without prejudice to the rights of the Council (if any) arising upon the next occasion of the said Affordable Dwelling falling vacant
- 3.8 With each notice given by the Provider to the Council pursuant to clause 3.2 the Provider shall certify to the Council that the Affordable Dwelling to which the notice relates is fit for Occupation.

4 SALE OF AFFORDABLE DWELLINGS

- 4.3 Should any of the Affordable Dwellings be purchased by a tenant under the provisions of the Housing Act 1996 the Provider shall be required to use the proceeds of sale to provide a replacement dwelling of a similar size on an approved tenancy at an affordable rent within East Devon in accordance with Housing Circular F120/97 or any amending legislation the Council shall have the right to nominate to the initial letting of such replacement dwelling with 75% of the relets thereafter

5 ENFORCEABILITY OF COVENANTS

- 5.3 This Agreement is made pursuant to the Local Government (Miscellaneous Provisions) Act 1982 Section 33 and the covenants on the part of the Provider shall be enforceable without any limit of time against any person deriving title from the 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 THAT the terms of this Agreement shall not be binding upon any mortgagee in possession for the time being of the Affordable Dwellings or part thereof or a receiver appointed by such a mortgagee which or who may sell free from the terms of this Agreement AND PROVIDED THAT the terms of this Agreement shall not be binding upon a person who purchases the property under a statutory right to buy or right to acquire or that persons mortgagee or successors in title

### **Appendix 3**

#### **PHASE 1 INFRASTRUCTURE CONTRIBUTIONS**

**Education  
Footpath and Cycleways  
Public Transport  
Country Park  
Landscaping  
Public convenience  
Recycling Contribution  
Public Realm & Public Art  
New Community Officer  
Community Development Worker  
Police & Ambulance  
Place of Worship  
Pebble Beds SAC & SPA**

### **Appendix 4**

#### **PHASE 2 INFRASTRUCTURE**

**Education  
Highways  
Cemetery  
Allotments**

**Appendix 5**  
**DRAFT PLANNING PERMISSION**

**EAST DEVON DISTRICT COUNCIL**

Council Offices, Knowle  
Sidmouth, Devon EX10 8HL



**TOWN AND COUNTRY PLANNING ACT 1990**

**GRANT OF OUTLINE PLANNING PERMISSION**

**Applicant:** Wainhomes (SW) Holdings Ltd      **Application No:** 11/1898/MOUT

**Address:** Owlsfoot Buisiness Centre      **Date of Registration:** 1 August 2011  
Sticklepath  
Oakhampton  
EX20 2PA

**Agent:** Focus On Design (Jon Stanley)      **Date of Decision:**  
**Address:** The Old Brewery  
Lodway  
Pill  
Bristol  
BS20 ODH

**Proposal:** Outline application including access arrangements, details of layout and scale for development of 55 dwellings. Duplicate to application 05/1791/MOUT.

**Location:** Land Opposite The Oriental Promise  
London Road  
Whimple

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

1. Approval of the details of the layout and appearance of the building (s), the means of access thereto 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.)
2. Approval of details of the layout, appearance of the buildings and the landscaping of the site referred to in condition 1 ("the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced and carried out as approved.  
(Reason - The application is in outline with one or more matters reserved.)



3. 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.  
(Reason - In accordance with the requirements of Section 92 of the Town & Country Planning Act 1990.)
4. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.  
(Reason - In accordance with the requirements of Section 92 of the Town & Country Planning Act 1990.)
5. The details to be submitted as part of the reserved matters shall adhere to the key design principles set out within the Design & Access Statement and the illustrative layout ref SK03 Rev C. The detailed layout shall be prepared to have regard to exiting tree roots (and the need to protect them), shadowing and dominance from trees and the implication of layout of services (including district heating pipes) and accord with British Standard 5837:2005.  
(Reason - To ensure that the development proceeds in accordance with the design principles established at the outline stage in the interests of ensuring a development that is compatible with the urban design principles established through the Cranbrook New Community Strategic Design Guidance (June 2010) and Development Framework Plan for Cranbrook as approved by Outline Planning Application 03/P1900 and to ensure the proposed development is appropriate for the area and to accord with policy CO6 (Quality of New Development) of the Devon Structure Plan and policies PUA1 (New Community) and D1 (Design and Local Distinctiveness) of the East Devon Local Plan).
6. Details in relation to the reserved matters submitted in compliance with Condition 1 shall include finished floor levels where relevant and existing and proposed ground levels in relation to a fixed datum. Development shall then be carried out in accordance with those approved details unless minor variations are otherwise subsequently agreed in writing by the Local Planning Authority.  
(Reason - To ensure that adequate details of levels are provided to enable assessment of the relative heights of ground and buildings in relation to the landscape, the proposed development and existing structures and that the development accords with Policy D1 (Design and Local Distinctiveness) of the East Devon Local Plan).
7. Any reserved matters submissions shall include a schedule of materials and finishes for buildings and hard landscaping having regard to the palette of materials set out in the Design and Access Statement, Cranbrook New Community Strategic Design Guidance (June 2010) and / or the Design Codes for Cranbrook and, where so required by the Local Planning Authority, samples of such materials and finishes to be used for the external walls and roofs of the proposed development and the hard landscaping, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details unless subsequently otherwise agreed in writing by the Local Planning Authority.  
(Reason: To ensure that the materials are sympathetic to the character and appearance of the area and that the development accords with Policy D1 (Design and Local Distinctiveness) of the East Devon Local Plan).

8. Unless otherwise agreed in writing with the Local Planning Authority, no construction shall commence until full details of both hard and soft landscaping works (including highway trees) have been submitted to and approved by the Local Planning Authority as reserved matters.

These details shall adhere to the general principles of Section 6.6 of the Design and Access Statement (April 2011) and 'Illustrative Layout Before Cranbrook' ref SK03 RevC and 'Illustrative Layout After Cranbrook' ref SK06.

In preparing these details, regard should be had to the relevant provisions for tree/hedgerow protection set out in the Landscape, Biodiversity and Drainage Strategy (LBDS) for Cranbrook (Outline Planning Application 03/P1900), particularly in relation to hedgerows that form the boundary between the site and Parcel Group C as defined in the Phasing Strategy for Cranbrook (October 2010).

The landscaping works shall be undertaken in accordance with the approved scheme, and any subsequent amendments as shall be approved in writing by the Local Planning Authority, within 12 months of completion or during the next planting season following completion whichever is the sooner. If within a period of 5 years from the date planted any tree, plant or shrub dies, is removed or becomes seriously damaged or diseased it shall be replaced in the next planting season with other(s) of similar size and species unless that landscaping has been transferred to the Local Authority or other agreed maintenance body, or the Local Planning Authority gives written consent to any variation.

(Reason - In the interests of enhancing and preserving the amenity of the area and to ensure that the development accords with Policies D1 (Design and Local Distinctiveness), D4 (Landscape Requirements) and EN6 (Wildlife Habitats and Features) of the East Devon Local Plan).

9. Should any contamination of soil or groundwater be discovered during development of the site, the Local Planning Authority should be contacted immediately. Site activities within that sub-phase or part thereof, should be temporarily suspended until such time as a procedure for addressing such contamination, within that sub-phase or part thereof, is agreed upon with the Local Planning Authority or other regulating bodies.  
(Reason - To ensure that any contamination existing and exposed during the development is identified and remediated and that the development accords with Policy EN15 (Control of Pollution) of the East Devon Local Plan).
10. Prior to the commencement of development (save such preliminary or minor works that the Local Planning Authority may agree in writing), a Construction Environmental and Management Plan (CEMP) to manage the impacts of construction, including traffic, shall be submitted to and approved in writing by the Local Planning Authority (in consultation with the Secretary of State for Transport). For the avoidance of doubt, the CEMP shall include:-
- i. measures to regulate the routing of construction traffic is consistent with agreed routes for sub phases of development associated with Outline Planning Permission 03/P1900 in accordance with Drawing Number 04PN055/57/A - Plan 13 of the Section 106 Agreement between Devon County Council, East Devon District Council and the East Devon New Community Partners;
  - ii the times within which traffic can enter and leave the site;
  - iii. the importation and/or dispersal of spoil and soil on and off site;

- iv. measures to control dust from earthworks and construction activities;
- v. a noise control plan;
- vi. the location of the site compound(s);
- vii. specified on-site parking for vehicles associated with the construction works and the provision made for access thereto;
- viii. expected number of construction vehicles per day.

The CEMP shall also commit to the following construction management practices:

- 1) Construction vehicles should not cross or work directly in any watercourses. Temporary bridges should be constructed for vehicles to cross and excavations done from the bank;
- 2) Pumps used for pumping out water from excavations should be sited well away from watercourses and surrounded by absorbent material to contain oil spillages and leaks;
- 3) Discharge of silty or discoloured water from excavations should be irrigated over grassland or passed via a settlement lagoon so that gross solids are removed. This Agency must be advised if a discharge to a watercourse is proposed;
- 4) Storage of fuels for machines and pumps should be well away from any watercourses. The tanks should be bunded or surrounded by oil absorbent material (regularly replaced when contaminated) to control spillage and leakage; and
- 5) The Environment Agency must be notified immediately of any incident likely to cause pollution.

The details so approved and any subsequent amendments as shall be agreed in writing by the Local Planning Authority shall be complied with in full and monitored by the applicants to ensure continuing compliance during the construction of the development. (Reason - To minimise the impact of the works during the construction of the development in the interests of highway safety and the free-flow of traffic, and to safeguard the amenities of the area and that the development accords with Policies TA7 (Adequacy of Road Network and Site Access) and EN15 (Control of Pollution) of the East Devon Local Plan).

- 11. No construction shall be commenced (save such preliminary or minor works as the Local Planning Authority may approve in writing) until the relevant details of the following works have been submitted to and approved by the Local Planning Authority:-

Details of the proposed estate roads, footways, footpaths, cycleways, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance/vehicle overhang margins, embankments, visibility splays, accesses, car parking and street furniture, shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections indicating, as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.

The works shall thereafter be provided and retained in accordance with the approved details and any subsequent amendments as shall be approved in writing by the Local Planning Authority.

(Reason - To ensure adequate information is available for the proper consideration of the detailed proposals, the site is developed in a proper manner, adequate access and associated facilities are available for all traffic attracted to the site, in the interest of the safety of all users of the adjoining public highway and to protect the amenities of the

adjoining and future residents and that the development accords with Policy D1 (Design and Local Distinctiveness) of the East Devon Local Plan).

12. No construction shall commence (save such preliminary or minor works as the Local Planning Authority may approve in writing) until details of a Sustainable Urban Drainage System (SUDS) for the disposal of the surface water from the development has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out and thereafter retained in accordance with those approved details and any subsequent amendments as shall be approved in writing and each dwelling shall not be occupied until the relevant works for the disposal of surface water have been completed.  
(Reason - To avoid pollution of the environment and/or flooding and that the development accords with Policy EN15 (Control of Pollution) of the East Devon Local Plan and Policy CO13 (Protection of Water Resources and Flood Defence) of the Devon Structure Plan).
13. Prior to the commencement of works, details of measures to protect the pond and associated vegetation to be retained within that sub-phase shall be submitted to and approved by the Local Planning Authority. The development shall be implemented in accordance with such details and any subsequent amendments as shall be approved in writing by the Local Planning Authority.  
(Reason - To protect flora and fauna dependent on the aquatic environment and to protect the riverine environment in general and that the development accords with Policies EN6 (Wildlife Habitats and Features) and EN15 (Control of Pollution) of the East Devon Local Plan and Policy CO13 (Protection of Water Resources and Flood Defence) of the Devon Structure Plan).
14. Reserved matters submission shall include details of the walls and/or fences or other forms of enclosure to be erected with frontage onto the public highway, and be approved in writing by the Local Planning Authority. Any walls and/or fences shall be erected in accordance with the approved details and any subsequent amendments as shall be approved in writing by the Local Planning Authority before the relevant building is first occupied. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), these walls and/or fences or other means of enclosure shall not thereafter be altered or removed without the prior written approval of the Local Planning Authority. For the avoidance of doubt, no fence or other means of enclosure shall be erected within or closer to any hedgerow other than as shown on the approved plans or as shall first be agreed in writing with the Local Planning Authority.  
(Reason - In the interests of preserving and enhancing the character and appearance of the area and/or protecting the privacy of local residents and that the development accords with Policies D1 (Design and Local Distinctiveness) and D4 (Landscape Requirements) of the East Devon Local Plan).
15. No development shall commence on site until all the mitigation measures identified in the Ecological Impact Assessment (extended Phase 1 & Phase 2; Hedgerow, Badger, Bat Bird, Dormouse, Reptile & Great Crested Newts) May 2011 have been implemented. These measures shall include:  
Seeding of the public open space area with a species diverse flowering wild meadow seed mix (Section 6.1 of EIA);

Compensatory planting of native species such as dog rose, hazel, black thorn, hawthorn and damson to offset the removal of small sections of hedgerow (Section 6.1 of EIA);

Preparation and implementation of a pond management scheme to halt eutrophic processes (Section 6.1 of EIA);

Inclusion of bad roosting structures and a lighting plan (Section 6.4 of EIA); and

Application to Natural England for a Protected Species License (Section 6.5).

Prior to commencement of development and implementation of these mitigation measures, a written report shall be submitted for approval by the Local Planning Authority. This report shall provide a timetable for implementation of the mitigation measures and further details of the type and location of compensatory planting, location and type of bat boxes to be installed, a lighting plan and details of the type of wild meadow seed and location of seeding.

(Reason - In the interests of protected species and to accord with advice given in PPS8 (Biodiversity and Geological Conservation), policy CO10 (Protection of Nature Conservation) of the Devon Structure Plan and policy EN6 (Wildlife Habitats and Features) of the East Devon Local Plan).

16. 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 to accord with the advice contained within PPS5 (Planning for the Historic Environment), policy CO8 (Archaeology) of the Devon Structure Plan and policy EN8 (Proposals affecting sites which may potentially be of archaeological importance) of the East Devon Local Plan).

17. The plans and particulars submitted in accordance with the reserved matters shall include and take due account of:

a) A survey and plan to show the location of and allocating a reference number to all trees on and adjacent to the site.

The survey shall be carried out by a competent Arboriculturist (see BS5837: 2005 section 2.2) with experience of working with trees on development sites. The survey shall be undertaken in accordance with British Standard 5837:2005 "Trees in relation to construction".

b) A report and plans in accordance with recommendations of BS5837:2005, giving the following information:

For each tree:

- Reference number.
- Species.
- Height.
- Height of crown clearance.
- Crown spread of each tree (in relation to all four compass points).
- Diameter of the trunk measured at 1.5m above ground in millimeters on single stem trees and immediately above the root flare on multi-stemmed trees.
- Age class (e.g. young, middle age, mature, over mature, veteran).
- Assessment of the structural and physiological condition including trunk, crown and roots.

- Tree management recommendations.
- Trees to be felled as part of development proposal.
- British Standard category grading
- Root Protection Area (RPA)
- Arboricultural Impact Assessment (AIA)

For the site:

- Details of any proposed alterations in existing ground levels, and the position and details of any proposed excavation, within the crown spread of any retained tree, or on land adjacent to the site, within a distance of any tree equivalent to half the height of that tree.

- A Tree Protection Plan (including Arboricultural Method Statements (AMS) giving details of the specification and location of proposed fencing and any other measures including Arboricultural Method Statements (AMS) to be put in place for the protection and monitoring of any retained tree from damage before or during the course of development.

(Reason: To ensure the continued well being of the trees in the interests of the amenity of the locality, by correctly identifying, plotting and assessing all trees present on or adjacent to the site. This is to comply with Policy CO6 (Quality of New Development) of the Devon Structure Plan and Policies D1 (Design and Local Distinctiveness) and D5 (Trees on Development Sites)).

18. The flood alleviation measures identified within the Flood Risk and Drainage Assessment (May 2011) must be implemented in accordance with the mitigation details specified therein unless subsequently otherwise agreed in writing by the Local Planning Authority.

(Reason - To ensure the provision of a hydrologically acceptable flooding and drainage scheme that also brings further landscape, amenity and biodiversity enhancements and that the development accords with Policy EN15 (Control of Pollution) of the East Devon Local Plan and Policy CO13 (Protection of Water Resources and Flood Defence) of the Devon Structure Plan).

19. No existing hedgerows on the boundary of the site and shown as being retained in whole or in part on site in the Landscape, Bio-diversity and Drainage Strategy (LBDS) dated September 2011 (Outline Planning Application 03/P1900), including any amendments as shall be agreed in writing by the Local Planning Authority, shall be uprooted or destroyed (including severance of roots), or otherwise wilfully damaged, other than in accordance with the LBDS or approved management plan, without the prior written consent of the Local Planning Authority. Any part of any retained hedgerow within the LBDS which within 5 years of the commencement of development of that sub-phase is uprooted, dies or becomes diseased, shall be replaced before the end of the next available planting season with a species, details of which shall first have been submitted to and approved in writing by the Local Planning Authority.

(Reason - To ensure minimum interference with the hedgerows on the land in order to protect habitat and biodiversity and that the development accords with Policies D4 (Landscape Requirements), D5 (Trees on Development Sites) and EN6 (Wildlife Habitats and Features) of the East Devon Local Plan and Policy CO9 (Biodiversity and Earth Science Diversity) of the Devon Structure Plan.).

20. Any reserved matters submission for the residential and commercial development shall include detailed plans showing provision for any relevant external refuse and recycling storage facilities. Such provision is to be implemented and thereafter retained in

accordance with the approved plans, unless subsequently otherwise agreed in writing by the Local Planning Authority.

(Reason - To ensure this amenity is satisfactorily integrated into the design of the development and that the development accords with Policy D1 (Design and Local Distinctiveness) of the East Devon Local Plan and Policy WM1 (Waste Management) of the Devon Structure Plan).

21. Reserved matters submissions shall include details of both on-street and off-street parking provision for each sub-phase of development for approval in writing by the Local Planning Authority and are to be provided in accordance with those approved details and any subsequent amendments as shall be approved in writing by the Local Planning Authority. Thereafter all off-street parking provision shall be retained for that purpose unless otherwise agreed in writing with the Local Planning Authority.  
(Reason - To ensure required parking standards are adhered to and that the development accords with Policy TA9 (Parking Provision in New Development) of the East Devon Local Plan and Policy TR4 (Parking Strategy, Standards and Proposals) of the Devon Structure Plan).
22. No dwelling shall be occupied until the garage(s) and/or parking spaces agreed to serve that dwelling have been provided in accordance with details that previously shall have been approved in writing by the Local Planning Authority. Such garages and parking spaces shall thereafter be retained for the parking of vehicles unless otherwise agreed in writing with the Local Planning Authority.  
(Reason - To ensure required parking facilities are provided and available for use upon occupation of the dwellings and that the development accords with Policy TA9 (Parking Provision in New Development) of the East Devon Local Plan and Policy TR4 (Parking Strategy, Standards and Proposals) of the Devon Structure Plan).
23. Reserved matters submission shall include details for the provision of cycle parking facilities. These approved facilities shall be installed and available for use on first occupation of the building and shall be retained and maintained for that purpose only thereafter unless otherwise agreed in writing by the Local Planning Authority.  
(Reason - To achieve modal shift from private car to other forms of transport in accordance with the Transport Assessment and that the development accords with Policy TA9 (Parking Provision in New Development) of the East Devon Local Plan and Policy TR4 (Parking Strategy, Standards and Proposals) of the Devon Structure Plan).
24. Details shall be submitted to show external plant or machinery, which shall not be installed on any building within the site without the prior approval of the Local Planning Authority. The development shall proceed only in accordance with those approved details.  
(Reason - In the interests of local amenity and that the development accords with Policy D1 (Design and Local Distinctiveness) of the East Devon Local Plan).
25. All sub-stations and similar utility buildings or structures required by statutory undertakers and all other appropriate bodies, wherever practicable, shall be placed underground or shall be located in suitably concealed locations where they are not visually prominent.  
(Reason - In the interests of visual amenity and that the development accords with Policy D1 (Design and Local Distinctiveness) of the East Devon Local Plan).

26. 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).
27. No part of the development hereby approved shall be commenced until:
- A) The access road has been laid out, kerbed, drained and constructed up to base course level for the first 20 metres back from its junction with the public highway
  - B) The ironwork has been set to base course level and the visibility splays required by this permission laid out
  - C) The footway and cycleway on the public highway frontage required by this permission has been constructed up to base course level
  - D) A site compound and car park have been constructed to the written satisfaction of the Local Planning Authority.
- (Reason - To ensure that adequate on site facilities are available for all traffic attracted to the site during the construction period, in the interest of the safety of all users of the adjoining public highway and to protect the amenities of the adjoining residents and that the development accords with Policy D1 (Design and Local Distinctiveness) of the East Devon Local Plan).
28. The occupation of any dwelling in an agreed phase of the development shall not take place until the following works have been carried out to the written satisfaction of the Local Planning Authority:
- A) The cul-de-sac carriageway including the vehicle turning head within that phase shall have been laid out, kerbed, drained and constructed up to and including base course level, the ironwork set to base course level and the sewers, manholes and service crossings completed;
  - B) The cul-de-sac footways and footpaths which provide that dwelling with direct pedestrian routes to an existing highway maintainable at public expense have been constructed up to and including base course level;
  - C) The cul-de-sac visibility splays have been laid out to their final level;
  - D) The street lighting for the cul-de-sac and footpaths has been erected and is operational;
  - E) The car parking and any other vehicular access facility required for the dwelling by this permission has/have been completed;
  - F) The verge and service margin and vehicle crossing on the road frontage of the dwelling have been completed with the highway boundary properly defined;
  - G) The street nameplates for the cul-de-sac have been provided and erected.
- (Reason - To ensure that adequate access and associated facilities are available for the traffic attracted to the site).
29. Following the provision of suitable alternative vehicular accesses to adoptable standard to the west or east by the development of the adjoining land, the estate street access to old A30 (currently numbered as B3174) shall be effectively and permanently closed to motorised vehicles 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).

## NOTE FOR APPLICANT

1. IN GRANTING PLANNING PERMISSION FOR THIS DEVELOPMENT, THE FOLLOWING IS A SUMMARY OF THE REASONS FOR THE DECISION:

The proposal complies with the following Devon Structure Plan 2001-2016 Policies and the adopted East Devon Local Plan 1995-2011 Policies:

### Devon Structure Plan Policies

ST1 (Sustainable Development)  
ST3 (Self Sufficiency of Devons Communities)  
ST4 (Infrastructure Provision)  
ST10 (Exeter Principal Urban Area)  
ST11 (Exeter Principal Urban Area Housing and Employment Provision)  
ST12 (East Devon New Community Proposal)  
ST17 (Housing and Employment Land Provision)  
ST18 (Affordable Housing)  
ST19 (Strategic Development Sites)  
ST23 (Concept of new Community Development)  
ST24 (New Community Implementation)  
CO6 (Quality of New Development)  
CO7 (Historic Settlements and Buildings)  
CO8 (Archaeology)  
CO10 (Protection of Nature Conservation Sites and Species)  
CO11 (Conserving Energy Resources)  
CO12 (Renewable Energy Developments)  
CO13 (Protecting Water Resources and Flood Defence)  
CO14 (Conserving Agricultural Land)  
CO16 (Noise Pollution)  
TR2 (Co-ordinating Land Use/Travel Planning)  
TR5 (Hierarchy of Modes)  
TR6 (Network Integration)  
TR7 (Walking and Cycling)  
TR9 (Public Transport)

### East Devon Local Plan Policies

S1 (Strategic Development in the East Devon Part of the Exeter Principal Urban Area)  
S5 (Countryside Protection)  
S7 (Infrastructure Related to New Development)  
D1 (Design and Local Distinctiveness)  
D2 (Sustainable Construction)  
D3 (Access for the Disabled)  
D4 (Landscape Requirements)  
D5 (Trees on Development Sites)  
D6 (Public Art)  
EN4 (Nationally Important Sites including Sites of Special Scientific Interest)  
EN6 (Wildlife Habitats and Features)  
EN7 (Nationally and Locally Important Archaeological Sites)  
EN8 (Proposals Affecting Sites Which May be of Archaeological Importance)  
EN15 (Control of Pollution)  
H1 (Residential Land Provision)  
H2 (Residential Land Allocation)

H3 (Range and Mix of New Housing Development)  
H4 (Affordable Housing)  
RE3 (Open Space Provision in New Housing Developments)  
C6 (Renewable Energy)  
TA1 (Accessibility of New Development)  
TA3 (Transport Assessments /Travel Plans)  
TA4 (Footpaths, Bridleways and Cycleways)  
TA7 (Adequacy of Road Network and Site Access)  
TA8 (Safeguarding of Land Required for Highway and Access Improvements)  
PUA 1 (New Community)  
PUA 5 (Clyst Honiton Eastern By-Pass and Other Transport Works)

## 2. Commencement of Construction

This means the commencement or carrying out of any works of construction to any dwelling or building as the case may be within the application site. For the avoidance of doubt, conditions 8, 11, 12, 13 and 26, relate to the commencement of construction as so defined.

## 3. REASONS FOR APPROVAL

The proposals meet with the requirements of the policy framework set down within the Devon Structure Plan, East Devon Local Plan and Supplementary Planning Guidance which make specific provision for a New Community in this location and having regard, in particular but not exclusively, to Policies ST12, ST23, ST24 and ST25 of the Devon Structure Plan 2001 - 2016 (Adopted October 2004) and Proposal PUA1 and Policy S1 of the East Devon Local Plan 1995-2011, but also to the wider policies of the development plan.

The development is consistent with national planning priorities, in particular but not exclusively, PPS1: Delivering Sustainable Development.

The development forms an important and sustainable element of the development plan strategy for accommodating employment and housing growth to the east of Exeter and which also include the Skypark and Science Park proposals. The New Community will provide a wide range of sustainable housing options including affordable housing to meet local needs.

The broad orientation and illustrative layout of uses proposed is acceptable, subject to further details of layout to be provided as Reserved Matters. The proposals adhere to the principles for the design of the New Community and the Strategic Design Guidance for Cranbrook and are not, therefore, considered to compromise the comprehensive development of Cranbrook (in particular, Parcel Group C as defined in the Phasing Strategy for Cranbrook).

In order to secure the delivery of key elements of the proposals and to mitigate against any adverse impacts of the development, it has been necessary for the applicant to enter into a Section 106 Agreement which includes. The commitments to be entered into as part of the Section 106 Agreement ensure adequate on-site infrastructure is provided and that the proposed development makes appropriate pro-rata contribution to wider community infrastructure to be implemented for the New Community.

The applicant has also accepted conditions in relation to a range of matters including, but not confined to, archaeology, design, contaminated land, drainage and flooding alleviation, landscaping and open space, noise and the provision of infrastructure. Following agreement on these matters the development will not have a significant adverse impact on the environment, amenities, highway network, or any other material consideration.

Provision is made for the timely and integrated provision of the necessary community facilities and infrastructure consistent with ST23 of the Structure Plan and including provision for primary and secondary education and other community uses.

Proposals for the enhancement of the highway network are acceptable and appropriate and consistent with the access strategy for the area to the east of Exeter. The development will be linked effectively to Exeter in the first phase of development and be accessible to the Strategic Road Network and the Local Highway System.

The proposal does not harm business or employment opportunities.

The proposal does no harm to wildlife interest.

The access to the site does not prejudice highway safety.

4. NB: A SECTION 106 LEGAL AGREEMENT RELATES TO THIS PLANNING PERMISSION

5. Materials

Condition 7 requires samples of materials to be submitted and these samples must comply with the following criteria:-

Materials (General)

Prior to construction a reference panel sufficiently representing the material in question should be built on site. The panel should be no less than 1square metre in size and should be in the final proposed material, colour finish and texture including gloss factor to paint work, sprayed and powder coated materials.

The reference panel should be built on a level firm foundation in a dry location with natural daylight.

All panels should be viewable from close range and from approximately 3 metres away. All sample panels shall be viewed together to allow an assessment of the entire materials palette.

All materials should be reasonably free from damage, deformation and deflection especially edges and corners.

Materials (Brickwork) - All brickwork must be built in accordance with BS EN 771-1.

Materials (Render) - A through- render system is preferred.

The plans relating to this application are listed below:

0415-100	Location Plan	25.08.11
SK03 REVC	Layout	01.08.11
SK06	Layout	24.08.11



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Head of Economy

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

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