

DATED

24 February

2017

EAST DEVON DISTRICT COUNCIL (1)

and

CAVANNA HOMES (DEVON) LIMITED (2)

DEED OF VARIATION

- to Section 106 Agreement dated 12 September 2014 relating to –
Site at The Jack in the Green Inn, Rockbeare, Exeter, EX5 2EE
Planning Permission Reference: 14/0300/MFUL

East Devon District Council
Knowle
Sidmouth
EX10 8HL
(Legal Services reference: Dev.2-0389)

This DEED OF VARIATION is made the 24th day of February 2017

BETWEEN:

- (1) **EAST DEVON DISTRICT COUNCIL** of Council Office, Knowle, Sidmouth, Devon, EX10 8HL ("the District Council")
- (2) **CAVANNA HOMES (DEVON) LIMITED** (Co. Regn. No. 4228419) of Cavanna House, Riviera Park, Nicholson Road, Torquay, TQ2 7TD ("the Owner")

WHEREAS:

- (A) The District Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 ("TCPA 1990") for the area in which the Site is situated.
- (B) The Owner is the freehold owner of part of the Site registered at the Land Registry under title number DN654096.
- (C) On 12 September 2014 the District Council, the Owner, Lloyds Bank Plc and Paul Kevin Parnell and Judith Mary Parnell entered into the Original Agreement.
- (D) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of Original Agreement as set out in this deed.
- (E) This agreement is made under section 106A of the TCPA 1990 and is supplemental to the Original Agreement.

1 INTERPRETATION

1.1 Definitions

In this deed unless the context otherwise requires the following expressions shall have the following meanings:

"Original Agreement" means the agreement made under section 106 of the TCPA 1990 dated 12 September 2014 between the District Council, the Owner, Lloyds Bank Plc and Paul Kevin Parnell and Judith Mary Parnell and appended at Schedule 2

- 1.2 Unless where otherwise specified or where the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this deed.

- 1.3 Clause headings shall not affect the interpretation of this deed.

- 1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the District Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Unless the context otherwise requires, references to clauses are to the clauses of this deed.
- 1.11 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2 STATUTORY PROVISION

This deed is made pursuant to the provisions of sections 106 and 106A of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

3 VARIATIONS TO THE ORIGINAL AGREEMENT

The District Council and the Owner hereby agree that the Original Agreement shall be varied as set out in Schedule 1 to this deed from the date hereof.

4 COVENANTS TO THE DISTRICT COUNCIL

The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this deed.

5 ENDORSEMENT

Promptly following completion of this deed the District Council shall endorse a memorandum of variation on the Original Agreement in the following terms:

"This Agreement has been varied by a supplemental agreement dated 2017 and made between (1) East Devon District Council and (2) Cavanna Homes (Devon) Limited

6 COSTS

The Owner shall pay on the date hereof the reasonable legal costs of the District Council in entering into this Deed.

7 GENERAL PROVISIONS

7.1 It is hereby agreed and declared between the parties as follows:

7.1.1 This deed comes into effect immediately upon being dated.

7.1.2 The Owner shall only be responsible for complying with the terms of this deed and the Original Agreement so long as it shall retain an interest (within the meaning of Section 106 of the Act) in the Site or any part thereof which is the subject of the obligations attached to the part of the Site in which its interest subsists and so that having parted with its interest in the Site or the relevant part the subject of the particular obligation any subsequent breach of the terms of this Agreement shall be enforced by the District Council against the persons who are then owners or occupiers of the Site or any part thereof in respect of which the obligations subsist but nothing in this clause shall release the Owner in respect of any breach occurring before it shall have parted with its interest in the Site.

7.1.3 The District Council shall upon receipt of a written request from the Owner and without unreasonable delay at any time after the planning obligations under the Original Agreement as varied by this Deed have been fulfilled issue written confirmation thereof and thereafter arrange for cancellation of all related entries in the Register of Local Site Charges.

7.1.4 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and its terms shall not be enforceable by or against anyone other than the Owner or the District Council and any person deriving title from them.

7.1.5 This deed shall be registered as a local land charge by the District Council.

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

8 GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

IN WITNESS whereof this Deed of Variation was executed and delivered as a deed on the day and year first above written

SCHEDULE 1

VARIATIONS TO THE PRINCIPAL AGREEMENT

1 In Schedule 1 clause 1 (Definitions) of the Original Agreement:

- 1.1 The definition of "Affordable Housing Units" shall be deleted and replaced with:

"Affordable Housing Units means the Dwellings to be provided in perpetuity (here meaning for a period of 80 eighty years) as Affordable Housing which shall comprise 2 (two) of the total Dwellings provided in the Development comprising the Discounted Sale Dwellings to be provided in accordance with the provisions of this Schedule on the Affordable Housing Site and for the avoidance of doubt, any reference to an Affordable Housing Unit shall mean one of the Affordable Housing Units"

- 1.2 The definition of "Designated Person" shall be deleted and replaced with:

"Designated Person means a person or family who has a Local Connection immediately prior to his/their proposed occupation and who is registered with Help to Buy South West"

- 1.3 The definition of "Design and Quality Standards" shall be amended by the deletion of paragraph (iii).

- 1.4 The following definitions shall be deleted:

1.4.1 "Affordable Housing Site"

1.4.2 "Affordable Shared Ownership Dwelling"

1.4.3 "Common Housing Register"

1.4.4 "Housing Need"

1.4.5 "Housing Provider"

1.4.6 "Nomination Agreement"

1.4.7 "Shared Ownership Lease"

1.4.8 "Staircasing Receipts"

- 1.5 The following new definitions shall be added in alphabetical order:

County Connection (1) means a connection to the County of Devon, demonstrated by one or more of the following in

priority order:

- (2) being permanently resident therein for a continuous period of at least three (3) years out of the five (5) years immediately prior to being offered the Discounted Sale Dwelling; or
- (3) being formerly permanently resident therein for a continuous period of five (5) years; or
- (4) having his or her place of permanent work (normally regarded as 16 hours or more a week and not including seasonal employment) therein for a continuous period of at least twelve (12) months immediately prior to being offered the Discounted Sale Dwelling; or
- (5) having a connection through a close family member (normally mother, father, brother, sister, son or daughter) where the family member is currently resident therein and has been so for a continuous period of at least five (5) years immediately prior to being offered the Discounted Sale Dwelling and where there is independent evidence that the family member is in need of support or can give support"

"Discounted Sale" means the Affordable Housing Units provided for sale at 80% of the Open Market Value of a comparable Open Market Dwelling

"Discounted Sale Dwellings" means the Dwellings to be sold as Discounted Sale by the Owner to Designated Persons with a Local Connection

"Discounted Sale Restriction" means the restriction to be entered in the proprietorship register at the Land Registry in relation to each Discounted Sale Dwelling in the following terms (subject to any amendments thereto required by the Land Registry and agreed between the parties hereto):

"No disposition of the registered estate by the proprietor

- d. that the Affordable Housing Unit is to be sold free from the restrictions or obligations relating to a Affordable Housing Unit contained in this Deed

"Plan 3" means the plan annexed to this Deed and labelled "Plan 3" outlining in red the extent of the Development which is potentially subject to an Overage Payment pursuant to the provisions of this Deed

"Mortgagee" means either:

(a) the mortgagee of the Site or any part thereof; or

(b) the mortgagee of an individual Affordable Housing Unit where the mortgagor has defaulted on the particular mortgage

"Open Market Dwelling" means a private dwelling to be constructed pursuant to the Planning Permission that is not an Affordable Housing Unit and not subject to the terms of Schedule 1 of this Deed

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

"Sale Contract" means a contract for the Disposal of a Discounted Sale Dwelling

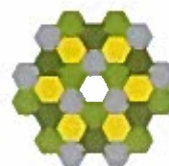
2 In Schedule 1 clause 2 (Affordable Housing) of the Original Agreement:

2.1 Sub-clause 2.1 shall be varied by:

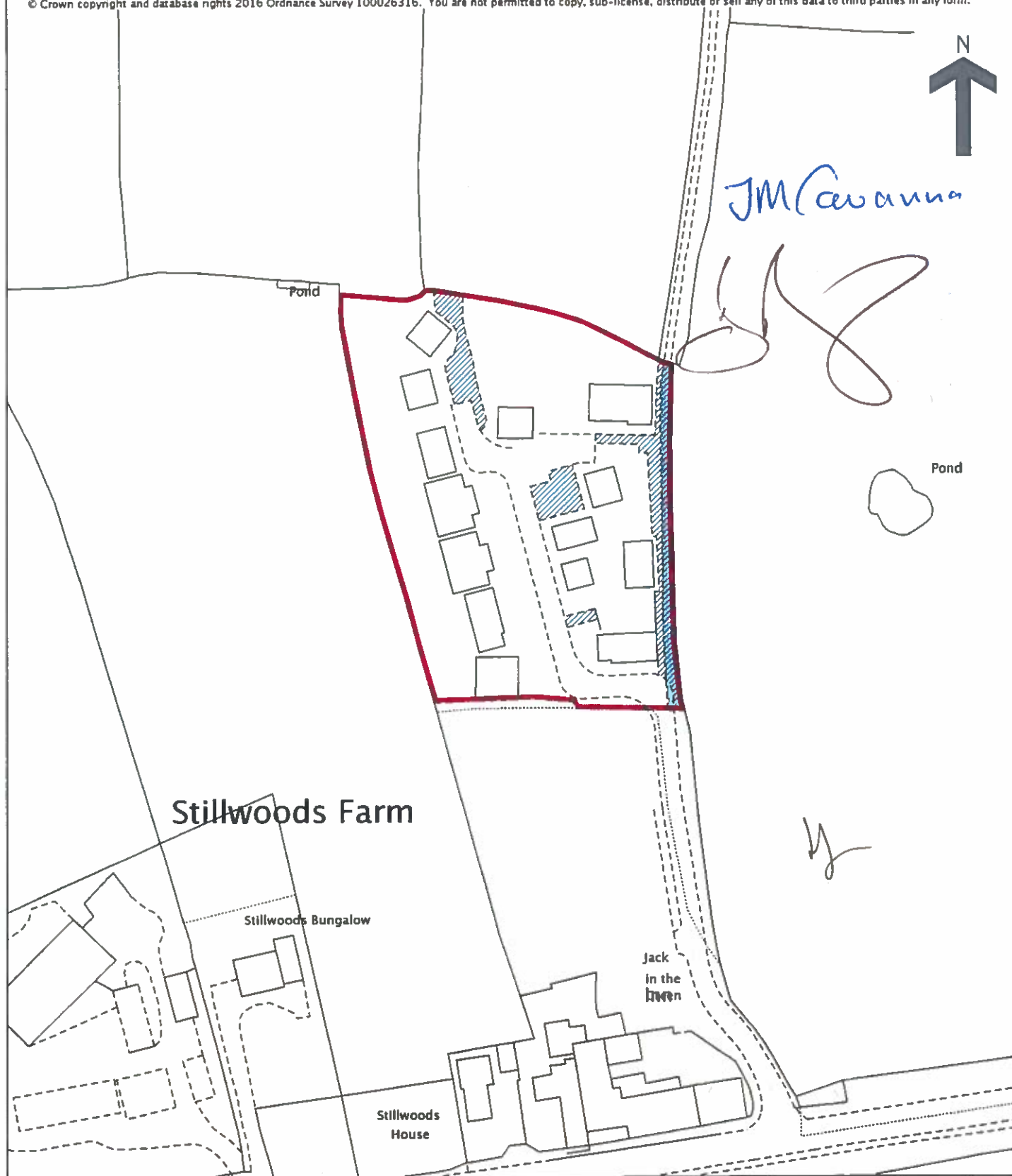
the insertion of the words "In any event should there be any amendment to the provision of Affordable Housing after Commencement of Development a revised Affordable Housing Scheme together with a plan identifying the

Land Registry
Official copy of
title plan

Title number **DN654096**
Ordnance Survey map reference **SY0195NE**
Scale **1:1250 enlarged from 1:2500**
Administrative area **Devon : East Devon**



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PLAN 3

Affordable Housing Site is to be submitted to and approved in writing by the District Council" after the words District Council.

- 2.2 Sub-clause 2.3 shall be varied by:

replacing the two references to "the 11th Private Dwelling" with the words "the 14th Private Dwelling"

- 2.3 Sub-clause 2.4 shall be deleted in its entirety

- 2.4 Sub-clause 2.5 shall be varied by deleting the words "to the Housing Provider"

- 2.5 Sub-clause 2.6 shall be varied by deleting the words "the Housing Provider"

- 2.6 Sub-clause 2.7 shall be deleted and replaced with the following words "The Owner shall not transfer the Discounted Sale Dwellings unless it is (or in the case of first sale will following completion of the registration at the Land Registry of the transfer of such Discounted Sale Dwelling be) subject to the Discounted Sale Restriction on the register of title to the relevant Discounted Sale Dwelling and a copy of the relevant restriction and the certificate referred to therein has been supplied to the District Council (marked for the attention of the Strategic Lead Housing and Environment) on each such disposition of the Discounted Sale Dwelling "

- 2.7 Sub-clauses 2.9 to 2.15 (inclusive) shall be deleted in their entirety

- 2.8 A new sub-clause 2.9 shall be inserted as follows:

2.9 Mechanism for disposal of Discounted Sale Dwellings

- 2.9.1 The Discounted Sale Dwellings shall not be disposed of for consideration in excess of 80% of Open Market Value.

- 2.9.2 Prior to the disposal of any or all of the designated Affordable Housing Units the Owner shall serve upon the District Council for the attention of the Strategic Lead Housing and Environment a valuation notice setting out the Owner's calculation of Open Market Value together with supporting evidence in respect of those units.

- 2.9.3 The District Council shall notify the Owner in writing within 10 working days of receipt of the valuation notice stating whether or not it agrees with the Owner's calculation of Open Market Value and in the event that no such written notice is received from the District

Council within this period of time it shall be deemed that the Owner's calculation is agreed.

- 2.9.4 In the event that the District Council disagrees with the Owner's calculation of Open Market Value it shall give full reasons for the disagreement together with supporting evidence and the parties shall endeavour to agree the Open Market Value within a period of 10 working days or such longer period as they may agree.
- 2.9.5 In the event of the parties failing to reach agreement after the said further period of 10 working days the parties shall refer the matter for determination by an independent person in accordance with the provisions of clause 15 hereof such arbitration to be completed within 14 days of the date of the reference.
- 2.9.6 Any Sale Contract for the disposal of Discounted Sale Dwellings shall contain a covenant that any subsequent disposal of a Discounted Sale Dwelling shall comply with the Resale Procedure set out in sub-clause 2.10 of this Schedule 1.
- 2.9.7 Prior to the payment of the reservation fee for a Discounted Sale Dwelling (if practicable) and in any event, prior to exchange of a Sale Contract to provide the District Council with satisfactory evidence that the proposed purchaser of the Discounted Sale Dwelling is a person authorised by the District Council as a Designated Person such evidence to include details of Local Connection.
- 2.9.8 In the event that no Designated Person can be identified and who is authorised to purchase a Discounted Sale Dwelling by the District Council;
- 2.9.8.1 after the period of six months from the date of first marketing of a Discounted Sale Dwelling then the Discounted Sale Dwelling may be disposed of to any person with a County Connection and who is registered with Help to Buy South West but for the avoidance of doubt shall still be sold at a Discounted Sale;
- 2.9.8.2 after the period of ten months from the date of first marketing of a Discounted Sale Dwelling then the Discounted Sale Dwelling may be disposed of to any person (who is not a Designated Person or with Local Connection or with a County

Connection) but for the avoidance of doubt shall still be sold at a Discounted Sale;

2.9 A new sub-clause 2.10 shall be inserted as follows:

2.10 Resale Procedure

2.10.1 On any subsequent disposal of a Discounted Sale Dwelling the owner of the unit in question shall notify the District Council for the attention of the Strategic Lead Housing and Environment in writing of its intention to dispose of the same and shall provide 2 independent valuations based upon the local housing market from estate agents who are either members of the Royal Institute of Chartered Surveyors or the National Association of Estate Agents of the Open Market Value of that Discounted Sale Dwelling and shall also provide the name of the firm of estate agent instructed to market the Discounted Sale Dwelling

2.10.2 The District Council will on receipt of such notification advise the owner of the approved Open Market Value for the Discounted Sale Dwelling such value being either:-

2.10.2.1 The average of the 2 valuations referred to in 2.10.1 above priced subject to the 20% discount; or

2.10.2.2 if the average of the two valuations referred to in 2.10.2.1 above is not approved by the District Council the value attributed to the Discounted Sale Dwelling by an independent valuer appointed jointly by the District Council and the owner;

2.10.3 the owner will not enter into a Sale Contract other than in accordance with clauses 2.9.6, 2.9.7, and 2.9.8 of this Schedule and prior to exchange of a Sale Contract shall supply evidence to the District Council's reasonable satisfaction pursuant to sub-clause 2.9.4;

2.10.4 the Discounted Sale Dwellings shall not be let in whole or in part without the prior written consent of the District Council such consent not to be unreasonably withheld or delayed but for the avoidance of doubt it shall be reasonable for the District Council to refuse to give consent if the proposed rent payable exceeds 80% of Open Market Rent;

2.10 A new sub-clause 2.11 shall be inserted as follows:

2.11 Mortgagee's Duty

The Mortgagee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than 2 (two) months prior written notice to the District Council for the attention of the Strategic Lead Housing and Environment of its intentions to dispose and:

2.11.1 In the event that the District Council responds within 1 (one) month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing (in the case of Discounted Sale Dwellings by selling at no more than 80% of the Open Market Value to Designated Persons) then the Mortgagee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer;

2.11.2 If the District Council does not serve its response to the notice served under Clause 2.11.1 within 1 (one) month then the Mortgagee shall be entitled to dispose free of the restriction set out in this Part of Schedule 1 and such restrictions shall at all times cease to apply to the Affordable Housing Unit(s) which are subject to the Mortgagee's Charge;

2.10.3 If the District Council or any other person cannot within 1 (one) month of the date of service of its response under Clause 2.10.1 secure such transfer then provided that the Mortgagee shall have complied with its obligations under sub-clause 2.10 the Mortgagee shall be entitled to dispose free of the restriction set out in this Schedule 1 and such restrictions shall at all times cease to apply to the Affordable Housing Unit(s) which are subject to the Mortgagee's Charge;

PROVIDED THAT at all times the rights and obligations in this sub-clause shall not require the Mortgagee to act contrary to its duties under the charge or mortgage and that the District Council must give full consideration to protecting the interest of the Mortgagee in respect of monies outstanding under the charge or mortgage

- 3 Schedule 1 clause 6 (Overage) sub-clause 6.1 of the Original Agreement shall be amended by:

3.1 in the first line replacing the words "24 (twenty four)" with the words "36 (thirty six)";

3.2 in the sixth line replacing the words "24 months" with the words "36 months"

3.3 a new paragraph below paragraph 6.4 shall be inserted which shall read:

"6.5 The District Council agrees that this Clause 6, in relation to Overage shall only apply to Development on the land outlined red in Plan 3".

- 4 Schedule 2 (Draft Nomination Agreement) of the Original agreement shall be deleted

SCHEDULE 2
"THE ORIGINAL AGREEMENT"

DATED

12th September

2014

- (1) EAST DEVON DISTRICT COUNCIL
- (2) PAUL KEVIN PARNELL AND JUDITH MARY PARNELL
- (3) LLOYDS BANK PLC
- (4) CAVANNA HOMES (DEVON) LIMITED

SECTION 106 AGREEMENT

relating to

LAND AT THE JACK IN THE GREEN INN, ROCKBEARE, EXETER EX5 2EE

Michelmores 

Woodwater House

Pynes Hill

Exeter EX2 5WR

DX 135608 EXETER 16

Tel: 01392 688688

Fax: 01392 360563

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THIS AGREEMENT is made the 12th day of September 2014

BETWEEN

- (1) **EAST DEVON DISTRICT COUNCIL** of Knowle, Sidmouth, Devon, EX10 8HL (the 'District Council').
- (2) **PAUL KEVIN PARNELL** and **JUDITH MARY PARNELL** of The Jack in the Green, Rockbeare, Exeter, Devon EX5 2EE (the 'Owner').
- (3) **LLOYDS BANK PLC** (company registration number 2065) of ~~Dept. No. 9314 of Bristol Securities Centre, PO Box 853, Unit 8, City Business Park, Easton Road, Bristol BS69 5HZ~~ Perdeford Securities Centre, Perdeford Business Park Wobaston Road, Wolverhampton, WVA 5HA W
RS
- (4) **CAVANNA HOMES (DEVON) LIMITED** (company registration number 4228419) of Cavanna House, Riviera Park, Nicholson Road, Torquay TQ2 7TD (the 'Developer').

WHEREAS:

1. DEFINITIONS

1.1 In this Deed the following definitions shall apply:

The 1990 Act	means the Town and Country Planning Act 1990 as amended
The Application	means the detailed planning application given reference 14/0300/MFUL made to the District Council for the Development
Attenuation Tanks	means the part of the Site which comprises the offline attenuation tanks as are further shown on Drawing No.13.129/050 rev P3
Attenuation Tank Land	means the land where the Attenuation Tanks are located and which is shown coloured brown on Plan 2
Commencement of Development	means the commencement of the Development by the carrying out of any material operation (as defined in Section 56 of the 1990 Act) but for the purposes of this Deed only shall not include operations consisting of site clearance, demolition works, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial works in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the display of site notices or

	advertisements and the expressions 'Commence', and 'Commenced' shall be construed accordingly
Commencement of Development Notification	means the written notification to the Head of Planning advising the Council of the date of Commencement of Development
The Development	means the erection of 19 Dwellings together with associated access (including new access to the restaurant / pub), drainage, parking, servicing, landscaping and associated works including district heating plant as is more fully described in the Application
Dwelling	means any dwelling or dwellings to be constructed on the Site pursuant to the Planning Permission
Footpath and Cycle Links	means the 2 (two) links for the use of pedestrians and cyclists shown coloured blue on the Plan which link the Development to land to the North of the Site
Habitat Mitigation Contribution	means the sum of £9,348 (nine thousand three hundred and forty eight) pounds) as a contribution towards mitigation of the impact of the Development on the Exe Estuary SPA /RAMSAR site and the Pebblebed Heaths SAC and SPA
Head of Planning	means the Head of Planning or such person in whom the Head of Planning's functions are from time to time vested
Interest Rate	means 4% above the Bank of England Base Rate calculated on a day to day basis
Monitoring Fee	means the sum of £1,917 (one thousand nine hundred and seventeen pounds) to be paid to the District Council as a contribution towards the District Council's costs of monitoring the implementation and delivery of this Deed
Occupation	means occupation of a Dwelling (except for the purposes of construction, fitting out, security or marketing) on a residential basis and 'Occupy' or 'Occupied' 'Occupancy' shall where the context so requires have the same meaning

Open Space Contribution	means the sum of £85,500 (eighty five thousand five hundred pounds) as a contribution towards the provision, maintenance or enhancement of public open space and / or play areas in the vicinity of the Development	Plan 1	means the plan annexed to this Deed and labelled 'Plan 1' showing the extent of the Site edged red	Plan 2	Means the plan annexed to this Deed and labelled 'Plan 2' and showing the extent of the Footpath and Cycle Links and Attenuation Tank Land	Planning Permission	means any planning permission issued pursuant to the Application	Practical Completion	the Developer's architect has issued a certificate stating that practical completion of the Dwellings in the Development has occurred and setting out the date on which practical completion occurred and the term 'Practically Complete' shall be construed accordingly	Private Dwelling	means any Dwelling constructed on the Site which is intended for private sale or rent on the open market	Site	means the land shown edged red on the Plan 1 and known as land at the Jack in the Green Inn, Rockbeare, Exeter EX5 2EE which such land registered at Land Registry under title number DN225793
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2 BACKGROUND

- 2.1 The District Council is the Local Planning Authority for the District of East Devon for the purposes of the 1990 Act for the area in which the Site is situated and is the authority by whom the planning obligations in this Deed shall be enforced.
- 2.2 The Owner is the proprietor of the Site registered at the Land Registry under Title Number DN225793.
- 2.3 The Developer has submitted the Application to the Council.
- 2.4 The Mortgagee has a registered charge over the Site dated 12 June 2003.
- 2.5 The parties hereto in accordance with the provisions of section 106 of the 1990 Act as

amended, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011, section 2 of the Local Government Act 2000 and any other enabling powers have agreed to enter into a planning obligation the terms of which are contained in this Deed.

IT IS HEREBY AGREED AND DECLARED that:

3 GENERAL

- 3.1 This Deed is a planning obligation binding the Site made in pursuance of section 106 of the 1990 Act and enforceable by the District Council under section 106 of the 1990 Act against the Owner and their successors in title.
- 3.2 Where in this Deed reference is made to any clause, paragraph, schedule or recital, such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 3.3 The Deed is conditional on the grant of Planning Permission and Commencement of Development save for any obligation expressed to be required to be complied with prior to the Commencement of Development and the provisions of clause 5 which shall take effect from the date of this Deed.
- 3.4 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 3.5 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons including companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 3.6 Where more than one person is obliged to observe or perform an obligation, the obligation can be enforced against all such persons jointly and against each individually unless there is an express provisions otherwise.
- 3.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validly from it.
- 3.8 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party, and references to any local authority shall include the successors to its various statutory functions.

3.9 This Deed shall cease to have effect (insofar as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn (without the consent of the Owner) if it is modified by statutory procedure or expires prior to Commencement of Development.

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

4 SERVICE OF NOTICES

4.1 Any notices to be served shall be served in writing to the principal address or registered office (as appropriate) of the relevant party.

4.2 If the Owner fails to serve any notice required by this Deed any period within which the District Council is required to give a response to that notice shall not commence before the date that the District Council notifies the Owner in writing that it is in breach of its duty to serve the notice.

5 LIABILITY FOR FUTURE BREACHES OF AGREEMENT

5.1 No person shall be liable for any breach of the obligations or covenants contained within this Deed which occurs after that person has parted with their entire interest in the Site or the part of it in respect of which the breach occurs but without prejudice to any liability for any subsisting breach arising prior to parting with such interest.

5.2 The covenants and obligations in this Deed shall not be enforceable against:

5.2.1 the purchaser, lessee, occupier or mortgagee of a Private Dwelling; or

5.2.2 the purchaser, lessee, occupier or mortgagee of an Affordable Housing Unit save for those obligations in paragraph 2 of Schedule 1 concerning affordable housing.

6 LEGAL FEES AND MONITORING FEE

The Developer shall, prior to the execution hereof, pay the District Council's reasonable legal costs and the Monitoring Fee in connection with the preparation and completion of this Deed.

7 COVENANTS

- 7.1 The Owner covenants with the District Council to observe and perform the Obligations in Schedule 1 and the District Council covenants to observe and perform the provisions of the Schedule 1 insofar as they are expressed so as to be given by the District Council.
- 7.2 The Owner shall serve the Commencement of Development Notification on the Council within 7 days of the Commencement of Development occurring.

8 MISCELLANEOUS

- 8.1 No provisions of this Deed are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to this Deed, except that the application of that Act shall not prevent all or any of the future successors in title or to the statutory functions of any of the parties to this Deed from being able to benefit from or to enforce any of the obligations in this Deed.
- 8.2 Where the agreement approval, consent or expression of satisfaction is required by one party from another party under the terms of this Deed, such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 8.3 Any such agreement, approval, consent or expression of satisfaction shall unless otherwise stated in this Deed be given on behalf of the District Council by the Head of Planning.
- 8.4 The District Council will upon the written request of the Owner or the Developer at any time after the obligations of the Owner under this Deed have been fulfilled issue written confirmation of the same, and thereafter cancel all related entries in the Register of Local Land Charges.
- 8.5 Insofar as any clause or clauses in this Deed are found (for whatever reason) to be invalid, illegal or unenforceable, then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 8.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not an appeal) after the date of this Deed.

9 WAIVER

No waiver (whether express or implied) by any party to this Deed of any breach or default

£Y is the amount of the contribution to be paid.

14 INTEREST

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

15 DISPUTE RESOLUTION

- 15.1 In the event of any dispute arising between the Owner and the Developer and the District Council ('the parties to the dispute') in respect of any matter contained in this Deed including questions of value and any question of reasonableness the same shall be referred to an expert ('the Expert') to be agreed upon between the parties to the dispute or at the request and option of any of them to be nominated by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors and the Expert's decision shall be final and binding on the parties to the dispute and whose costs (including the reimbursement of the costs of any other experts' fees) shall be at his discretion and in the absence of any direction from the Expert on costs each party shall bear their own costs.
- 15.2 The Expert shall have at least 10 (ten) years' post qualification experience in the subject matter of the dispute.
- 15.3 The Expert shall be appointed subject to an express requirement that he reaches a decision and communicates it to the parties to the dispute within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 36 (thirty six) working days from the date of his appointment to act.
- 15.4 The Expert shall be required to give notice to all of the parties to the dispute inviting each of them to submit to him within such period as he shall reasonably determine within 10 (ten) working days of his appointment written submissions and supporting material and shall afford to each of the parties to the dispute an opportunity to make counter submissions within a further 10 (ten) working days in respect of any such submission and material and the Expert shall disregard any representations made out of time and the Expert's decision shall be given in writing within 21 (twenty one) working days from receipt of any counter submissions or the date when any counter submissions should have been received by with reasons and in the absence of manifest error the Expert's decision shall be final and binding on the parties to the dispute.
- 15.5 It is hereby agreed between the parties hereto that nothing in this Clause 15 shall be taken

to fetter the ability of the District Council to seek legal redress for any breach of any of the obligations entered into by the Owner in this Deed.

SCHEDULE 1

COVENANTS WITH THE DISTRICT COUNCIL

1 DEFINITIONS

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

Affordable Housing	means units of subsidised housing within the meaning of National Planning Policy Framework or any Government Policy Statement or Circular that replaces it
Affordable Housing Units	means the Dwellings to be provided as Affordable Housing which shall comprise 3 (three) of the total Dwellings provided in the Development comprising the Affordable Shared Ownership Dwellings to be provided in accordance with the provisions of this Schedule on the Affordable Housing Site
Affordable Housing Scheme	means the scheme for securing the provision of the Affordable Housing Units on the Affordable Housing Site as hereinafter defined more particularly the location, tenure and mix of unit types and the proposed timetable for such provision
Affordable Housing Site	means the land to accommodate the Affordable Housing Units
Affordable Shared Ownership Dwelling	means Dwellings for sale on a shared ownership basis solely by way of a Shared Ownership Lease
Biomass Boilers	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 part material, by products and waste from livestock, livestock farming feed processing and preparation and domestic organic waste
Code for Sustainable	means the Code for Sustainable Homes published by the Department for Communities and Local Government on 13 December 2006 and not withstanding any of the provision of this Agreement shall not include any

Homes	updated or subsequent revision, alteration or superseding document
Code for Sustainable Homes Certificate	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 those documents provided that, for the avoidance of doubt, the Owner shall not be required to comply with any higher standard from the standard required under Building Regulations prevailing at the date of construction (provided always that the standard meets Code for Sustainable Homes level 3 as required by this Agreement) and further that if the Code for Sustainable Homes is superseded and it is no longer possible to obtain a Code for Sustainable Homes Certificate a written certification from a suitably qualified surveyor that the Dwelling at least would have achieved the Code for Sustainable Homes level 3 shall be provided in its place
Common Housing Registers	means in the register or list of applicants maintained by the Regional Homebuy Agent
Design and Quality Standards	means that the Affordable Housing Units shall be constructed: <ul style="list-style-type: none"> (i) strictly in accordance with the plans and elevations deposited and as approved by the District Council as part of the Planning Permission (ii) in accordance with the Homes and Community Agency's design and quality standards and the Housing Provider's own design standards applicable at the time of Commencement of Development (iii) to a minimum of Code for Sustainable Homes Level 3 (iv) tenure blind so as to be indistinguishable from Private Dwellings
Designated Person	means a person or family who is registered on the Common Housing Register or Housing Provider's waiting lists and is in Housing Need
Development Costs	means the actual costs incurred by the Owner in constructing the Development in the same format as set out in Appendices 6 to 10 of the Viability Appraisal (being the various summary appraisals that supported the Viability Appraisal) as agreed between the parties or as determined

	by the Expert
Disposal	means disposal of the Owner's interest by way of the sale of the freehold interest or the granting of any leasehold interest or licence to occupy and 'Disposed' shall be construed accordingly
District	means the administrative area of the East Devon District Council
District Heating Facility	means a District Heating Facility that is capable of supplying water and space heating from Biomass Boilers situated near or at Exeter Airport or any other district heating facility / network in the vicinity of the Development
Housing Need	means the circumstances unless provided to the contrary in this Deed where a household is currently occupying accommodation that is sub standard or unsuitable for its requirements and which has an income that is too low either to buy or rent accommodation appropriate to their circumstances on the open market
Housing Provider	means a housing association or similar organisation or a social landlord in each such case registered with the Homes and Communities Agency under section 1 of the Housing Act 1996 or such other body or organisation whose main object is the provision of Affordable Housing as agreed by the District Council
Local Connection	<p>means a connection to the Parish of Rockbeare or, in the event of the new Parish or Town Council of Cranbrook being constituted so that its administrative area includes the Site, the Parish or Town Council of Cranbrook, demonstrated by one or more of the following in priority order:</p> <p>(1) being permanently resident therein for a continuous period of at least 3 years out of the 5 years immediately prior to being offered the Affordable Housing Unit; or</p> <p>(2) being formerly permanently resident therein for a continuous period of 5 years; or</p> <p>(3) having his or her place of permanent work (normally regarded as 16 hours or more a week and not including seasonal employment)</p>

	<p>therein for a continuous period of at least 12 months immediately prior to being offered the Affordable Housing Unit; or</p> <p>(4) having a connection through a close family member (normally mother, father, brother, sister, son or daughter) where the family member is currently resident therein and has been so for a continuous period of at least 5 years immediately prior to being offered the Affordable Housing Unit and where there is independent evidence that the family member is in need of support or can give support</p> <p>and in the event that no-one satisfying the above requirements can be found within the Parish of Rockbeare (or, if appropriate, the Parish or Town Council of Cranbrook) then the process shall be repeated considering persons from the following areas in the following priority order:</p> <p>(1) the Neighbouring Parishes</p> <p>(2) persons from the District</p>
Management Company	means a private limited company established to manage open space the purpose of which will be to manage and maintain the Footpath and Cycle Links
Management Scheme	means the scheme or schemes to be submitted by the Owner to the District Council for its approval as the mechanism for securing the in perpetuity maintenance of the Footpath and Cycle Links in accordance with the provisions of paragraph 5 of Schedule 1 which may include at the Owners' own expense creation or employment of the Management Company
Neighbouring Parishes	means the parishes of Whimple, Ottery St Mary, Aylesbeare, Clyst Honiton or Broadclyst and (in the event of the Parish or Town Council of Cranbrook being properly constituted) the Parish of Rockbeare
Nomination Agreement	means the agreement or an agreement substantially in the form of the one appended to this Deed in Schedule 2 (or such other form of nomination agreement as the Council may approve) and which governs the ability of the District Council to nominate occupiers for the Affordable

	Housing Units
Overage Cap	the sum equal to £10,000 (ten thousand pounds) for every dwelling that is not an Affordable Housing Unit up to a maximum of £160,000 (one hundred and sixty thousand pounds)
Overage Payment	means 50% of the amount of the Overage Value and which shall be paid to the District Council to be applied in accordance with the Council's adopted policy
Overage Payment Date	means the first working day falling 28 (twenty eight) days after the date upon which the District Council confirm in writing that the Development Costs and the amount of the Overage Payment due is agreed
Overage Value	<p>means the additional profit made by the Owner calculated in accordance with the following formulae, namely:</p> $P = A - B - C$ <p>Where;</p> <p>P = Overage Value</p> <p>A = actual gross development value as determined by the agreed Updated Viability Appraisal</p> <p>B = Development Costs as determined by the agreed Updated Viability Appraisal</p> <p>C = A sum equal to 20% of A being the Owner's profit</p>
Rentcharge	means the perpetual yearly variable estate rentcharge reserved out of the transfer of each Dwelling or in the alternative a direct deed of covenant to be binding on the transferee and its successors in title of each Dwelling protected by the entry of a restriction in the proprietorship register of the transferee's title to cover the annual costs of complying with the obligations under the scheme approved under paragraph 5 of this Schedule for the maintenance of the Footpath and Cycle Links and Attenuation Tank Land such rentcharge or deed of covenant to include the administrative and management costs of the Management Company

	once established in consideration of the Management Company being responsible for the maintenance of the Footpath and Cycle Links and Attenuation Tank Land PROVIDED ALWAYS that the proportion of the costs secured by the rentcharge or deed of covenant in relation to each individual Dwelling shall be equal to the proportion that such Dwelling bears to the total number of Dwellings in the completed Development
Shared Ownership Lease	means a long shared ownership lease (as defined in section 622 of the Housing Act 1985 or successor provision) with a Housing Provider substantially in accordance with the Homes and Communities Agency (or successor body) Model as at the date of any such lease where the purchaser purchases an initial share of the equity between 25-80% and pays rent on the remaining unsold equity and where additional shares of the equity can be purchased provided that no more than 80% of the equity can be purchased
Staircasing Receipts	means any monies received by the approved Housing Provider of an Affordable Shared Ownership Dwelling as a result of the leaseholder exercising a right to increase their share of the equity (and any part of such monies)
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
Updated Viability Appraisal	means a document produced in the same format as the Viability Appraisal updated to be current at the time of submission to the District Council in accordance with the terms of this Deed and including: <ol style="list-style-type: none"> 1. actual Development Costs incurred 2. in relation to all Dwellings Disposed of the date and price of such Disposal PROVIDED THAT where any Dwelling has not been disposed of by way of freehold or long leasehold sale but has been leased (on an assured shorthold tenancy) or occupied under licence the value of the Dwelling shall be determined by averaging three independent valuations carried out by appropriately qualified chartered surveyors who have been

	approved in writing in advance by the Council 3. A calculation in accordance with the formulae contained in the definition of Overage Value
Viability Appraisal	means the viability appraisal submitted to the Council in March 2014 as part of the Application and carried out by Belvedere Vantage

2 AFFORDABLE HOUSING

PROVISION

- 2.1 The Owner shall not carry out or otherwise permit the Commencement of Development unless and until the Affordable Housing Scheme together with a plan identifying the Affordable Housing Site has been submitted to and approved in writing by the District Council.
- 2.2 The Owner shall construct and provide the Affordable Housing Units in accordance with the Affordable Housing Scheme approved pursuant to paragraph 2.1 above on the Affordable Housing Site and in accordance with the Design and Quality Standards.
- 2.3 Notwithstanding the requirements of paragraphs 2.1 and 2.2 above the Owner shall have completed all of the Affordable Housing Units prior to the Practical Completion of the 11th Private Dwelling and shall not permit Practical Completion of the 11th Private Dwelling until all of the Affordable Housing Units have been completed and are available for Occupation.
- 2.4 The Affordable Housing Units shall only be used for the purpose of providing Affordable Housing and shall be so used in perpetuity (here meaning for a minimum period of 80 (eighty) years).
- 2.5 The transfer of the Affordable Housing Site and / or the Affordable Housing Units to the Housing Provider shall be in such form as the Owner shall reasonably require to ensure that the Affordable Housing Site and / or the Affordable Housing Units are subject to the same rights and easements and covenants (both restrictive and positive) as are to be granted and reserved in sales of the Private Dwellings.
- 2.6 The Owner shall ensure that the Affordable Housing Site and / or Affordable Housing Units together with their respective curtilages will abut a publicly adopted highway or roads and footways the subject of a bonded road making agreement under section 38 of

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

- 2.7 The Owner shall transfer the Affordable Housing Site and the Affordable Housing Units to the Housing Provider and the said transfer shall contain a declaration that the Affordable Housing Site is so transferred subject to and with the benefit of the terms of this Deed.
- 2.8 The Owner shall give 1 (one) month's written notice to the District Council of the date when the Affordable Housing Units (or any of them) shall be available for Occupation.

RESTRICTIONS ON OCCUPATION OF AFFORDABLE HOUSING UNITS

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

RELEASE

- 2.11 None of the obligations and restrictions referred to in paragraph 2 of this Schedule will be enforceable in respect of the Affordable Housing Site or any Affordable Housing Unit as appropriate or against any mortgagee or chargee in possession of any of the Affordable Housing Units erected on the Affordable Housing Site (a 'Chargee ') or against any person or body deriving title from such Chargee PROVIDED ALWAYS that the Chargee has complied with its obligations contained in paragraphs 2.12 below.
- 2.12 The Chargee shall prior to seeking to dispose of the Affordable Housing Site or any Affordable Housing Unit(s) pursuant to any default under the terms of its mortgage or charge shall give not less than 3 (three) months' prior notice in writing to the District Council of its intention to dispose and:
- 2.12.1 If the District Council responds within 3 (three) months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Site or Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall cooperate with such arrangements

and use its reasonable endeavours to secure such transfer;

- 2.12.2 If the District Council or any other person cannot within 3 (three) months of the date of service of its response under paragraph 2.12.1 secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 2.12 the Chargee shall be entitled to dispose of the Affordable Housing Site or Affordable Housing Unit(s) free of the restriction set out in this Schedule;

PROVIDED THAT at all times the rights and obligations in paragraph 2.12 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the District Council must give full consideration to protecting the interests of the Chargee in respect of monies outstanding under the charge or mortgage.

- 2.13 In relation to any Affordable Housing Units the Affordable Housing obligations in this Deed shall not apply where the owner of the said unit has been granted a waiver to the requirements of the Designated Protected Area Order (SI 2009/2098) (or such other regulations restricting the ability to achieve 100% staircasing) the owner subsequently acquires such percentage that will take their ownership to 100% of the said unit or to the successors in title to any such persons.
- 2.14 In the event of any Affordable Shared Ownership Dwelling being released from the Affordable Housing restrictions herein contained by virtue of the operation of paragraph 2.13 above the Housing Provider shall provide the District Council with details of Staircasing Receipts from the Affordable Shared Ownership Dwellings and in co-operation with the District Council reach agreement to invest 100% of the Staircasing Receipts, if any, arising from the Affordable Shared Ownership Dwellings in the provision of new build Affordable Housing or to invest in measures to enhance the provision of Affordable Housing within the administrative area of the District Council including facilitating the acquisition of market housing or the conversion or refurbishment of existing housing to bring such housing back into beneficial use to enable it to be occupied provided that the use of the Staircasing Receipts is limited to the provision within District.
- 2.15 The Housing Provider will on request from the District Council allow the District Council to inspect or provide to the District Council such information as is necessary in order to enable the District Council to verify that the Housing Provider has let of the Affordable Housing in accordance with the terms of this Schedule.

3 CONTRIBUTIONS

The Owner hereby covenants with the District Council;

- 3.1 to pay the Habitat Mitigation Contribution prior to first Occupation of the Development and not to permit first Occupation until the Habitat Mitigation Contribution has been paid to the District Council
- 3.2 to pay 50% of the Open Space Contribution prior to the Occupation of any Dwelling and not to permit first Occupation until 50% of the Open Space Contribution has been paid to the District Council
- 3.3 to pay the remaining 50% of the Open Space Contribution prior to Occupation of 50% of the Dwellings and not to permit Occupation of 50% of the Dwellings until the remaining 50% of the Open Space Contribution has been paid to the District Council.

4 REPAYMENT OF CONTRIBUTIONS

- 4.1 If the Open Space Contribution or any parts thereof have not been spent or committed to be spent by the District Council within 10 years of Completion of the Development, the District Council shall upon request of the Owner (or such person who made the payment) repay the contributions or the unspent or uncommitted part thereof to the original paying party together with interest from the date of original payment to the date of repayment at the rate of the higher of either 0% or 1% below the Bank of England base rate for the time being in force.

5 FOOTPATH AND CYCLE LINKS AND ATTENUATION TANK LAND

- 5.1 Prior to Commencement of Development the Owner shall submit to the District Council a plan ("the Details") setting out in relation to the Footpath and Cycle Links and the Attenuation Tanks:
 - 5.1.1 the final location and routes;
 - 5.1.2 the construction methodology and how the links and tanks will be laid out;
 - 5.1.3 the timetable for the provisions of each link and tank;
 - 5.1.4 the future maintenance requirements of each link and tank (including where relevant the maintenance of any sustainable urban drainage system running underneath either of the Footpath and Cycle Links or the Attenuation Tank Land)

5.1.5 The Management Scheme.

- 5.2** The Owner shall not permit first Occupation of the Development until such time as the District Council has approved in writing the Details submitted under paragraph 5.1 above.
- 5.3** Once the District Council has issued its approval under paragraph 5.2 above, the Owner shall provide the Footpath and Cycle Links and Attenuation Tanks in accordance with the Details approved under paragraph 5.2 prior to the Occupation of the final Dwelling.
- 5.4** In the event that either of the Footpath and Cycle Links are adopted as public highways by the local highway authority or are made subject to agreements for their adoption with the local highway authority in either case prior to the Occupation of the final Dwelling then the provisions of paragraph 5.5 below shall cease to apply.
- 5.5** Subject to paragraph 5.4 above, where the Management Scheme approved as part of the Details submitted pursuant to paragraph 5.1 above requires the transfer of the Footpath and Cycle Links and the Attenuation Tank Land to a Management Company then prior to the Occupation of the final Dwelling the Owner shall so transfer the Footpath and Cycle Links and Attenuation Tank Land to the Management Company which shall thereafter be responsible for the upkeep and on-going maintenance of the Footpath and Cycle Links and Attenuation Tank Land in accordance with the scheme approved under paragraph 5.1 of this Schedule.
- 5.6** Where any or all of the Footpath and Cycle Links or the Attenuation Tank Land are to be transferred to the Management Company the Owner shall ensure that the Rentcharge is secured on the first transfer or disposal of any Dwelling and that covenants are contained on the transfer to procure that on any subsequent transfer or disposal the Rentcharge is secured in favour of the Management Company.

6 OVERAGE

- 6.1** If the Development is not Practically Complete within 24 (twenty four) months of the date of service of the Commencement of Development Notification the Owner shall provide the Updated Viability Appraisal to the District Council as soon as reasonably practicable after the Disposal of the last Dwelling the Owner shall provide the Updated Viability Appraisal to the District Council provided that for the avoidance of doubt if the Development is Practically Complete within 24 months of the service of the Commencement of Development Notification the Owner shall not be obliged to provide an Updated Viability Appraisal and no Overage Payment shall fall due.

6.2 The District Council shall confirm within 28 (twenty eight) days of receipt of the Updated Viability Appraisal or in the event of the District Valuer being asked to advise on the same then within 14 (fourteen) days of receipt of the District Valuer's report whether or not the Updated Viability Appraisal is agreed provided that:

6.2.1 If the District Council appoints the District Valuer, it shall instruct the District Valuer to provide a report within 35 (thirty five) days of being appointed.

6.2.2 if no response is received from the District Council within that period the Updated Viability Appraisal shall be deemed to be agreed.

6.2.3 If the District Council does not agree with the Updated Viability Appraisal they shall provide written reasons for such disagreement and the Owner shall use reasonable endeavours to address those reasons before resubmitting a revised Updated Viability Appraisal or a written response to the issues raised by the District Council (as appropriate) (to which the provisions of this Agreement shall apply).

6.2.4 If the Updated Viability Appraisal is not agreed by the District Council and the Owner objects to the reasons for such disagreement, the Owner may invoke the Dispute Resolution provisions at clause 14 above.

6.3 If the District Council confirms its acceptance of the Updated Viability Appraisal and the Updated Viability Appraisal demonstrates a positive Overage Value the Owner will pay to the District Council the Overage Payment by the Overage Payment Date within 14 (fourteen) days of receiving such confirmation PROVIDED ALWAYS THAT any Overage Payment shall not exceed the Overage Cap.

6.4 The Owner shall pay the Council's reasonable costs of assessing and considering the Updated Viability Appraisal which shall (if appropriate) include the reasonable costs of the District Valuer such costs to be paid within 14 (fourteen) days of receipt of an invoice produced by the Council.

7 SUSTAINABILITY PROVISIONS

7.1 The Owner shall not construct or cause or permit to be constructed any Dwelling (including the Affordable Dwellings) unless they ~~are constructed so as to ensure any Dwellings complies with Building Regulations prevailing as at the date of construction so as to achieve at least Code for Sustainable Homes level three.~~

- 7.2 Prior to Commencement of the Development a scheme shall be submitted to the District Council for approval setting out the works proposed to satisfy the following requirements:
- 7.2.1 The Development shall incorporate the necessary infrastructure including pipes and other apparatus (including heat exchanges in each home) to be laid or installed (as appropriate) 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 Owner shall provide such evidence to the District Council as reasonably required by the District Council from time to time that such infrastructure is of sufficient standard and specification to connect to the District Heating Facility.
- 7.2.2 The provision of an anticipated time scale for the Development to be connected to the District Heating Facility.
- 7.2.3 In the interim period prior to connection to the District Heating Facility the space and water heating shall be provided by the on-site facility permitted as part of the Development by the Planning Permission.
- 7.3 The Development shall be carried out in accordance with the details approved under paragraph 7.2 above.
- 7.4 Prior to first Occupation of each Dwelling a pre-assessment to confirm the Code of Sustainable Homes (and as soon as possible after the relevant Code for Sustainable Homes Certificate for each Dwelling) shall be provided to each new owner and/or occupier of the relevant Dwelling.
- 7.5 The Owner shall provide a Code for Sustainable Homes Certificate certifying that the standards set out above have been met.
- 7.6 The District Council may at any time satisfy itself that each Dwelling has been constructed in accordance with the Code for Sustainable Homes Certificate subject to giving reasonable notice to the Owner.
- 7.7 The Owners shall use all reasonable endeavours to secure connection and use of the District Heating Facility to supply water and space heating to the Development

SCHEDULE 2

DRAFT NOMINATION AGREEMENT

NOMINATION AGREEMENT IN RESPECT OF LAND AT THE JACK IN THE GREEN INN, ROCKBEARE, EXETER

THIS NOMINATION AGREEMENT is made the day of 2014

BETWEEN:

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

IT IS AGREED THAT:

1 DEFINITIONS AND INTERPRETATION

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

Affordable Housing Units	means the 3 units which are subject to the Transfer to the Registered Provider dated [XXXX] and which shall be made available as Affordable Housing (as defined in the Section 106 Agreement) and which shall comprise Affordable Shared Ownership Dwellings as defined and delivered pursuant to the Section 106 Agreement and Affordable Housing Unit shall be construed accordingly
Common Housing Register	means the register or list of applicants maintained by the Regional Homebuy Agent
Designated Person	means a person who is in Housing Need within the District and who is registered on the Common Housing Register
District	means the administrative area of EDDC
EDDC	means East Devon District Council
Eligible Person	means a person who is a Designated Person and who has a Local

	Connection
Expert	means an expert independent arbitrator to be appointed in accordance with clause 10.1 of this Agreement
First Occupation	means first Occupation (as defined in the Section 106 Agreement)
Housing Need	where a household is currently occupying accommodation that is sub standard or unsuitable for its requirements and which has an income that is too low either to buy or rent accommodation appropriate to their circumstances on the open market
Local Connection	<p>means a connection to the Parish of Rockbeare or, in the event of the new Parish or Town Council of Cranbrook being constituted so that its administrative area includes the Site, the Parish or Town Council of Cranbrook, demonstrated by one or more of the following in the following priority order;</p> <ul style="list-style-type: none"> (1) being permanently resident therein for a continuous period of at least three (3) years out of the five (5) years immediately prior to being offered the Affordable Housing Unit; or (2) being formerly permanently resident therein for a continuous period of five (5) years; or (3) having his or her place of permanent work (normally regarded as 16 hours or more a week and not including seasonal employment) therein for a continuous period of at least twelve (12) months immediately prior to being offered the Affordable Housing Unit; or (4) having a connection through a close family member (normally mother, father, brother, sister, son or daughter) where the family member is currently resident therein and has been so for a continuous period of at least five (5) years immediately prior to being offered the Affordable Housing Unit and where there is independent evidence that the family member is in need of support or can give support <p>and in the event that no-one satisfying the above requirements can be found within the Parish of Rockbeare (or, if appropriate, the Parish or Town Council of Cranbrook) then the process shall be repeated</p>

	considering persons from the Neighbouring Parishes and in the event that no-one satisfying the above requirements can be found from the Neighbouring Parishes then the process shall be repeated considering persons from the District of East Devon
Neighbouring Parishes	means the parishes of Whimple, Ottery St Mary, Aylesbeare, Clyst Honiton or Broadclyst and (in the event of the Parish or Town Council of Cranbrook being properly constituted) the Parish of Rockbeare
Nomination Period	means the period of eighty (80) years from the date of this Agreement
Nomination Right	means the right referred to in the Section 106 Agreement and conferred in clause 5 of this Nomination Agreement for EDDC to: (a) nominate Eligible Persons to occupy the Affordable Housing Units during the Nomination Period; or (b) allow a Registered Provider to allocate Eligible Persons to occupy the Affordable Housing Units through the Regional Homebuy Agent during the Nomination Period
Parties	means [<i>insert RP name</i>] and EDDC and 'Party' shall be construed accordingly
Section 106 Agreement	means the Agreement dated [<i>insert date</i>] and entered into pursuant to Section 106 Town and Country Planning Act 1990 between East Devon District Council (1) Paul Kevin Parnell & Judith Mary Parnell (2) Lloyds Bank Plc (3) and Cavanna Homes (Devon) Limited (4) which makes provision for affordable housing on land at the Jack in the Green Inn, Rockbeare, Exeter

- 1.2 Words denoting the singular only shall include the plural and vice versa.
- 1.3 Words denoting one gender shall include all genders and words denoting persons shall include firms and corporations and vice versa.
- 1.4 References to any statute or statutory provision includes a reference to:

- 1.4.1 that statute or statutory provision as from time to time amended extended re-enacted or consolidated; and
- 1.4.2 all statutory instruments or orders made pursuant to it.
- 1.5 References to any party in this Agreement shall include that party's successors in title and assigns.
- 1.6 References to a body exercising statutory powers and/or functions in this Agreement shall unless otherwise specified include any successor in function.
- 1.7 Every covenant in this Agreement not to do a particular thing shall be deemed to include (a covenant not to cause authorise or permit that thing to be done by another person.
- 1.8 Where there is conflict between any of the provisions of this Nomination Agreement and the provisions of the Section 106 Agreement the provisions of the Section 106 Agreement shall be taken to prevail for all purposes.
- 1.9 Nothing in this Nomination Agreement shall be taken to override the Homebuy Scheme and if any conflict arises between this Nomination Agreement and the Homebuy Scheme then the Homebuy Scheme shall prevail.
- 1.10 The headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

2 NOTICES

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

3 PROVISION OF AFFORDABLE HOUSING

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

4 NOMINATION RIGHTS

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

5 NOMINATION PROCEDURE

Notice of availability

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

Nomination of Eligible Persons

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

Offer of accommodation to Eligible Persons

- 5.5 The Registered Provider shall within ten working days of receipt of the names of the three

Eligible Persons pursuant to clauses 5.3 or 5.4 above have the reasonable right of interview and (on reasonable grounds) rejection of any prospective Eligible Person so nominated by EDDC.

5.6 Where the Registered Provider:

5.6.1 does not reject all of the prospective Eligible Persons nominated by EDDC; or

5.6.2 where it does reject a Eligible Person and it is later determined that the rejection was unreasonable,

it shall make an offer to purchase or offer to lease (as appropriate) to the highest priority Eligible Person.

5.7 Where EDDC has nominated a Eligible Person(s) the Registered Provider shall as soon as practicable notify EDDC if:

5.7.1 the Registered Provider rejects any Eligible Person(s) nominated by EDDC; or

5.7.2 if any Eligible Person nominated in respect of a particular Affordable Housing Unit fails to accept or refuses an offer of a lease or an offer to purchase which is made by the Registered Provider.

5.8 Where the Registered Provider rejects a Eligible Person and provides notice to EDDC of that rejection in accordance with clause 5.7.1 above that notice shall include the Registered Provider's reasons for that rejection.

5.9 On receipt of a notice of rejection EDDC shall consider the reasons for rejection and if it determines that a rejection was not reasonable it shall set out its reasons for so doing in writing and immediately notify the Registered Provider of those reasons.

5.10 In the event of a dispute between the Registered Provider and EDDC relating to whether a rejection is reasonable or not the matter may be referred by either party for resolution under the terms of clause 10.

Further nominations

5.11 This clause applies where either:

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

or

- 5.11.2 an Eligible Person refuses to accept an offer to sale made by the Registered Provider within four weeks of the date of that offer.
- 5.12 Where clause 5.11 applies, the Registered Provider shall notify EDDC and invite further nominations within ten working days.
- 5.13 Within ten working days of receipt of a notification received in accordance with clause 5.12 EDDC may nominate to the Registered Provider a further three prospective Eligible Persons in priority order for the purposes of occupying that Affordable Housing Unit. Clauses 5.5 to 5.10 shall apply in respect of those nominations as if they were made under clause 5.3 or 5.4.

Local Connections

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

Fit for occupation

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

6 VARIATION AND WAIVER

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

7 INFORMATION

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

re-sales.

- 7.2 EDDC may request such further information from the Registered Provider concerning the occupation of the Affordable Housing Unit as it may reasonably require and such information shall be provided by the Registered Provider within twenty-eight days of receipt of a request.

8 ENFORCEABILITY OF COVENANTS

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

9 COSTS

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

10 DISPUTES

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

10.1.1 in the absence of agreement the dispute or question shall be referred to an Expert to be agreed by EDDC and the Registered Provider;

10.1.2 in the absence of agreement between the Registered Provider and EDDC the Expert shall be determined upon the application of either EDDC or the Registered Provider by the President of the Royal Institution of Chartered Surveyors;

10.1.3 any such reference is to be treated as a submission to arbitration within the means of the Arbitration Act 1996; and

10.1.4 in the event of a reference to arbitration arising out of the unreasonable

withholding of any approval required or sought under this Agreement the timescale for carrying out any required steps under this Agreement may be extended either by written agreement between the parties to the procedure or failing such agreement in accordance with such extended timescale as the Expert may deem fit.

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

11 EXCLUSIONS

- 11.1 Nothing in this Agreement shall bind:

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

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

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

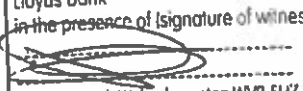

Authorised Signatory

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

Authorised Signatory

Authorised Signatory / Secretary

SIGNED AS A DEED

BY LISA JANE PACKHAM as authorised signatory for Lloyds Bank in the presence of (signature of witness)	}	Per Pro Lloyds Bank
		
Wobaston Rd, Wolverhampton WV9 5HZ		

re-sales.

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

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

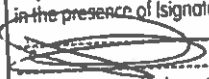
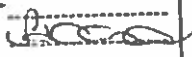
Authorised Signatory

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

Authorised Signatory

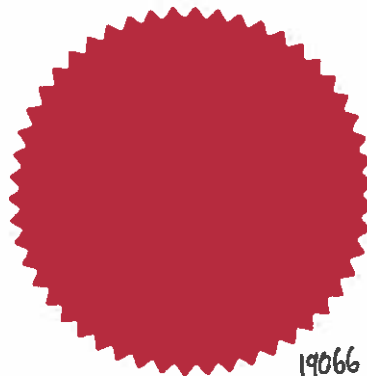
Authorised Signatory / Secretary

SIGNED AS A DEED

BY LISA JANE PACKHAM as authorised signatory for Lloyds Bank in the presence of (signature of witness)	}	Per Pro Lloyds Bank
		
Wobaston Rd, Wolverhampton WV9 5HZ		

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

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



Authorised Signatory

Agua



Signed as a Deed by PAUL KEVIN)
PARNELL in the presence of:)

Paul Kevin Parnell

Witness Signature: K. Bigns

Witness Name: KEITH BIGGS

Witness Address: Senate House

Exeter

Witness Occupation: Solicitor

Signed as a Deed by JUDITH MARY)
PARNELL in the presence of:)

Judith Parnell

Witness Signature: *K. B. S.*

Witness Name: *KEITH B. S.*

Witness Address: *Senate Court*

Exeter

Witness Occupation: *Solicitor*

EXECUTED AS A DEED)
by affixing the Common Seal of)
CAVANNA HOMES (DEVON) LIMITED)
in the presence of:-)

Director/Secretary

[Signature]

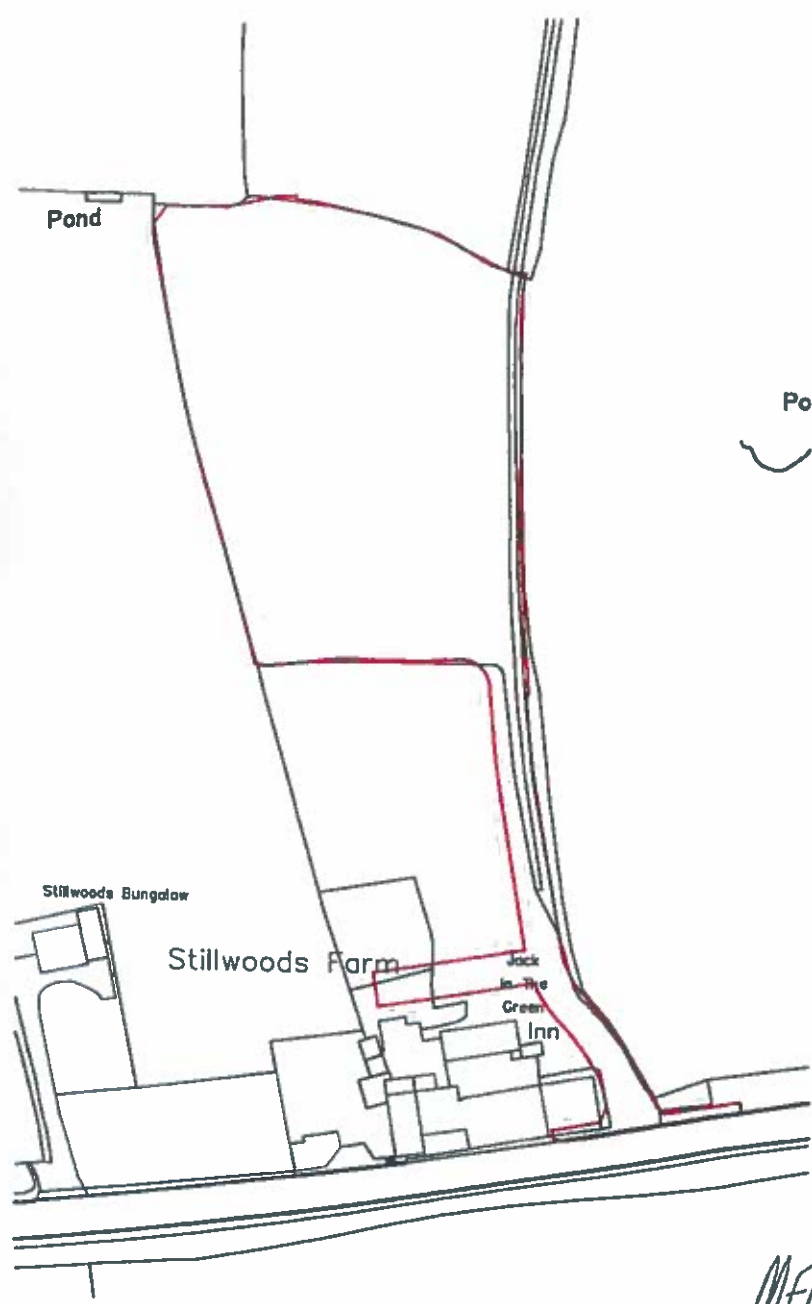
Director

M. B. S.



KEYSCALE

Hyas



Michael



Michael

MEB



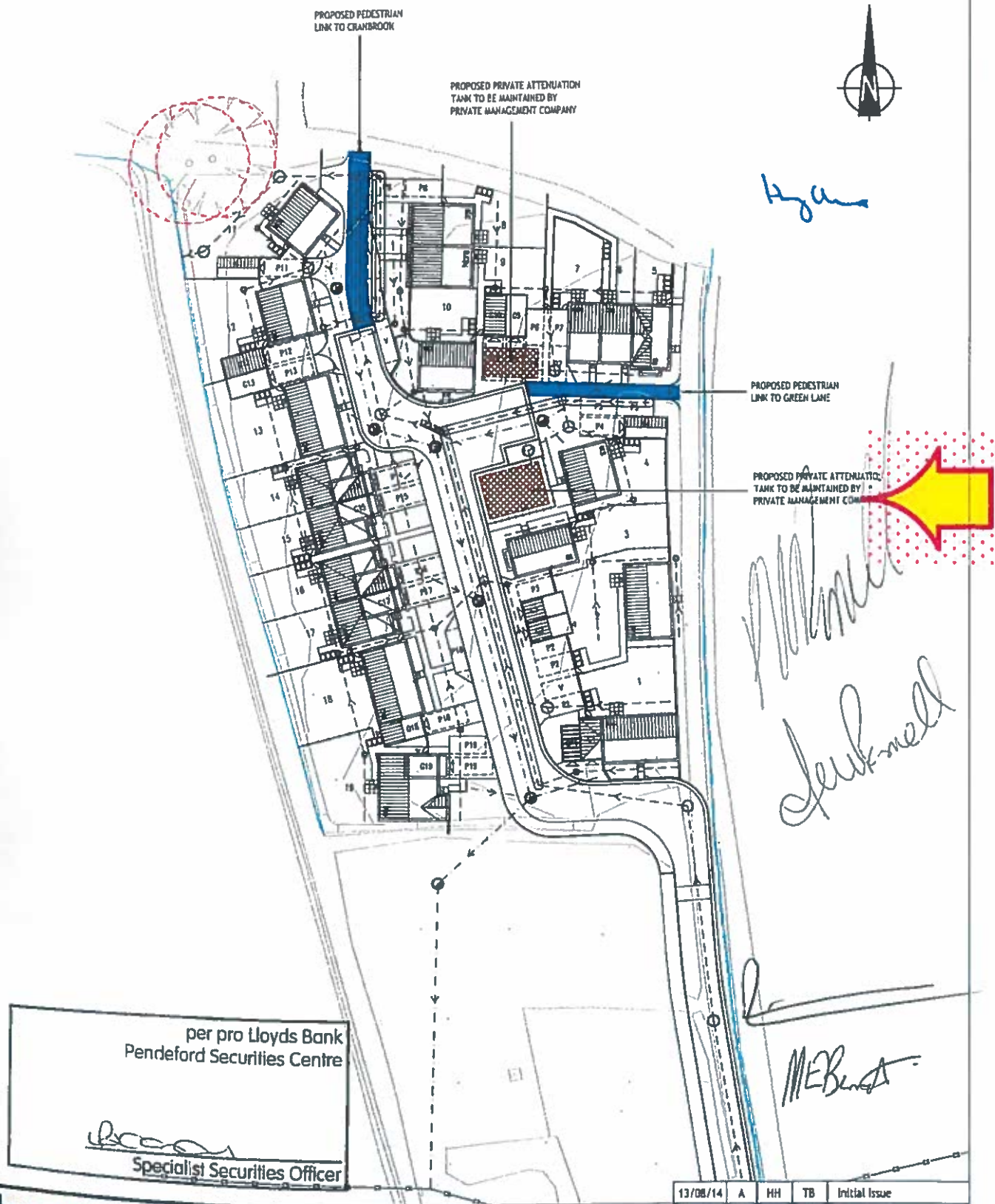
per pro Lloyds Bank
Pendeford Securities Centre

[Signature]
Specialist Securities Officer

LOCATION PLAN



www.focuson.co.uk



twp Consulting Structural and Civil Engineers
Bradinch Hall, Castle Street,
Exeter, EX4 3PL
t: 01392 276046 f: 01392 430853
e-mail: admin@twpey.com

1. All dimensions and details to be checked prior to commencement of any works or preparation of other drawings.
2. This drawing should not be scaled, refer to figured dimension only.
3. Discrepancies, if found, to be reported immediately to TWP.
4. This drawing is to be read in conjunction with all architectural and/or other relevant drawings.

Job Title:
**JACK IN THE GREEN,
ROCKBEARE**

Client:
CAVANNA HOMES

Drawing Title:
SECTION 106 PLAN 2

13/08/14	A	HH	TB	Initial Issue
Date	Rev	By	Ch'd	Amendment details

Drawing Status:
Preliminary Issue

Scale	1:500/A3	Drawing Number
Drawn	HH	13129-016
Date	AUG 2014	Revision
Checked	TB	A

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

)
)
)



19508

.....
Authorised Signatory

Executed as a DEED)
by affixing the Common Seal of)
CAVANNA HOMES (DEVON) LIMITED)
In the presence of:-)

.....
J M Cavanah

Director/ Secretary

.....
Director