

THIS DEED is made under section 106 of the Town and Country Planning Act 1990 (as amended) Section 111 of the Local Government Act 1972 and all other enabling powers.

Date:

2020

Parties:

- (1) **WEST DEVON BOROUGH COUNCIL** of Kilworthy Park, Tavistock, Devon PL19 0BZ ("**the Council**");
- (2) **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter, Devon, EX2 4QD ("**the County Council**");
- (3) **MARION RUTH FOALE, EDWARD LEWIS FOALE AND MARK EDWARD ROWAN FOALE** of Courtwell House, Coffinswell, Newton Abbot, Devon TQ12 4SS ("**the First Owner**")
- (4) **JOHN HAROLD DAVIES AND ANNE FRANCES DAVIES** of Valley View Farm, Brook Lane, Tavistock, Devon PL19 9DP ("**the Second Owner**"); and
- (5) **LINDEN LIMITED** (Company Registration Number: 01108676) whose registered office is at Cowley Business Park, Cowley, Uxbridge, Middlesex, UB8 2AL ("**the Developer**")

RECITALS

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated
- (B) The County Council is a local planning authority, highway authority and education authority for the purposes of the Act for the area in which the Land is situated
- (C) The First Owner is the freehold owner of part of the Land registered at the HM Land Registry under Title Number DN558635
- (D) The Second Owner is the freehold owner of part of the Land registered at the HM Land Registry under Title Number DN603492
- (E) The Developer has the benefit of an option agreement dated 3 November 2008 (as amended by a supplemental agreement dated 21 January 2015) in respect of the Land
- (F) The Council is minded to grant the Permission subject to the parties entering into this Deed.

1 DEFINITIONS

In this Deed:-

"Act"	means the Town and Country Planning Act 1990 (as amended);
"Affordable Housing"	means affordable housing available to specific eligible households whose needs are not met by the market as set out within the glossary at Annex 2 of the National Planning Policy Framework February 2019 (as may be amended or superseded from time to time) being permanent dwellings to be let as Social Rented Units or disposed of as Intermediate Housing Units / Shared Ownership Housing Units through an Affordable Housing Provider or otherwise as Discount Market Units pursuant to this Deed;

"Affordable Housing Provider" or "AHP"	means a registered provider as defined in the Housing & Regeneration Act 2008 who is registered with Homes England or any other provider of Affordable Housing;
"Affordable Housing Scheme"	means a written scheme to be submitted to and approved by the Council setting out details of the provision of the Affordable Housing Units such scheme to identify the tenure, size, location, layout and specification of each of the Affordable Housing Units;
"Affordable Housing Unit"	means each of those Dwellings to be specified in the Affordable Housing Scheme as Dwellings to be delivered as Affordable Housing;
Alternative Transport Scheme	means a written scheme in accordance with Schedule 2 to provide transport improvements for pedestrians and/or vehicles between Tavistock and Plymouth;
"Application"	means the application for outline planning permission registered by the Council with reference number 3614/18/OPA for development of 250 dwellings and 2 hectares of B1 commercial use;
"BCIS Index"	means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institute of Chartered Surveyors;
"Chargee"	means a mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver") of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver;
"Chargee's Duty"	means the tasks and duties set out in Paragraph 14 of Part 1 to Schedule 1;
"Commencement of Development"	means the carrying out of a material operation on the Land pursuant to the Permission as defined in Section 56 of the Act other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, ecological investigation, mitigation works and similar phrases such as "Commence Development" shall be construed accordingly;
"Commercial Access Road"	means the works to construct vehicular and pedestrian access to the Employment Land in accordance with Plan/Drawing No VD19071-0100 Rev C attached to this Deed (or such other drawing as may be agreed in writing with the Council from time to time);

"Contribution"	means all or any of the Early Years Contribution, Transport Contribution, Sports Pitch Contribution and Primary School Contribution as the context requires;
"Development"	means the development of the Land pursuant to the Permission or carried out substantially in accordance with such Permission;
"Development Plan"	means the Plymouth and South West Devon Joint Local Plan adopted by the Council in March 2019;
"Devon Home Choice"	means the choice based letting scheme introduced in the County of Devon with a view to allocating those most in need of accommodation owned by local authorities and registered providers (or such other successor scheme as may be brought into effect);
"Discount Market Housing Unit"	means each Affordable Housing Unit which is to be disposed of and occupied in accordance with the provisions set out at Paragraph 13 of Part 1 to Schedule 1 and the expression "Discount Market Housing Units" shall be construed accordingly;
"Dwelling"	means a residential unit (including a house, flat or maisonette) to be constructed on the Land pursuant to the Permission being either an Affordable Housing Unit or a Market Housing Unit;
"Early Years Contribution"	means the sum of Two Hundred and Fifty Pounds (£250) per Qualifying Dwelling (Index Linked) to be used towards early years provision at a new primary school in Tavistock required as a result of the Development and to be paid by the Owners to the County Council in accordance with the terms of this Deed;
"Employment Development"	means 2 hectares of B1 commercial use;
"Employment Floorspace"	means an area in the region of 18,600m ² to be built on the Employment Land in accordance with reserved matters pursuant to the Permission for the purposes of the Employment Use;
"Employment Land"	means land of a minimum of 2.0 hectares (which calculation includes all associated roads cycleways service areas car parking and any SUDS which are required for the provision of Use Class B1 and other appropriate employment in the location shown coloured blue on the Land Use Plan the exact size and location of which shall be determined through the reserved matters pursuant to the Permission;
"Employment Land Managing Body"	means a body which has been first approved in writing by the Council designed to hold and manage the Employment Land;
"Employment Land Owner"	means the owner of the Employment Land for the time being;

"Employment Use"	means any use that is within Use Class B1 of the Town and Country Planning Act (Use Classes) Order 1987 (as amended);
"EMS Scheme"	means the Plymouth Sound and Estuaries EMS Recreation Mitigation and Management Scheme dated November 2019;
"Expert"	means a person of not less than 10 (ten) years recent and relevant experience of the matter in dispute as may be appointed by the parties to this Deed or in the absence of agreement, appointed by the president of the Royal Institute of Chartered Surveyors;
"Highways Agreement"	means an agreement under Sections 38 and 278 of the Highways Act 1980 to provide a right hand turn lanes and access road and associated works;
"Transport Contribution"	means the sum of £587.32 per Dwelling (Index Linked) payable by the Owners to the County Council as a contribution towards the reestablishment of the Tavistock to Bere Alston railway line;
"Homebuy Agent"	means Help to Buy South (Radian) (company number 01683645) whose registered office is at Collins House Bishopstoke Road Eastleigh Hampshire SO50 6AD or such other organisation(s) as may be designated by Homes England or a successor body;
"Index Linked"	means increased in accordance with the indexation formula set out at Schedule 3 to this Deed;
"Interest Rate"	means 4% above the Barclays Bank base rate calculated on a day to day basis from time to time in force;
"Intermediate Housing Unit"	means each of those Dwellings to be specified in the Affordable Housing Scheme as Dwellings to be delivered as Intermediate Housing Units which may include Shared Ownership Units and/or Discount Market Housing Units and/or such similar or equivalent means of tenure and the expression "Intermediate Housing Units" shall be construed accordingly;
"Land"	means land at Plymouth Road, Tavistock shown for illustration purposes edged red on Plan 1;
"Land Use Plan"	means plan/drawing 0661-1005 attached to this Deed or such other replacement plan/drawing as may be agreed in writing with the Council from time to time;
"LEAP"	means a local equipped area for play designed for children up to the age of six years containing at least three (3) pieces of play equipment with a buffer zone of at least 10 metres between the equipped activity area and the nearest residential dwelling which shall be delivered on the Land in Phase 1 in accordance with the Phasing Plan and the Open Space Specification;

"LEMP Land"	means the part(s) of the Land subject to the Landscape and Ecology Management Plan;
"Landscape and Ecology Management Plan"	means details (including a plan) setting out the maintenance arrangements for the Open Space to be managed for biodiversity, open space, play and landscape purposes (as applicable) in accordance with a plan to be submitted and approved by the Council pursuant to the Permission (such approval not to be unreasonably withheld or delayed);
"Local Allocations Policy"	means the policy adopted by the Council in September 2015 (Revised November 2017) to ensure locally based allocation policies for Affordable Housing Units pursuant to section 167(2E) of the Housing Act 1996 together with any revisions thereof and together with any site specific variations as may be agreed between the Council and the Affordable Housing Provider;
"Local Connection"	means a local connection to the administrative area of the Council having regard to the local connection criteria set out in the Local Allocations Policy applicable at the date when the relevant Affordable Housing Unit(s) are being allocated (or, in the event of there being no Local Allocations Policy in force, such other criteria as may be agreed by the Council in writing);
"Management Company"	means a management company set up by the Owners to manage and maintain the Open Space or such other management entity or body as may be approved in writing by the Council;
"Market Housing Units"	means those Dwellings which are market housing for sale on the open market and which are not Affordable Housing Units;
"Market Value"	means the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion;
"NEAP"	means a neighbourhood equipped area for Play designed for children from the age of 7 years up to the age of 14 years containing at least eight (8) pieces of play equipment with a buffer zone of at least 30 metres between the equipped activity area and the nearest residential dwelling which shall be delivered in accordance with the Phasing Plan on the Land in accordance with the Open Space Specification;
"Obligations" and "Obligation"	means the planning obligations, covenants, requirements and restrictions contained in the relevant Schedules of this Deed;
"Occupation" or "Occupy"	means occupation for residential use permitted by the Permission but not including occupation by personnel engaged in construction, sitting out, decoration, marketing, display or security operations;

"Open Space"	means the parts of the Land to be delivered as public open space the exact location of which to be determined through a reserved matters application to the Council which fall outside of the curtilage or control of any Dwelling which shall be delivered as public open space of which there will be 1.3 hectares of green space which shall include the LEAP and NEAP and a minimum of 0.1 hectares for the purposes of providing allotments and any SUDS and any unadopted footpaths through the said open space (if applicable);
"Open Space Specification"	means details and specifications for the laying out and provision of the Open Space including the standard of the maintenance and management to be undertaken;
"Open Space Works"	means the works required to lay out and deliver the Open Space in accordance with the Open Space Specification;
"Owners"	means the First Owner and the Second Owner and their respective successors in title;
"Permission"	means the planning permission granted by the Council pursuant to the Application;
"Phase" or "Phases"	means a Phase of the Development in accordance with the Phasing Plan;
"Phasing Plan"	means a plan detailing the proposed phasing of the Development which shall include details of when the LEAP NEAP and any allotments will be provided to be agreed with the Council or such other replacement plan/drawing as may be agreed in writing with the Council from time to time;
"Plan 1"	means the plan marked 'Plan 1' attached to this Deed;
"Plymouth Sound and Estuaries EMS Contribution"	means a financial contribution per Dwelling calculated in accordance with paragraph 16 of Part Two of Schedule 1 for the purposes of delivering the mitigation and management set out in the EMS Scheme to mitigate the recreational impacts of the Development;
"Practical Completion"	means the issue of a CML certificate of practical completion;
"Primary School Contribution"	means a financial contribution calculated on the basis of £4,004.75 per Dwelling Index Linked to be paid to County Council BUT FOR THE AVOIDANCE OF DOUBT shall not be payable in relation to the first 166 Dwellings towards the provision of a new primary school in Tavistock required as a result of the Development and to be paid by the Owners to the County Council in accordance with the terms of this Deed;
"Protected Tenant"	means any tenant who: (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provisions for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;

	<p>(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;</p> <p>(c) has been granted a shared ownership lease by an Affordable Housing Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Affordable Housing Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Affordable Housing Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit; or</p> <p>(d) has acquired an Affordable Housing Unit through Homebuy Scheme funded pursuant to s.19(3) of the Housing and Regeneration Act 2008 or pursuant to a voluntary grant scheme under s.21 of the Housing Act 1996 or any amendment or replacement thereof;</p>
"Qualifying Dwelling"	means a Dwelling having two or more bedrooms;
"Residential Land Owner"	means the owner of the Land not including the Employment Land for the time being;
"Shared Ownership Housing Unit"	<p>means each of those Dwellings to be specified in the Affordable Housing Scheme as Dwellings to be delivered as Shared Ownership Housing Units and to be let under a lease (of not less than 99 years) in the standard form of the Affordable Housing Provider and in accordance with the requirements of Homes England whereby the Dwelling is let by an Affordable Housing Provider and the purchaser/leaseholder;</p> <p>(a) acquires an initial equity share in the Affordable Housing Unit; and</p> <p>(b) pays to the Affordable Housing Provider a rent in respect of the remaining equity of up to 2.75% of the unsold equity,</p> <p>or such similar or equivalent means of tenure;</p>
"Section 73 Agreement"	means a short form agreement substantially in the form of that attached at Appendix 1;
"Services"	means such services as are reasonably necessary for the occupation and use of the Employment Land including publicly adopted highway, water supply, foul sewerage, surface water drainage, electricity and telecommunications;
"Social Rented Unit"	means each of those Dwellings to be specified in the Affordable Housing Scheme as Dwellings to be delivered as Social Rented Units and to be let be an Affordable Housing Provider on an assured tenancy at no more than the target rents set by Homes England and which shall be disposed of in accordance with the provisions of Schedule

	1 and the expression " Social Rented Units " shall be constructed accordingly;												
"SPD"	<p>means the Supplementary Planning Document intended to be adopted by the Council to support the Development Plan which is anticipated to require the Plymouth Sound and Estuaries EMS Contribution to be calculated on the following alternative basis:</p> <table border="1"> <thead> <tr> <th>Dwelling Size</th> <th>Contribution per Dwelling</th> </tr> </thead> <tbody> <tr> <td>1 bedroom</td> <td>£236.62</td> </tr> <tr> <td>2 bedroom flat</td> <td>£330.92</td> </tr> <tr> <td>2 bedroom house</td> <td>£435.89</td> </tr> <tr> <td>3 bedroom dwelling</td> <td>£467.91</td> </tr> <tr> <td>4+ bedroom dwelling</td> <td>£507.05</td> </tr> </tbody> </table> <p>AND FOR THE AVOIDANCE OF DOUBT the contribution figures contained in the adopted version of the SPD shall take precedence over those set out in the table above in the event of any inconsistency</p>	Dwelling Size	Contribution per Dwelling	1 bedroom	£236.62	2 bedroom flat	£330.92	2 bedroom house	£435.89	3 bedroom dwelling	£467.91	4+ bedroom dwelling	£507.05
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2 bedroom house	£435.89												
3 bedroom dwelling	£467.91												
4+ bedroom dwelling	£507.05												
"Sports Pitch Contribution"	means the sum of Three Hundred and Forty Four Thousand Five Hundred and Sixty Pounds (£344,560) (Index Linked) (based on 250 Dwellings) to be paid to the Council as a contribution towards the off-site sports provision including (but not restricted to) playing pitches courts and changing facilities within the parish of Tavistock required as a result of the Development;												
"SUDS"	means the surface water drainage systems forming part of the Development and to be constructed / constructed pursuant to the Permission;												
"Working Days"	means any Monday to Friday (other than any statutory or bank or public holidays or a day on which clearing banks are not open for normal business and does not include the days between 23 December and the immediately following 2 January in each year).												

2 INTERPRETATION

In this Deed, except where the context requires otherwise:-

- 2.1 The singular includes the plural, the masculine includes the feminine, and vice versa.
- 2.2 References to clauses and schedules are to the clauses in and schedules to this Deed.
- 2.3 Reference to any party having an interest in land affected by this Deed shall include any successor in title of that party to that land or to any part of it.
- 2.4 Reference to any party having a statutory function referred to in this Deed shall include any successor to that statutory function.
- 2.5 Reference to any Act or Statutory Instrument shall include any subsequent amendment or re-enactment of it.
- 2.6 Where any Obligation applies to more than one person, their liabilities shall be joint and several.

2.7 The clause and paragraph headings herein are for ease of reference only and shall not affect the interpretation of this Deed.

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the 1990 Act and all other enabling powers and enactments which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained with the intent to bind the Owners' interest in the Land and to the intent that the obligations on the part of the Owners herein contained falling within the provisions of Section 106 of the 1990 Act shall be planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council and the County Council as local planning authorities against the Owners and their respective successors and assigns of each and every part of the Land but subject as hereinafter provided.

3.2 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 the Obligations shall not be enforceable by anyone who is not a party to this Deed or successor in title to any party to this Deed or any person or body succeeding to any of the statutory functions of any party to this Deed.

3.3 The Obligations are local land charges and shall be registered as such by the Council.

3.4 Nothing in this Deed is or amounts to or shall be construed as a planning permission within the meaning of Section 336 of the Act.

3.5 For the avoidance of doubt save as lawfully permitted nothing herein contained or implied shall prejudice or affect the Council's or the County Council's rights, powers, duties or obligations in relation to its functions pursuant to all public and private statutes bye-laws orders and regulations which may be as fully and effectively exercised in relation to the Land as if this Deed had not been exercised.

3.6 Where under this Deed any notice, approval, consent, certificate, direction, authority, agreement, action or expression of satisfaction is required to be given or reached or taken by any party or any response is requested, then any such notice, approval, consent, certificate, direction, authority, agreement, action or expression of satisfaction shall not be unreasonable or unreasonably withheld or delayed provided that nothing herein shall fetter the statutory rights, powers or duties of the Council or of the County Council.

4 OWNERS' COVENANTS

Subject to Clause 6, the Owners covenant on behalf of themselves and their successors in title to observe and perform the Obligations contained in Schedule 1 which shall bind the Land (and every part of it) as planning obligations under section 106 of the Act.

5 COUNCIL'S AND COUNTY COUNCIL'S COVENANTS

The Council and the County Council covenant to observe and perform the relevant covenants contained in Schedules 1 and 2.

6 SCOPE OF THE OBLIGATIONS

6.1 This Deed shall come into effect upon both the Permission being granted and Commencement of Development save for the Obligations which are expressed so as to take effect prior to Commencement of Development and Clause 4, this Clause 6.1 and Clause 7.1 which shall come into effect on the date of this Deed.

- 6.2 No person shall be liable for any breach of an Obligation occurring after that person has parted with all of its interest in the Land or its interest in the part of the Land in respect of which such breach occurs (but without prejudice to liability for any subsisting breach arising prior to parting with such interest) and shall only be liable in respect of those Obligations which relate to such part of the Land in which it has an interest (but without prejudice to liability for any subsisting breach arising prior to parting with any interest) and provided always and without prejudice to the generality of the above no person will be deemed to have retained any interest in the Land for the purposes of this Deed by virtue of the reservation of any rights over the Land or enjoying the benefit of any covenants or rights to claim overage affecting the Land.
- 6.3 This Deed shall cease to have effect if the Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) is modified by any statutory procedure or expires prior to the Commencement of Development on the relevant part of the Land.
- 6.4 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission other than the Permission granted after the date of this Deed.
- 6.5 The Obligations shall not be binding on nor enforceable against any statutory undertaker nor any other person who acquires any part of the Land or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services.
- 6.6 Other than the Obligations relating to Affordable Housing set out in Part 1 of Schedule 1 of this Deed the Obligations shall not be binding on nor enforceable against an Affordable Housing Provider or any other registered provider who acquires the Affordable Housing Units or any person deriving title therefrom including any Chargee.

7 FINANCIAL MATTERS

- 7.1 The Owners agree to pay upon completion of this Deed the reasonable legal costs of the Council and the County Council in respect of the negotiation, preparation, execution and completion of this Deed.
- 7.2 If the Owners fail to settle any account that may be properly and duly rendered to the Owners within 14 (fourteen) days of dispatch to the Owners the sum due shall accrue interest at the Interest Rate from the date payment is due until the date of actual payment.

8 MONITORING FEES

The Owners acknowledge that the Council shall be entitled to use up to a 5% (five per cent) of the total payments and Contributions payable to the Council pursuant to the provisions of this Deed hereto towards the costs to be reasonably and properly incurred by the Council in monitoring compliance with this Deed and in assessing the details submitted to the Council for approval pursuant to this Deed.

9 DISPUTE RESOLUTION

If there is any dispute or difference between the Owners the Council or the County Council or any of them arising out of this Deed (other than a dispute or difference relating to a question of law or in relation to the interpretation of this Deed) the matter in dispute may (with the agreement of the other parties to the dispute) be referred to the Expert in which case it is agreed that:

- 9.1 the determination of the Expert will be final and binding on the parties hereto save in the case of manifest error or fraud;

- 9.2 the parties will be entitled to make representations and counter-representations in accordance with such timetable as the Expert directs;
- 9.3 the Experts costs will be borne in such proportions as he/she may direct failing which the parties will each bear their own costs of the reference and determination and the Experts costs calculated by dividing the Experts costs by the number of sides to the reference; and
- 9.4 the Expert may be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to proceed to discharge his/her function and such fresh appointee will be appointed in the same manner as the Expert;

PROVIDED THAT the provisions of this Clause shall be without prejudice to the right of any party to seek the resolution of any matter relating to the Agreement by the Courts and/or in accordance with Section 106(6) of the Act and the referral of any matter to the Expert shall not prejudice prevent or delay the recourse of any party to the Courts or to the provisions of Section 106(6) of the Act for the resolution of any matter arising from the Agreement.

10 CHANGE IN OWNERSHIP

The Owners agree to give the Council and the County Council written notice of any change in ownership of any of its interest in the Land as soon as reasonably practicable following the change of ownership occurring before all the Obligations under this Deed has been discharged such notice to give full details of the transferee's name and address together with the area of Land transferred PROVIDED THAT the requirements of this Clause shall not apply in respect of the disposal of individual Dwellings to plot purchasers nor to any disposal to a statutory undertaker or service provider.

11 SERVICE OF NOTICES AND WRITTEN COMMUNICATIONS

- 11.1 Any notice or other written communication to be served upon a party or given by one party to any other under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing PROVIDED THAT delivery by hand will only be effective upon the delivering party receiving a written receipt
- 11.2 The address for any notice or other written communication shall be with the United Kingdom
- 11.3 A written notice or communication shall be served or given:
- (a) On the First Owner;
 - (b) On the Second Owner;
 - (c) On the Developer;
 - (d) On the Council,

at the addresses set out above or such other address as shall be notified in writing to all parties from time to time AND any notice or other written communication served on the Council shall be headed 'For the attention of the Development Management Community of Practice Lead Specialist' or in respect of notices relating to Schedule 1 to the "Affordable Housing Specialist" AND any notice or other written communication served on the County Council shall be headed 'For the attention of the County Solicitor'

12 INTEREST ON LATE PAYMENT

If any payment due to be paid by the Owners under the terms of this Deed is paid late or the Owners fail to settle any account that may be properly and duly rendered to the Owners

within fifteen (15) Working Days of dispatch the sum due shall accrue interest at the Interest Rate from the date payment is due until the actual date of the payment

13 NOTICE OF COMMENCEMENT OF DEVELOPMENT

The Owners covenant to notify the Council and the County Council in writing of the date of Commencement of Development within fourteen (14) days of Commencement of Development

14 CANCELLATION OF ENTRIES

On receipt by the Council or County Council (as applicable) of a written request of the Owners at any time after each or all of the Obligations have been performed or otherwise discharged the Council or County Council (as applicable) will issue a written confirmation of such performance or discharge

Following the performance and full satisfaction of all terms of this Deed or if this Deed is otherwise determined the Council will on receipt of a written request of the Owners cancel all entries made in the local land charges registered in respect of this Deed

15 REASONABLENESS

Any approval, consent, direction, authority, agreement or action to be given by the Council under this Deed shall not be unreasonably withheld or delayed

16 SEVERANCE

16.1 If any provision or part-provision of this Deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of this Deed

16.2 If any provision or part-provision of this Deed is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision

17 SECTION 73 APPLICATIONS & FUTURE PERMISSIONS

17.1 In the event that any new planning applications are made in respect of the Development pursuant to section 73 of the Act then, subject to agreement between the Parties (or their successors) evidenced by the signing of a Section 73 Agreement, with effect from the date that the new planning permission (referred to in a Section 73 Agreement) is granted pursuant to section 73 of the Act:

(a) the obligations in this Deed shall (in addition to continuing to bind the Land in respect of the Permission) relate to and bind the Land in respect of any planning permission granted pursuant to section 73 of the Act which is referred to in the Section 73 Agreement; and

(b) the definitions of Application, Development and Permission in this Deed shall be construed to include references to any applications under section 73 of the Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s)

PROVIDED THAT nothing in this Clause shall fetter the discretion of the Council in determining any application(s) under section 73 of the Act or the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Deed

and required pursuant to a determination under section 73 of the Act whether by way of a new deed or supplemental deed pursuant to section 106 of the Act or a modification agreement pursuant to section 106A of the Act.

17.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with an planning permission (other than the Permission) granted after the date of the Permission

18 JURISDICTION

This Agreement is governed and interpreted in accordance with the law of England and Wales

IN WITNESS the Council, the County Council, the First Owner, the Second Owner and the Developer have executed this document as a Deed and it is delivered on the date set out at the front of this Deed.

Schedule 1

OBLIGATIONS IN FAVOUR OF THE COUNCIL AND THE COUNTY COUNCIL

The Residential Land Owner hereby covenants with the Council and the County Council as follows:

PART ONE - AFFORDABLE HOUSING

General Obligations

- 1 30% of the Dwellings shall be provided as Affordable Housing Units, being Seventy Five (75) Dwellings where the total number of Dwellings delivered pursuant to the Permission is Two Hundred and Fifty (250)
- 2 Not to Commence Development unless and until the Affordable Housing Scheme and Phasing Plan have first been submitted to and approved in writing by the Council PROVIDED THAT Unless otherwise agreed with the Council the Affordable Housing Scheme shall provide for:
 - 2.1 70% of the Affordable Housing Units to be provided and occupied as Social Rented Units; and
 - 2.2 30% of the Affordable Housing Units shall be provided and occupied as Intermediate Housing Units
3. To construct and provide the Affordable Housing Units in accordance with the approved Affordable Housing Scheme and the approved Phasing Plan
4. To construct and provide the Affordable Housing Units to meet the mandatory requirements of the Building Regulations 2010 (as amended) or any subsequent revision thereof as in force at the date of grant of the relevant reserved matters approval relating to those Affordable Housing Units

Mechanism for Provision of Affordable Housing

- 5 The Residential Land Owner shall use reasonable endeavours to enter into a contract with an AHP within nine (9) months of Commencement of Development
- 6 If the Residential Land Owner has not contracted to sell the Affordable Housing Units to a AHP within nine (9) months of the Commencement of Development (despite having used reasonable endeavours to do so) the Residential Land Owner shall demonstrate to the Council why they were unable to do so and PROVIDED THAT the Council, acting reasonably, is satisfied that all reasonable endeavours have been undertaken to secure a contract with an Affordable Housing Provider in respect of the Affordable Housing Units, the Residential Land Owner and the Council shall seek to agree an alternative tenure mix of the Affordable Housing Units within thirty (30) Working Days
- 7 From the date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing and shall only be occupied by persons with a Local Connection who cannot afford to rent or buy housing generally available on the open market immediately prior to Occupation save that this obligation and the nomination obligations set out in Paragraphs 10 to 12 of this Part shall not be binding on:
 - 7.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or
 - 7.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty following which the provisions of this Part 1 shall cease to apply to the

Affordable Housing Unit(s) in respect of which the Chargee's Duty has been complied with

- 8 No more than 50% of the Market Housing Units shall be Occupied until 50% of the Affordable Housing Units have been constructed to Practical Completion and are ready for Occupation and have been transferred to the Affordable Housing Provider and no more than 75% of the Market Housing Units shall be Occupied until all (100%) of the Affordable Housing Units have been constructed to Practical Completion and are ready for Occupation and have been transferred to the Affordable Housing Provider PROVIDED THAT where the development is to be provided in Phases the restrictions in this Paragraph shall apply on a per Phase basis
- 9 Prior to the first Occupation of any Dwelling the Residential Land Owner shall notify the Council of the name of the Affordable Housing Provider(s) to whom the Affordable Rented Units and the Intermediate Housing Units (excluding any Discount Market Housing Units) shall be transferred

Nominations – Social Rented Units

- 10 Not to allocate the Social Rented Units except in accordance with the Local Allocations Policy and the Devon Home Choice Register and each Social Rented Unit shall only be let to a person:
 - 10.1 who falls within the selection and allocations criteria set out in Devon Home Choice; and
 - 10.2 who is considered by the Affordable Housing Provider to be in need of the accommodation; and
 - 10.3 who has a Local Connection
 - 10.3.1 PROVIDED THAT in the event that the Council has been unable to nominate a person who has a Local Connection within two (2) months of being notified of the vacancy the Affordable Housing Provider shall be entitled to allocate the relevant Affordable Rented Unit to any person who falls within the selection and allocations criteria set out in Devon Home Choice and is considered by the Affordable Housing Provider to be in need of the accommodation;
 - 10.3.2 AND FURTHER PROVIDED THAT the Affordable Housing Provider may allocate a Social Rented Unit to a person with a Local Connection who falls within housing need band E notwithstanding paragraph 5.11 of the Local Allocations Policy
- 11 In the event that Devon Home Choice ceases to operate or the register is discontinued an alternative allocation method shall be agreed with the Council prior to any further allocations

Nominations - Intermediate Housing Units (excluding Discount Market Housing Units)

- 12 In so far as it is lawfully able to do so the Residential Land Owner shall ensure that the Intermediate Housing Units (excluding any Discount Market Housing Units) are disposed of only to:
 - 12.1 those persons who have lived or worked in the administrative area of the Council for 3 (three) years immediately prior to their acquisition of an interest in the Intermediate Housing Unit; and/or
 - 12.2 persons chosen by the Affordable Housing Provider from the list of eligible applicants which the Affordable Housing Provider shall request from the Homebuy Agent

provided that if there shall not be sufficient suitable applicants on such list or if any suitable applicants fail to proceed with the purchase within 3 (three) months of being made an offer by the Affordable Housing Provider then the Affordable Housing Provider shall be entitled to dispose of the Intermediate Housing Unit to a person of its own choosing who is unable to afford suitable accommodation on the open market provided that the Affordable Housing Provider shall use its reasonable endeavours to dispose the Intermediate Housing Unit to persons from such list of eligible applicants

Discount Market Housing – Marketing & Disposal

13 The Residential Land Owner covenants with the Council as follows:-

- 13.1 The Residential Land Owner shall not dispose of a Discount Market Housing Unit unless and until the Residential Land Owner has:
 - 13.1.1 given not less than fourteen (14) Working Days prior written notice to the Council of their intention to market the Discount Market Housing Unit(s) for sale PROVIDED THAT on the first disposal of a Discount Market Housing Unit the earliest date upon which the said notice may be validly served shall be two (2) calendar months following commencement of construction of the relevant Discount Market Housing Unit(s) and FURTHER PROVIDED THAT commencement of construction shall have been notified to the Council in writing within five (5) Working Days;
 - 13.1.2 provided two (2) Market Value valuations of the Discount Market Housing Units from independent estate agents who are either Members of the Royal Institute of Chartered Surveyors or the National Association of Estate Agents; and
 - 13.1.3 provided the name of the first Estate Agents instructed
- 13.2 The Residential Land Owner shall Commence Marketing within ten (10) Working Days of receipt of written approval from the Council of the two (2) Market Value valuations referred to in Paragraph 13.1 of this Part (in the event that the Council does not respond to the Market Valuations referred to in Paragraph 13.1 of this Part within ten (10) Working Days their approval shall be deemed)
- 13.3 The selling price of the Discount Market Housing Units shall be the average of the Market Value from the two (2) Market Value valuations referred to in Paragraph 13.1 of this Part with a 20% discount from the average figure
- 13.4 The price at which the Discount Market Housing Units shall be sold shall be no more than 80% of Market Value in perpetuity
- 13.5 If no person has purchased the Discount Market Housing Unit pursuant to Paragraph 13.3 of this Part within three (3) months of the Commencement of Marketing the owner of the relevant Discount Market Housing Unit shall use reasonable endeavours to sell the Discount Market Housing Unit(s) at no more than 80% of Market Value to an Affordable Housing Provider and/or the Council
- 13.6 If the Residential Land Owner has not exchanged contracts for the sale of the Discount Market Housing Unit with an Affordable Housing Provider and/or the Council within four (4) months of the Commencement of Marketing the Residential Land Owner shall notify the Council in writing that it has not exchanged contracts for the sale of the Discount Market Housing Unit and shall be free to sell the Discount Market Housing Unit at no more than 80% of Market Value to any person PROVIDED THAT the provisions of Paragraph 13 of this Part shall (unless otherwise agreed in writing by the Council) apply in full in respect of any subsequent disposals of the said Discount Market Housing Unit

- 13.7 Prior to exchange of any sale contract the Residential Land Owner shall provide the Council with evidence that the proposed purchaser of the Discount Market Housing Unit meets the criteria set out in Paragraphs 13.3, 13.5 or 13.6 of this Part
- 13.8 The transfer of each Discount Market Housing Unit (save for any transfer made to the Council or an Affordable Housing Provider pursuant to Paragraph 13.5 of this Part) shall contain the following covenants and provisions
- 13.8.1 Not to let the whole or part of the dwelling for a period in excess of six months in any period of ownership and not without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed but for the avoidance of doubt it shall be reasonable for the Council to refuse to give consent if the proposed rent payable does not reflect the discounted sale price of the dwelling);
- 13.8.2 On any sale and all subsequent resales of the Discount Market Housing Unit(s) the owner of the Discount Market Housing Unit ("the Seller") covenants:-
- (a) Not to transfer the dwelling at a price greater than 80% of the Market Value of the dwelling in perpetuity;
 - (b) Not to let the whole or part of the dwelling for a period of in excess of six (6) months in any period of ownership and not without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed but for the avoidance of doubt it shall be reasonable for the Council to refuse to give consent if the proposed rent payable does not reflect the discounted sale price of the dwelling);
 - (c) To notify the Council in writing of the intention to sell and to provide the Council with two (2) independent valuations from estate agents who are either members of the Royal Institute of Chartered Surveyors or the National Association of Estate Agents for the Market Value of the dwelling. The selling price for the dwelling will be the average of the Market Value from the two valuations with a 20% discount from the average figure; and
 - (d) to contract to sell only to those persons and in the timescales set out in Paragraphs 13.3 and 13.5 to 13.7 (inclusive) of this Part above and prior to exchange of contracts to supply to the Council with evidence of the proposed purchaser's residence, employment and income provided that if a person cannot be identified who satisfies the requirements of the said Paragraphs within four (4) months from first marketing the dwelling the Seller may ask the Council in writing to consent to the sale of the Discount Market Housing Unit on such other terms as may be proposed by the seller (such consent not to be unreasonably withheld)
- 13.9 The Council shall within 10 Working Days of receipt of such notification referred to in Paragraph 13.8.2(c) of this Part confirm to the seller:
- 13.9.1 the agreed Market Value valuation for the dwelling (being the average of the two valuations referred to in Paragraph 13.8.2(c) of this Part); and
- 13.9.2 the discount to be applied
- 13.10 On completion of the sale of the Discount Market Housing Unit a fee of £50 shall be payable to the Council by the person selling the Dwelling to cover reasonable

administration costs incurred by the Council such sum to be reviewed every five (5) years from the date of this Deed in line with inflation

Chargee's Duty

- 14 The provisions in Part 1 of this Schedule 1 shall not be binding on a Chargee or on any persons or bodies deriving title through such Chargee PROVIDED THAT:
- 14.1 the Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Unit(s) (the "Chargee's Notice") and shall have used reasonable endeavours over a period of three calendar months from the date of the Chargee's Notice to complete a disposal of the Affordable Housing Unit(s) to another Affordable Housing Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- 14.2 if such disposal has not completed within the said three (3) month period, the Chargee shall be entitled to dispose of the Affordable Housing Unit(s) free from the restrictions in Part 1 of this Schedule 1 which provisions shall determine absolutely

PART TWO - CONTRIBUTIONS

Notices

- 15 The Residential Landowner shall notify the Council and the County Council in writing within seven days of the following events:-
- 15.1 The date on which any of the Dwellings are ready for Occupation;
- 15.2 The date on which 5% of the Dwellings have been Occupied; and
- 15.3 The date on which 40% of the Dwellings have been Occupied

Plymouth Sound and Estuaries EMS Contribution

- 16 Subject to Paragraph 19 of this Part the Plymouth Sound and Estuaries EMS Contribution in respect of each Phase shall be calculated on the date on which the final reserved matters for that Phase are approved in accordance with the following table:

Dwelling Size	Contribution per Dwelling
1 bedroom	£17.16
2 bedroom flat	£23.99
2 bedroom house	£31.60
3 bedrooms	£33.93
4 bedroom house	£36.76
5 bedroom house	£40.38

- 17 The Residential Landowner shall pay the Plymouth Sound and Estuaries EMS Contribution due in respect of each Phase to the Council in the following instalments:-
- 17.1 prior to the Occupation of more than 20% of the Dwellings in a Phase to pay 20% of the Plymouth Sound and Estuaries EMS Contribution due in respect of that Phase
- 17.2 prior to the Occupation of more than 40% of the Dwellings in a Phase to pay 50% of the Plymouth Sound and Estuaries EMS Contribution due in respect of that Phase
- 17.3 prior to the Occupation of more than 60% of the Dwellings in a Phase to pay 80% of the Plymouth Sound and Estuaries EMS Contribution due in respect of that Phase

- 17.2 prior to the Occupation of more than 80% of the Dwellings in a Phase to pay all of the Plymouth Sound and Estuaries EMS Contribution due in respect of that Phase
- 18 The Residential Landowner shall not cause or permit the Occupation of more than 20%, 40%, 60% and 80% of the Dwellings in a Phase until the relevant instalment of the Plymouth Sound and Estuaries EMS Contribution due in accordance with Paragraph 17 of this Part has been paid.
- 19 If the SPD has been adopted by the Council prior to the date on which the final reserved matters approval for a Phase has been approved then the Plymouth Sound and Estuaries EMS Contribution due in respect of that Phase shall be recalculated in accordance with the relevant details set out in the SPD which shall supersede the table at Paragraph 16 of this Part.

Sports Pitch Contribution

- 20 The Residential Land Owner covenants with the Council that they shall not cause or permit the Occupation of:
- 20.1 10% of the Dwellings unless and until 50% of the Sports Pitch Contribution has been paid to the Council;
- 20.2 50% of the Dwellings unless and until all of the Sports Pitch Contribution has been paid to the Council

AND the Residential Land Owner covenants with the Council to pay the Sports Pitch Contribution in accordance with the provisions set out in this Paragraph

- 21 It is hereby acknowledged and agreed between the parties that the Sports Pitch Contribution payable pursuant to this Deed has been calculated on the basis of 250 Dwellings being provided pursuant to the Permission and any subsequent reserved matters approvals AND THEREFORE upon the approval of reserved matters relating to the layout and scale of the Development a review shall be carried out and in the event that the number of Dwellings to be constructed varies from the presently proposed 250 Dwellings the Sports Pitch Contribution shall be reviewed on the basis of £1,378.24 per Dwelling (Index Linked) and the amount payable to the Council pursuant to Paragraph 16 of this Part shall be adjusted accordingly.

Early Years Contribution

- 22 The Residential Land Owner covenants with the County Council that they shall not cause or permit the Occupation of:
- 22.1 10% of the Dwellings unless and until 50% of the Early Years Contribution has been paid to the County Council;
- 22.2 50% of the Dwellings unless and until all of the Early Years Contribution has been paid to the County Council

AND the Residential Land Owner covenants with the Council to pay the Early Years Contribution in accordance with the provisions set out in this Paragraph

Primary School Contribution

- 23 The Residential Land Owner covenants with the County Council that they shall not cause or permit the Occupation of:
- 23.1 10% of the Dwellings unless and until 50% of the Primary School Contribution has been paid to the County Council;

- 23.2 50% of the Dwellings unless and until all of the Primary School Contribution has been paid to the County Council

AND the Residential Land Owner covenants with the Council to pay the Primary School Contribution in accordance with the provisions set out in this Paragraph

Transport Contribution

- 24 The Residential Land Owner covenant with the County Council that they shall not cause or permit the Occupation of any of the Market Housing Units unless and until the Transport Contribution has been paid in full to the County Council AND the Residential Land Owner covenants with the County Council to pay the Transport Contribution in accordance with the provisions set out in this Paragraph
- 25 Nothing in this Part Two shall restrict the Occupation of any Affordable Housing Unit

PART THREE - OPEN SPACE

- 26 Not to Commence Development unless or until:
- 26.1 the Open Space Specification has been submitted to and approved by the Council (such approval not to be unreasonably withheld or delayed); and
 - 26.2 not to cause or permit the Occupation of any Market Housing Unit unless or until a Management Company has been formed (or management mechanism identified) to manage the Open Space and the LEMP Land
- 27 Not to cause or permit the Occupation of more than 75% of the Market Housing Units unless or until:
- 27.1 the Open Space Works have been completed in accordance with the Open Space Specification; and
 - 27.2 the Residential Land Owner has transferred the Open Space to the Management Company (or such other arrangement as shall have been agreed with the Council has been put in place)
- 28 Once the Open Space Works have been completed pursuant to Paragraph 27.1 of this Part the Residential Land Owner shall:
- 28.1 maintain and manage (or procure the maintenance and management of) the Open Space in perpetuity in accordance with the Open Space Specification to the reasonable satisfaction of the Council;
 - 28.2 keep the Open Space available for public use (free of charge) in perpetuity PROVIDED THAT the Residential Land Owner shall be entitled temporarily to restrict access to the Open Space or to part or parts thereof from time to time in so far as is reasonably necessary for the following purposes:
 - 28.2.1 maintenance or repair of any part of the Open Space or equipment installed thereon;
 - 28.2.2 maintenance or repair of any part of the Land or any building constructed thereon;
 - 28.2.3 the development or redevelopment of any part of the Land in accordance with a planning permission;

28.2.4 for the purpose of laying service installations or to maintain repair renew replace inspect and cleanse the same;

28.2.5 for one day a year to prevent the accrual of third party rights;

28.2.6 to exclude individuals who are acting in an antisocial or dangerous manner; and

28.2.7 any other purpose which is first approved by the Council in writing

Management Company

29 Prior to parting with the ownership or possession of any part of the Open Space the Residential Land Owner shall:

29.1 establish a Management Company;

29.2 procure that there is included in each transfer deed of the freehold interest in each of the Dwellings:

29.2.1 a requirement that each transferee shall pay a service charge to meet the costs of the Management Company of managing and maintaining the Open Space; and

29.2.2 a requirement that the Management Company and its successor in title to the Open Space will manage and maintain the Open Space to the reasonable satisfaction of the Council

Landscape and Ecology Management Plan

30 Not to Commence Development unless and until the Council has approved the Landscape and Ecology Management Plan

31 To implement the approved Landscape and Ecology Management Plan in accordance with the details and timescales set out therein and to manage and maintain (or procure the management or maintenance of) the measures set out therein in perpetuity

PART FOUR - EMPLOYMENT LAND

28 The Owner covenants with the Council as follows:

28.1 no more than 25% of the Dwellings shall be Occupied until the site levelling of the Employment Land in accordance with the reserved matters pursuant to the Permission has been completed to the satisfaction of the Council;

28.2 no more than 25% of the Dwellings shall be Occupied until all necessary Services up to the boundary of/on the Employment Land has been completed to the satisfaction of the Council;

28.3 no more than 25% of the Dwellings shall be Occupied until the Commercial Access Road have been completed to the satisfaction of the County Council;

28.4 no more than 50% of the Dwellings shall be occupied until 50% of the Floorspace has been completed and made available for Employment Use in accordance with the reserved matters pursuant to Permission;

28.5 no more than 80% of the Dwellings shall be occupied until all of the Floorspace has been completed and made available for Employment Use in accordance with the reserved matters pursuant to Permission;

- 28.6 the Owner may offer to the Council in writing to transfer the Employment Land together with all rights of vehicular and pedestrian access and easements with the benefit of the Services to enable the Employment Use to the Council for one pound (£1.00) following the completion of the works set out in Paragraphs 28.1 to 28.3 of this Part;
- 28.7 the Council shall have a period of two months from receipt of the notice in Paragraph 28.6 of this Part to confirm to the Owner that it shall purchase the Employment Land together with all rights of vehicular and pedestrian access and easements necessary to benefit from the Services right of access and all necessary easements (notice of acceptance) and the transfer shall be completed within six months of the date of the notice of acceptance
- 29 In the event that the transfer to the Council is completed the obligations in Paragraphs 28.4 and 28.5 of this Part shall no longer apply

PART FIVE - HIGHWAYS WORKS

- 30 The Owners covenant to enter into the Highways Agreement with the County Council

Schedule 2

COVENANTS ON BEHALF OF THE COUNCIL AND THE COUNTY COUNCIL

Part A: Covenants on Behalf of the Council

- 1 The Council hereby covenants with the Owners:
 - 1.1 not to use the Sports Pitch Contribution for any purpose other than as a contribution towards the off-site sports provision of playing pitches, courts and changing facilities within the parish of Tavistock required as a result of the Development;
 - 1.2 should the Sports Pitch Contribution or Plymouth Sound and Estuaries EMS Contribution or any part thereof remain unspent and uncommitted at the end of 10 (ten) years from the date of receipt the Council shall repay the unspent and uncommitted part of the relevant contribution to the party which paid the contribution together any interest that has accrued;
 - 1.3 to provide the Owners with a breakdown of expenditure of the Sports Pitch Contribution upon any reasonable request thereof in writing provided that any such request shall not be made more frequently than once per annum;
 - 1.4 any contribution paid to the Council under this Deed shall only be used for the purpose as defined herein

Part B: Covenants on behalf of the County Council

- 2 The County Council hereby covenants with the Owners:

Early Years Contribution

- 2.1 Not to use the Early Years Contribution for any purpose other than towards the cost of early years provision at a new primary school in Tavistock required as a result of the Development;
- 2.2 In the event that upon the expiration of 10 (ten) years after the date on which the final instalment of the Early Years Contribution was paid to the County Council there should be any unexpended or uncommitted balance of the contribution to repay the said unexpended or uncommitted balance to the person who paid the contribution to the County Council together with interest on the said unexpended or uncommitted balance at a rate of 1% below the Bank of England Base Rate or 0% (whichever is higher)

Primary School Contribution

- 2.3 Not to use the Primary School Contribution for any purpose other than towards the cost of the provision of a new primary school in Tavistock required as a result of the Development;
- 2.4 In the event that upon the expiration of 10 (ten) years after the date on which the final instalment of the Primary School Contribution was paid to the County Council there should be any unexpended or uncommitted balance of the contribution to repay the said unexpended or uncommitted balance to the person who paid the contribution to the County Council together with interest on the said unexpended or uncommitted balance at a rate of 1% below the Bank of England Base Rate or 0% (whichever is higher)

Highways Contribution

- 2.5 Subject to Paragraph 2.6 of this Schedule to use the Transport Contribution for any purpose necessary towards the cost of re-establishment of the Tavistock to Bere Alston railway line;
- 2.6 In the event that the County Council considers that the Transport Contribution (or any part thereof) should be used other than towards the cost of re-establishment of the Tavistock to Bere Alston railway line the County Council shall:
- 2.6.1 notify the Council and the Residential Landowner in writing of the Alternative Transport Scheme which has been identified and explain the reasons for deciding to use the Transport Contribution for the Alternative Transport Scheme;
 - 2.6.2 take into consideration any comments the Council or Residential Landowner make within 21 days of the notice; and
 - 2.6.3 advise the Council and Residential Landowner of any adjustments made to the Alternative Transport Scheme or the reasons why the comments have not required any changes to the Alternative Transport Scheme before committing any of the Transport Contribution to the Alternative Transport Scheme

AND FOR THE AVOIDANCE OF DOUBT the Transport Contribution can only be used for its original purpose or an Alternative Transport Scheme

- 2.7 In the event that upon the expiration of 15 (fifteen) years after the date on which the final instalment of the Transport Contribution was paid to the County Council there should be any unexpended or uncommitted balance of the contribution to repay the said unexpended or uncommitted balance to the person who paid the contribution to the County Council together with interest on the said unexpended or uncommitted balance at a rate of 1% below the Bank of England Base Rate or 0% (whichever is higher)

Schedule 3

THE INDEXATION FORMULA

- 1 In the event that any Contribution payable under the terms of this Deed is not paid on the date of this Deed then at the date that it is paid in accordance with the terms of this Deed it shall be increased in accordance with the following formula:-

$$C = \text{£Y} \times \frac{B}{A}$$

where:

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

B is the value of the BCIS Index last published before the said Contribution has been paid

C is the sum to be paid after application of this formula

£Y is the amount of the relevant Contribution

PROVIDED THAT if the BCIS Index shall cease to exist, there shall be substituted such other index as shall be specified by the Council/County Council (as applicable) acting reasonably.

THE COMMON SEAL of **WEST DEVON BOROUGH**)
COUNCIL was affixed to this Deed in the presence of)

Authorised Officer:

EXECUTED as a **DEED** by **DEVON COUNTY COUNCIL**)
Whose **COMMON SEAL** was hereunto affixed in the)
Presence of:)

A Duly Authorised Officer:

EXECUTED as a **DEED** by)
)
 and)
)
 as attorneys for **LINDEN LIMITED**) As attorney for Linden Limited
 under a Power of Attorney)
 dated)
)

 As attorney for Linden Limited

Both in the presence of:

Witness Signature:

Name (BLOCK CAPS):

Address:

Occupation:

Signed as a Deed by
MARION RUTH FOALE

In the presence of:

Witness Signature:

Name (BLOCK CAPS):

Address:

Occupation:

Signed as a Deed by
EDWARD LEWIS FOALE

In the presence of:

Witness Signature:

Name (BLOCK CAPS):

Address:

Occupation:

Signed as a Deed by
MARK EDWARD ROWAN FOALE

In the presence of:

Witness Signature:

Name (BLOCK CAPS):

Address:

Occupation:

Signed as a Deed by

JOHN HAROLD DAVIES

In the presence of:

Witness Signature:

Name (BLOCK CAPS):

Address:

Occupation:

Signed as a Deed by

ANNE FRANCES DAVIES

In the presence of:

Witness Signature:

Name (BLOCK CAPS):

Address:

Occupation:

Appendix 1
Section 73 Agreement

BETWEEN

- (1) **West Devon Borough Council** of ("the Council")
- (2) **Devon County Council** of County Hall, Topsham Road, Exeter, Devon, EX2 4QD ("the County Council");
- (3) [*the relevant Owner(s) of the Land*] of [*insert address*]
- (4) [*the relevant mortgagee(s) of the Land (if any)*] of [*insert address*]

WHEREAS

- (A) In this Agreement all terms in uppercase shall unless otherwise indicated herein have the meaning given to that term in the section 106 agreement dated [*insert date*] between (1) West Devon Borough Council; (2) Devon County Council; (3) Marion Ruth Foale, Edward Lewis Foale and Mark Edward Rowan Foale; (4) John Harold Davies and Anne Frances Davies; and (5) Linden Limited (the "**Principal Agreement**").
- (B) The Principal Agreement relates to and binds the Land.
- (C) An application has been made pursuant to section 73 of the Act to carry out the Development without complying with condition [*insert condition number*] attached to the Permission pursuant to planning application reference [*insert planning application reference of Section 73 application*] (the "**Section 73 Application**").
- (D) The Council is minded to grant planning permission pursuant to the Section 73 Application (the "**Section 73 Permission**") subject to the completion of this Agreement.
- (E) Clause 17 of the Principal Agreement permits the Parties to enter into this short form agreement in order to confirm that the obligations contained in the Principal Agreement shall be equally as applicable to the Section 73 Permission as they are to the Permission as more specifically set out in that Clause.

NOW THEREFORE

- (1) The parties hereto hereby agree:
 - (a) that pursuant to and in accordance with Clause 17 of the Principal Agreement the provisions of the Principal Agreement shall be enforceable against the Section 73 Permission and the development authorised thereby; and
 - (b) that a copy of this agreement shall be lodged by the Council with Local Land Charges and noted on the Land Charges Register accordingly.
- (2) The Council hereby agreed that it will issue the Section 73 Permission as soon as reasonably practicable but in any event within seven days of the date hereof

IN WITNESS whereof the parties hereto have (where such party is an individual) signed this agreement or (where such part is a body corporate) had this agreement signed on their behalf by a director, secretary or other person authorised in that regard the day and year first above appearing

Signed on behalf of **WEST DEVON BOROUGH COUNCIL**

Signed on behalf of **DEVON COUNTY COUNCIL**

Signed on behalf of [**OWNER(S)**]