

DATED

19 June

2025

(1) TIDCOMBE HALL LVA LLP

and

(2) LITTLE TIDCOMBE FARM LVA LLP

and

(3) MID DEVON DISTRICT COUNCIL

and

(4) DEVON COUNTY COUNCIL

#### S.106 AGREEMENT

Section 106 of the Town and Country Planning Act 1990  
Relating to development at Tidcombe Hall, Tidcombe Lane,  
Tiverton, Devon EX16 4EJ



This Deed is made on

14 June

2025

Between

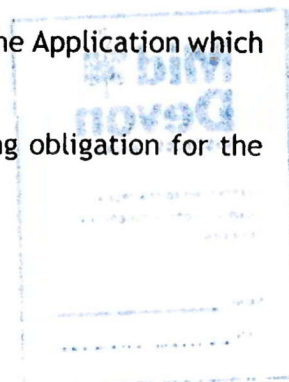
- (1) **TIDCOMBE HALL LVA LLP** (LLP Registration Number: OC416900) of 247 Westbury, Sherborne, England, DT9 3EJ ("**the First Owner**")
  - (2) **LITTLE TIDCOMBE FARM LVA LLP** (LLP Registration Number: OC416987) of 247 Westbury, Sherborne, England, DT9 3EJ ("**the Second Owner**")
- together, "**the Owner(s)**"

and

- (3) **MID DEVON DISTRICT COUNCIL** whose principal offices are at Phoenix House, Phoenix Lane, Tiverton, EX16 6PP ("**the District Council**")
- (4) **DEVON COUNTY COUNCIL** whose principal offices are at County Hall, Topsham Road, Exeter, Devon EX2 4QD ("**the County Council**")

#### INTRODUCTION

- (A) The District Council is the local planning authority for the purposes of the Act
- (B) The County Council is the highway authority for the area in which the Property is situated
- (C) The First Owner is the registered proprietor of the freehold interest in that part of the Property registered with title absolute at the Land Registry under title number DN425857
- (D) The Second Owner is the registered proprietor of the freehold interest in that part of the Property registered with title absolute at the Land Registry under title number DN608503
- (E) The First Owner changed its name from Project 45 LVA LLP on 11<sup>th</sup> October 2018
- (F) The Second Owner changed its name from Project 42 LVA LLP on 11<sup>th</sup> October 2018
- (G) The Applicant submitted the Application to the District Council for planning permission for the Development
- (H) The District Council refused the Application on 8 August 2024
- (I) The Applicant has submitted the Appeal against the said refusal of the Application which is due to be determined by the Inspector
- (J) Each obligation undertaken in this Deed by the Owner is a planning obligation for the purposes of Section 106 of the Act





## **OPERATIVE PART**

### **1. DEFINITIONS**

For the purposes of this Deed the following expressions shall unless the context otherwise requires, have the following meanings:

#### **Act**

Means the Town and Country Planning Act 1990 (as amended)

#### **Affordable Housing**

Means affordable residential housing available to specific eligible households whose needs are not met by the market as set out within the National Planning Policy Framework (December 2023) or any guidance notes or circulars which may supersede it being permanent dwellings to be let or sold as either Shared Ownership or Social Rented Housing through a Registered Provider where all Social Rented Units are let or disposed of to Designated Persons

#### **Affordable Housing Scheme**

Means a written scheme for the provision of Affordable Housing, such scheme to identify:

- (a) the location layout and design of the Affordable Housing Units including the schedule of accommodation and the Gross Internal Area of each Affordable Housing Unit and the number of bedrooms
- (b) the mix and anticipated tenure of the Affordable Housing confirming that:
  - (i) 30% of the Dwellings shall be secured as Affordable Housing Units;
  - (ii) 70% of the Affordable Housing Units shall be Social Rented Units; and
  - (iii) 30% Shared Ownership Units

or such other Affordable Housing Scheme and/or alternative tenure mix as may otherwise be agreed in writing by the District Council acting reasonably

#### **Affordable Housing Units**

Means 30% of the Dwellings within the Development to be constructed on the Property which will be provided as Affordable Housing in accordance with Schedule Three including any parking and residential curtilage associated with the Affordable Housing Units and reference to "Affordable Housing Unit" shall be construed accordingly

#### **Allotments**

means the 600 sqm of Public Open Space to be provided as allotments

#### **Appeal**

Means the planning appeal submitted by the applicant in respect of the District Council's refusal of the Application (under appeal reference number: APP/Y1138/W/24/3358001)

#### **Applicant**

Means Tidcombe Holdings LLP (company registration number OC424704) whose registered office address is 247 Westbury, Sherborne, Dorset, England DT93EJ

#### **Application**

Means the outline application for the erection of up to 100 dwellings to include the conversion of Tidcombe Hall and outbuildings, provision of community growing area, public

open space, associated infrastructure, ancillary works and access with all other matters reserved registered under reference number 24/00045/MOUT

**Armed Services Member**

means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service

**Building Control Final Certificate**

means a certificate issued by the building control body or such approved inspector to provide formal evidence that the build works have been carried out in accordance with Building Regulations

**Building Regulations**

Means the Building Regulations 2010 and any statutory amendment to them

**Close Family Association**

means having a connection through a close family member (normally mother, father, brother, sister, son or daughter) where the family member is currently resident within the relevant parish immediately prior to allocation

**Commencement of Development**

Means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance demolition work archaeological investigations for the purpose of assessing ground conditions remedial work in respect of any contamination or other adverse ground conditions erection of any temporary means of enclosure the temporary display of site notices or advertisements and Commence the Development and all other cognate expressions shall be construed accordingly

**Contributions**

Any one or number of the financial contributions required to be made pursuant to Schedule Two of this Deed each of which shall be Index Linked and the term Contribution shall be construed accordingly

**County**

Means the administrative area of the County of Devon

**Custom and Self-Build Housing**

means a Dwelling built by a person (which can include where a dwelling is built following a commission) and in either case occupied by that person as their sole or main residence as defined in section A1 of the Self-Build and Custom Housebuilding Act 2015 as amended by the Housing and Planning Act 2016

**Custom and Self-Build Land**

Means that part or parts of the Property reserved for Custom and Self-Build Housing and Custom and Self-Build Plots

**Custom and Self-Build Plot**

means a plot within the Property for the construction of a Custom and Self-Build Housing on the Custom and Self-Build Land



**Deed**

Means this deed made under section 106 of the Town and Country Planning Act 1990 between the Owners, the District Council and the County Council

**Designated Persons**

means for the purposes of the Social Rented Units those persons included on the current Devon Home Choice Register and who show to the District Council's satisfaction that their income is below that deemed to indicate need and who have a Local Connection

**Design Code**

means a code setting out the permitted design of the Custom and Self Build Housing including Plot Passports (if applicable) plot form, building forms, building orientation, density, developable footprint, building lines, building types, street network, views and vistas, soft landscaping, building frontage, townscape features, street trees, parking standards, waste facility, infrastructure as agreed in writing with the Proper Officer.

**Development**

Means subject to Clause 18 the development of the Property as described by the Application and pursuant to the Planning Permission

**Devon Home Choice Register**

Means the housing register operating under the Devon Home Choice maintained by the District Council of persons who have registered for and require Affordable Housing in the County of Devon or such other register or scheme that may supersede the Devon Home Choice Register

**Disposal**

means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:

- (a) a letting or sub-letting in accordance with paragraph Error! Reference source not found. of part 2 of Schedule Three
- (c) an Exempt Disposal

and "Disposed" and "Disposing" shall be construed accordingly

**District**

means the administrative area of the District Council

**Dwelling**

Means a unit of residential accommodation constructed on the Property pursuant to the Planning Permission including a house flat maisonette and Affordable Housing Unit and for the avoidance of doubt individual flats and maisonettes comprised in larger buildings shall be deemed to be one unit of residential accommodation and reference to "Dwellings" shall be construed accordingly

**First Occupation**

Means the first Occupation of any Dwelling

**First Time Buyer**

means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003

### **Healthcare Contribution**

Means a sum to be paid by the Owner to the District Council in accordance with Schedule Two as a contribution towards the provision of additional and/or expansion/improvement of healthcare facilities provided by NHS Devon Integrated Care Board within its administrative area the need for which arises from the Development and which is to be calculated in accordance with the following formula:

$$A \times B = C$$

Where:

A = the number of Dwellings permitted by all Reserved Matters Approvals for the Development

B = the sum of £583.41 (five hundred and eight three pounds and forty one pence)

C = the sum of the Healthcare Contribution for the Development

### **Highways Contributions**

Means the following sums to be paid by the Owner to the County Council in accordance with Schedule Two and include the following contributions:

- **Bus Services Contribution** - £30,000 (thirty thousand pounds) payable towards improving bus provision serving the Development;
- **A361 Post Hill Junction Scheme Contribution** - £3,131 (two thousand six hundred and thirty one pounds) per Dwelling towards construction of the A361 Post Hill junction scheme

### **Index**

Means the BCIS General Building Costs Index published by the Royal Institution of Chartered Surveyors, or in the case of the Monitoring Fee and Off Site Park, Sports, Recreation and Teenage Facilities Contribution, the Index of Retail Prices (All Items) published by the Office for National Statistic, and in the event of the said Index (as relevant) being discontinued such other index as the Council or County Council (as relevant) shall consider to be the nearest equivalent index.

### **Index Linked:**

*Means increased in accordance with the following formula:*

$$C = \text{£Y} \times A \div B$$

*where :*

*C is the amount of contribution actually payable after application of this formula*

*£Y is the contribution mentioned in this Agreement to which this formula is applied*



**A** *is the figure for the Index that applied immediately prior to the date the relevant contribution is due*

**B** *is figure for the Index that applied immediately prior to the date of this Agreement*

*provided that if the said Index (as relevant) shall cease to exist, there shall be substituted such other Index as shall be specified by the County Council or District Council (as relevant) acting reasonably and provided further that if the application of this calculation produces a reduction in the sum in question; such sum shall remain unchanged*

*and "Indexation" shall be construed accordingly*

**Inspector**

Means the planning inspector appointed by the Secretary of State who will be determining the Appeal

**Local Connection Criteria**

In determining the allocation of the Affordable Housing to local people the District Council will utilise the following cascade criteria to determine the suitability of potential occupants:

1. The intended household has been continuously resident in the Town for at least five years in Bands A-D;
2. The intended household is permanently employed in the Parish in Bands A - D and whose work is primarily based in this parish. For the purposes of this criterion, 'permanently employed' means having held a permanent employment contract for a minimum of 16 hours per week for at least the preceding 6 months;
3. Former residents who previously lived in the Town for a period of at least three years within the last 10 years in Bands A - D. Those in the Armed Forces (defined in Appendix 1) will be considered above those former residents who wish to return to the Parish;
4. The intended household is in the A - D Band and has a close living relation resident in the Parish. This means immediate family members (parents, siblings, dependent and non-dependent children) who themselves live in the Town and have done so for at least five years;
5. The intended household have been continuously resident in the Town for six months or more in Bands A - D);
6. The intended household has a local connection to the Town according to clauses 1 - 5, in order of preference, in the E Band where the household income is insufficient to enable them to afford or to sustain to rent or purchase a property suitable for their needs in the Town;
7. The intended household has a local connection to the Town according to clauses 2 - 4, in order of preference those who are currently Council/Housing Association Tenants who are in the E Band that have moved out of the Town but wish to return;

8. Those residents with a local connection to Mid Devon District in Bands A-D. For the purposes of determining 'local connection' the Devon Home Choice definition (see Appendix 1) will be used;
9. The intended household has a local connection to Mid Devon District according to the Devon Home Choice definition in the E Band where the household income is insufficient to enable them to afford or to sustain to rent or purchase a property suitable for their needs in Mid Devon;
10. All Devon Home Choice applicants.

**Management Company**

Means a limited company registered at Companies House which is incorporated in England Wales or Scotland and has its registered office in England and whose primary objects permit it to do any or all of the following:

1. manage maintain and renew the SuDS in accordance with the approved SuDS Scheme; and/or
2. manage and maintain the Public Open Space in accordance with the approved Public Open Space Management Scheme; and/or

which has been approved in writing by the Council

**Marketing Period**

Means a continuous period of not less than 12 (twelve) calendar months

**Marketing Strategy**

Means the strategy to be agreed in advance by the Proper Officer for marketing the Custom and Self-Build Plots to include as a minimum advertising with a reputable local estate agent and listing on a national internet property sales website making use of the District Council's self-build register and to include the Design Code and Plot Passports (if applicable) in marketing materials.

**District Council Monitoring Fee**

means the sum of £ £11,294.00 to be paid to the District Council as a contribution towards the District Council's costs in administering this Deed and monitoring compliance with the obligations of this Deed

**Mortgagee**

means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home

**Occupation**

Means occupation of any Dwelling or other land for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing and "Occupied" and "Occupier" shall be construed accordingly

**Open Market Dwelling**

Means any Dwelling within the Development that is not an Affordable Housing Unit and "Open Market Dwellings" shall be construed accordingly



**Off Site Park, Sports, Recreation and Teenage Facilities Contribution**

Means a sum to be paid by the Owners to the District Council in accordance with Schedule Two of this Deed as a contribution towards the costs and expenses incurred or to be incurred in connection with the provision of play facilities and/or or improvements to existing play facilities in the District to mitigate the additional demand arising from the Development which is to be calculated in accordance with the following formula:

$$(A \times 2.35) \times B = C$$

Where:

A = the number of Open Market Dwellings permitted by all Reserved Matters Approvals for the Development

B = the sum of £1114 (the cost of offsite provision of Teenage Facilities and Park, Sport and Recreation in accordance with the Mid Devon Open Space and Play Area Strategy 2014- 2033)

C = the sum of the Off Site Park, Sports, Recreation and Teenage Facilities Contribution for the Development

**Owner**

Means the First Owner and Second Owner together

**Plan 1**

Means the plan titled 'Location Plan' annexed to this Deed as Annex A

**Planning Permission**

Means the outline planning permission which may be granted for the Development pursuant to the Appeal as detailed in the Application

**Play Space**

Means the 150 sqm of Public Open Space to be laid out as children's play space

**Plot Passport**

means a summary of the design parameters for each Custom and Self-Build Plot which acts as a key reference point for prospective purchasers/occupants capturing relevant information from the Planning Permission and the Design Code for the relevant Phase to form part of the marketing material available for each Custom and Self-Build Plot and which shall also include the following details as a minimum:-

- (a) plot location
- (b) plot size
- (c) permissible building lines
- (d) side spacing requirements
- (e) building height restrictions
- (f) GIA parameters
- (g) proximity restraints to neighbouring buildings

- (h) developable footprint
- (i) servicing details
- (j) car parking and
- (k) access location

**Property**

Means the land described in the Schedule One hereof and identified edged red on Plan 1

**Public Open Space**

Means an area or areas of public open space (excluding the SuDS, grass verges and tree lined avenues) within the Property for use by the residents of the Dwellings, and the general public to be approved as part of a Reserved Matters Approval and provided as part of the Development consisting of 600 sqm of Allotments 2350 sqm of amenity green space and play space of 150 sqm

**Public Open Space Management Plan**

Means a scheme to be submitted to the District Council in accordance with paragraph 1.1 of Schedule 5 which sets out the detailed arrangements for the provision management and maintenance in perpetuity of the Public Open Space to the satisfaction of the District Council which scheme shall include details of:

- (i) the responsibilities of the Management Company and its management structure;
- (ii) for the Management Company, copies of its memorandum and articles of association;
- (iii) the proposals for the long term funding of the Management Company including the setting and collection of any service/rent charges from purchasers of the Dwellings to pay service/rent charges in respect of the Public Open Space to the Management Company;
- (iv) full details of the maintenance specifications for the Public Open Space and full details of the management programme for implementing those specifications to be managed by the Management Company provided that the details submitted may be amended or varied by written agreement from the District Council;
- (iv) the timetable for the carrying out of works to create the Public Open Space and
- (v) the arrangements for the provision of 600 sqm of Allotments
- (vi) the arrangements for the maintenance of the Play Space

**Registered Provider**

Means a body which is a non-profit registered provider of social housing as such term is defined in the Housing and Regeneration Act 2008 (as amended by the Localism Act 2011) and includes any registered social landlord previously registered under the 1996 Act or such other body as may be approved by the District Council

**Reserved Matters Application**

Means any reserved matter(s) application made for the approval of matters reserved for later determination (as specified in the Town and Country Planning (Development Management Procedure)(England) Order 2015) pursuant to the Planning Permission

**Reserved Matters Approval**

Means a reserved matters approval granted by the Council in relation to a Reserved Matters Application and 'Reserved Matters Approvals' shall be construed accordingly

**SDLT**

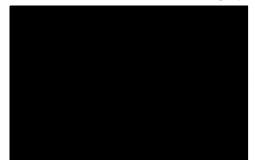
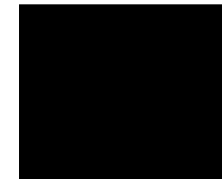
means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect



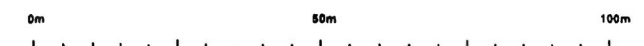


NOTES

Application boundary



11513



REV	NOTES	DATE
	Tidcombe Hall, Tiverton Location Plan	DCC/ DC
230301 L 01 01	1:2500/A3	Nov 2023

**CliftonEmerydesign**

Hems House, 84 Longbrook Street, Exeter, Devon, EX4 6AP  
T: 01392 368866 W: www.cliftonemerydesign.co.uk M: mail@cliftonemerydesign.co.uk

DRAWING STATUS Planning

CONTRACTORS MUST CHECK ALL DIMENSIONS ON SITE. ONLY FOUNDED DIMENSIONS ARE TO BE WORKED FROM. THIS DRAWING IS COPYRIGHT.



**Secretary of State**

Means the Secretary of State for Levelling Up Housing and Communities or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the Act

**Section 73 Consent**

means a planning permission granted pursuant to section 73 of the Act which varies and/or removes any condition to which the Planning Permission and/or to which such planning permission granted pursuant to section 73 of the Act was granted and/or a planning permission granted pursuant to section 73A of the Act which grants planning permission for development carried out before the date of the s73A application and "Section 73 Consents" and all other cognate expressions shall be construed accordingly

**Serviced**

Means the requirements set out in section 5 of the Self Build and Custom Housebuilding Act 2015 (as amended) and in particular with the benefit of utility service connections (mains water, sewerage, electricity and telecommunications) to the boundary of each Custom and Self-Build Plot and with appropriate capacity for a Dwelling, together with vehicular and pedestrian access to each such plot from a public highway.

**Social Rented Units**

Means Affordable Housing Units owned by local authorities and/or Registered Providers for which guideline target rents are determined through the national rent regime

**Shared Ownership**

Means subsidised housing provided by a Registered Provider for sale by way of a Shared Ownership Lease

**Shared Ownership Lease**

Means a Shared Ownership lease (as defined in section 622 of the Housing Act 1985) with an Registered Housing Provider in accordance with the Homes England model lease as at the date of any such lease

**Town**

Means the town of Tiverton

**Working Days**

Means any Monday to Friday (other than bank or public holidays) and "Working Day" shall be construed accordingly

**2. CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause paragraph schedule recital or annex such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule recital or annex in or attached to this Deed
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa



- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeable in that manner
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
- 2.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that act or deriving validity from it
- 2.6 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 in the case of the Council and the successors to its statutory functions
- 2.7 Any covenant not to act includes an obligation not to cause allow permit or suffer that act or thing to be done by another person and any covenant to do any act or thing includes an obligation to procure the doing of that act or thing by any other person
- 2.8 the headings to clauses and schedules are for reference only and shall not be considered in the construction or interpretation of this Deed
- 2.9 references in this Deed to restrictions on Commencement Occupation or use in relation to the Property or the Development or any part thereof shall be constructed as including causing procuring permitting suffering or allowing such Commencement Occupation or use
- 2.10 Where this Deed refers to any percentage or calculation the same shall be constructed by reference to the total number of Dwellings or units permitted under all Reserved Matters Approvals under the Planning Permission or in the event of uncertainty the total number of Dwellings or units permitted by the Planning Permission
- 2.11 If, on calculating any percentages in this Deed, the resulting number is not a whole number then the figure produced shall be rounded to the nearest whole number and, for the avoidance of doubt, 0.5 shall be rounded up
- 2.12 The Interpretation Act 1978 applies to this Deed as it applies to an Act of Parliament

### **3. LEGAL BASIS**

- 3.1 This Deed is made pursuant to section 106 of the Act and section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers
- 3.2 To the extent that they fall within the terms of section 106 of the Act the obligations contained in this Deed:
  - 3.2.1 are planning obligations for the purposes of section 106 of the Act;
  - 3.2.2 are enforceable as such by the District Council or the County Council as appropriate;

3.2.3 shall bind the Property and the respective interest of the Owner; and

3.2.4 shall be enforceable against the Owner and its successors in title to the Property or any part thereof and all persons deriving title to the Property or any part thereof through or under it or them save as expressly provided otherwise herein

3.3 If any decision issued by the Inspector pursuant to the Appeal expressly states that the whole or any part of an obligation set out in the Schedules to this Deed exceeds what can properly be required under Regulation 122 of the Community Infrastructure Levy Regulations 2010 then that obligation shall be deemed to be reduced varied or vitiated to the extent so expressly stated in the Inspector's decision letter But otherwise all obligations and other matters set out in the Schedules shall be deemed to remain in full force and effect

3.4 The Owner and any subsequent successors in title to the Property shall upon parting with their entire interest in the Property be released from all liability whatsoever under the terms of this Deed (save in respect of liability for any antecedent or subsisting breach of this Deed arising prior to parting with such interest)

#### **4. CONDITIONALITY**

4.1 It is hereby agreed between the Parties hereto that all the provisions of this Deed come into effect on the date hereof PROVIDED THAT the obligations set out in the Schedules shall not take effect until the Commencement of Development SAVE FOR those obligations or other provisions hereinafter that expressly or by necessary implication require compliance prior to the Commencement of Development which are conditional only upon the grant of the Planning Permission or as otherwise stated in this Deed.

#### **5. DISTRICT COUNCIL'S AND COUNTY COUNCIL'S COSTS**

5.1 The Owner shall pay to the District Council and the County Council on or before the date of this Deed their respective reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed.

#### **6. FUTURE PERMISSIONS**

6.1 Subject to the provisions of clause 18 below, nothing in this Deed shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission) granted after the date of the Planning Permission.

#### **7. COVENANTS**

7.1 The Owner hereby covenants with the District Council and County Council so as to bind its respective interests in the Property to observe and perform the planning obligations and other matters specified in this clause 7 and Schedules 2 and 3 and 4 and 5 of this Deed with the intent that this covenant shall be enforceable against any person deriving title under it or them or their interests in the Property



- 7.2 The Owners hereby covenants with the District Council to pay the Monitoring Fee (Index Linked) to the District Council prior to the Commencement of Development and not to Commence the Development unless or until the Monitoring Fee (Index Linked) has been paid to the Council

## **8. DETERMINATION OF DEED**

- 8.1 The obligations in this Deed (with the exception of Clause 9) shall cease to have effect (so far as they have not already been complied with) if before the commencement of Development within the meaning of section 56 of the Act, the Planning Permission:

8.1.1 expires;

8.1.2 is varied or revoked other than at the request of the Owners; or

8.1.3 is quashed following a successful legal challenge

PROVIDED THAT this clause shall have no effect if a Section 73 Consent has been granted

## **9. MISCELLANEOUS**

- 9.1 The covenants in this Deed are enforceable only by the District Council as local planning authority and the County Council as highway authority and any body succeeding to the statutory duties and functions of the District Council and County Council and no part of this Deed shall or may be construed as creating any rights enforceable by a third party as defined by the Contracts (Rights of Third Parties) Act 1999
- 9.2 Insofar as any clause or clauses of this Deed are found to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect or impair the validity legality or enforceability of the remaining provisions of this Deed
- 9.3 This Deed is intended to take effect as a Deed and constitutes the entire agreement between the parties
- 9.4 Nothing herein contained excludes the liability of any of the parties in relation to fraud
- 9.5 This Deed shall be registered as a local land charge
- 9.6 Subject to the provisions of Sections 106A and 106B of the 1990 Act the terms and conditions of this Deed shall only be capable of being varied by a supplemental agreement executed by the parties hereto or their successors in title
- 9.7 Except as herein specifically provided nothing in this Deed confers any approval consent or permission required from the District Council or County Council in the exercise of any of their statutory functions
- 9.8 Nothing in this Deed shall be construed as restricting the exercise by the District Council and County Council of any of its respective statutory powers



- 9.9 Noting contained or implied in this Deed shall prejudice or affect the District Council's and County Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice or affect any provisions rights powers duties and obligations of the District Council and County Council in the exercise of its functions as local planning authority for the purposes of the Act or as local authority generally and its rights powers duties and obligations under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the District Council and County Council were not a party to this Deed

## **10. WAIVER**

- 10.1 It is hereby agreed by the Owner hereto that failure by the District Council and County Council at any time to enforce the provisions of this Deed or to require performance strictly or otherwise by any party to this Deed of any of the conditions covenants agreements or obligations of this Deed or any failure or delay by the District Council and County Council to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation and shall not affect the validity of this Deed or any part thereof or the right of the Council to enforce any provision and/or any variation of this Deed

## **11. CHANGE IN OWNERSHIP**

- 11.1 The Owner covenants to give the District Council and County Council written notice of any change in ownership of any of its interests including the grant of any lease for more than ten years in the Property as soon as reasonably possible following such change such notice to give details of the transferee's or lessee's full name and registered office (if a company) or usual address (if not) together with the area of the Property purchased by reference to a plan SAVE THAT this obligation shall not apply in respect of:

11.1.1 Any disposition of an individual Open Market Dwelling; or

11.1.2 the disposition of any part or parts of the Property to a statutory authority or service company

## **12. DELIVERY**

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

## **13. WARRANTY**

- 13.1 Save as disclosed in any certificate of title delivered to the District Council and/or County Council prior to completion of this Deed, the Owner hereby warrants to the District Council and the County Council that:

13.1.1 they have not leased mortgaged charged or otherwise created any interest in the Property at the date of this Deed other than the interests shown at the Land Registry at the date of this Deed; and

13.1.2 Apart from the parties to this Deed there are no other persons with any interest (legal or equitable) in the Property or any part thereof

#### **14. GOVERNING LAW**

14.1 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 and Wales.

#### **15. INDEX LINKING AND INTEREST**

15.1 If the Owner fails to pay any Contribution or any other sum payable to the District Council or County Council under this Deed on the date when such payment falls due then the District Council and the County Council shall have the right to charge interest on such unpaid sum from the date on which that sum falls due until the date in which such sum is paid at the rate of 4% per annum above the base rate from time to time of the Bank of England

15.2 Each of the Contributions and all payments due to the District Council and County Council under this Deed shall be Index Linked

15.3 All payments made in accordance with the terms of this Deed shall be exclusive of VAT properly payable in respect thereof which shall be payable by the Owner.

#### **16. EXPERT DETERMINATION**

16.1 Any dispute arising out of the provisions of this Deed shall be referred to a person having appropriate qualifications and experience in such matters ("the Expert") for the determination of that dispute PROVIDED THAT the provisions of this Clause shall be without prejudice to the right of any party to seek the resolution of any matter relating to the Deed by referring it to 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 1990 Act for the resolution of any matter arising from the Deed

16.2 The Expert shall be appointed jointly by the relevant parties to the dispute ("the Relevant Parties") or in default of agreement by a person nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of any of the Parties

16.3 The decision of the Expert shall be final and binding upon the Relevant Parties and the following provisions shall apply:

16.3.1 the charges and expenses of the Expert shall be borne equally between the Relevant Parties unless the Expert shall otherwise direct



- 16.3.2 the Expert shall give the relevant Parties an opportunity to make representations and counter representations to him before making his decision
  - 16.3.3 the Expert shall be entitled to obtain opinions from others if he so wishes
  - 16.3.4 the Expert shall make his decision within the range of any representations made by the relevant Parties themselves
  - 16.3.5 the Expert shall comply with any time limit or other directions agreed by the Relevant Parties on or before his appointment
- 16.4 Where there is a dispute as to the amount of any Contribution payable to the District Council or the County Council the Owner shall pay the District Council's or County Council's (as the case may be) estimate of such Contribution to the District Council or County Council's (as the case may be) at the time specified in this Deed and shall pay any difference between that figure and the amount determined by the Expert within 28 days of the Expert's decision together with interest thereon at the rate of 8% per annum above the base rate from time to time of the Bank of England calculated from the date the payment was required until the date it is made

## **17. CONSENTS APPROVALS AND SATISFACTIONS**

- 17.1 Where any agreement consent approval or expression of satisfaction of the District Council and County Council is required in this Deed such agreement consent approval or expression of satisfaction shall only be valid if given in writing and shall not be unreasonably withheld or delayed, shall be expressed to be pursuant to this Deed and shall be in addition to and not in substitution for any other permission that may be necessary

## **18. S73 AND OTHER PERMISSIONS**

- 18.1 If any Section 73 Consent or Section 73 Consents is/are granted after the date of this Deed -
- 18.1.1 the planning obligations in this Deed shall on the date that the Section 73 Consent is granted automatically come into effect and relate to and bind such Section 73 Consent from the date of grant of the Section 73 Consent (in addition to continuing to have effect and to bind the Property in respect of the Development carried out pursuant to the Planning Permission) without the need to enter into any subsequent deed of variation or new deed pursuant to section 106 or section 106A of the Act;
  - 18.1.2 the definitions "Application", "Development" and "Planning Permission" shall be construed as including (respectively and as appropriate) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself; and
  - 18.1.3 this Deed shall be endorsed with the following words in respect of any Section 73 Consent-



“the planning obligations and undertakings in this Deed relate to and bind the Property in respect of which a new planning permission reference [ ] has been granted pursuant to [section 73 or section 73A] of the Town and Country Planning Act 1990 (as amended)”

**PROVIDED THAT:-**

- 18.1.4 nothing in this clause shall fetter the discretion of the District Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations and undertakings required in connection with the determination of the same;
  - 18.1.5 to the extent that any of the planning obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent; and
  - 18.1.6 the District Council reserves the right to require the completion of a separate planning obligation that could include other obligations and undertaking by deed of agreement or deed of variation in connection with any Section 73 Consent if they consider it desirable and necessary to do so.
- 18.2 In the event of different planning obligations or other obligations or undertakings agreed by the District Council coming into effect on the grant of any Section 73 Consent pursuant to clause 18.1.6 above, this Deed or such part of it as is referred to in such different planning obligations, or other obligations or undertakings, shall not apply to that Section 73 Consent if that separate deed expressly states that it is in substitution (or partial substitution) for the planning obligations and the other obligations or undertakings contained in this Deed

**19. NOTICES**

- 19.1 The provisions of Section 196 of the Law and Property Act 1925 (as amended) shall apply to any notice or approval or other matter to be served under or in connection with this Deed and any such notice or approval shall be in writing and shall specifically refer to the name date and parties to this Deed and shall cite the clause of the Deed to which it relates and in the case of notice to the District Council shall quote the reference number of the Planning Application, marked for the attention of “The Chief Planner - s.106” copied to ‘Head of Legal’ and ‘Planning Obligations’ and shall be addressed to Phoenix House, Phoenix Lane, Tiverton, EX16 6PP together with an email copy to the S106 Monitoring Officer

**20. NOTICES TO THE DISTRICT COUNCIL**

- 20.1 The Owner shall give notice in writing to the District Council at least 4 calendar weeks prior to the following :-
  - 20.1.1 the proposed date of Commencement of Development and if materially different from the actual Commencement Date then notice shall be served within 14 days of the actual Commencement Date
  - 20.1.2 Occupation of the first Dwelling

20.1.3 Occupation of the Dwelling that constitutes 49% of the Dwellings

20.1.4 Occupation of the Dwelling that constitutes 74% of the Dwellings

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## **SCHEDULE ONE**

### **THE SITE**

Tidcombe Hall, Tidcombe Lane, Tiverton, Devon EX16 4EJ shown edged red on Plan 1 and comprised in Land Registry title numbers DN608503 and DN425857



**SCHEDULE TWO**  
**COVENANTS WITH THE DISTRICT COUNCIL AND COUNTY COUNCIL**  
**CONTRIBUTIONS**

**Part 1 - Contributions to District Council**

The Owner covenants with the District Council as follows:

Off Site Park, Sports, Recreation and Teenage Facilities Contribution

1. To submit the Off Site Park, Sports, Recreation and Teenage Facilities Statement to the District Council for its written approval prior to the Commencement of the Development
2. To pay the Off Site Park, Sports, Recreation and Teenage Facilities Contribution together with Indexation to the District Council as follows:
  - 2.1 50% of the Off Site Park, Sports, Recreation and Teenage Facilities Contribution (as detailed in the approved Off Site Public Open Space Statement) together with Indexation to the Council prior to Occupation of the first Dwelling; and
  - 2.2 The remaining 50% of the Off Site Park, Sports, Recreation and Teenage Facilities Contribution (as detailed in the approved Off Site Park, Sports, Recreation and Teenage Facilities Contribution Statement) together with Indexation to the Council on Occupation of no more than 50% of the Dwellings
3. Not to Commence the Development nor permit cause or allow Commencement of the Development unless or until:
  - 3.1 the Off Site Park, Sports, Recreation and Teenage Facilities Statement has been submitted to and approved in writing by the District Council
4. Not to Occupy or cause or permit Occupation of any of the Dwellings unless and until 50% of the Off Site Park, Sports, Recreation and Teenage Facilities Contribution has been paid to the District Council
5. Not to Occupy or cause or permit Occupation of more than 50% of the Dwellings unless and until the whole of the Off Site Park, Sports, Recreation and Teenage Facilities Contribution has been paid to the District Council

Healthcare Contribution

6. To pay the Healthcare Contribution together with Indexation to the District Council as follows:

- 6.1 50% of the Healthcare Contribution together with Indexation to the District Council on Occupation of the first Dwelling;
- 6.2 The remaining 50% of the Healthcare Contribution together with Indexation to the District Council upon Occupation of 75% of the Dwellings
7. Not to Occupy nor permit allow or cause Occupation of more than 50% of the Dwellings unless or until 50% of the Healthcare Contribution together with Indexation has been paid to the District Council
8. Not to Occupy nor permit allow or cause Occupation of more than 75% of the Dwellings unless or until the remaining 50% of the Healthcare Contribution together with Indexation has been paid to the District Council

## **Part 2 - Contributions to County Council**

The Owner covenants with the County Council as follows:

### Highways Contributions

1. Prior to Occupation of any Dwelling to pay the Bus Services Contribution together with Indexation to the County Council; and
2. Not to Occupy or permit Occupation of any Dwelling unless and until the Bus Services Contribution together with Indexation has been paid in full to the County Council.
3. Prior to Occupation of 75% of the Dwellings approved by the Planning Permission or 5 (five) years after Occupation of the first Dwelling on the Site (whichever shall be the earlier) to pay the A361 Post Hill Junction Scheme Contribution to the County Council; and
4. Not to Occupy or permit Occupation of 75% of the Dwellings approved by the Planning Permission until the A361 Post Hill Junction Scheme Contribution has been paid to the County Council.



**SCHEDULE THREE**  
**COVENANTS WITH THE DISTRICT COUNCIL**  
**AFFORDABLE HOUSING**

**Part 1 - General**

The Owner covenant with and undertake to the District Council as follows:

1. to provide at least 30% of the Dwellings as Affordable Housing Units of which:
  - 1.1. at least 30% of the Affordable Housing Units shall be Shared Ownership; and
  - 1.2. at least 70% of the Affordable Housing Units shall be Social Rented Units
2. to submit to the District Council prior to the Commencement of the Development the Affordable Housing Scheme
3. not to Commence Development unless or until the Affordable Housing Scheme has been submitted to and approved in writing by the District Council;
4. not to First Occupy nor permit cause or allow the First Occupation of any Dwelling unless or until the identity of the Registered Provider to whom the Affordable Housing Units will be transferred has been notified to and approved in writing by the District Council
5. to construct and provide the Affordable Housing Units:
  - 5.1. in accordance with the Planning Permission the approved Affordable Housing Scheme and this Schedule Three such that they are indistinguishable in design and appearance from comparable Open Market Dwellings; and
  - 5.2. to a standard as approved in writing with the District Council and in accordance with building regulations from time to time in force or any other standards that are required for grant funding purposes regardless of whether the Affordable Housing Units will receive grant funding from whatever source or not
6. not to Occupy nor allow cause or permit the Occupation of a Social Rented Unit to or by any person other than:
  - 6.1. a Designated Person;
  - 6.2. a person approved by the District Council in writing; or
  - 6.3. the widow or widower of any persons specified in paragraphs 6.1 and 6.2 of this Part;
  - 6.4. any members of the household of any such person mentioned in paragraphs 6.1 and 6.2 of this Part; or
  - 6.5. any licensee or invitee residing with any such persons mentioned in paragraphs 6.1 and 6.2 of this Part,

and for the avoidance of doubt no person shall Occupy, use or let a Social Rented Unit as a holiday homes, second home or for use as short let holiday accommodation

7. not to Occupy nor permit cause or allow the Occupation of more than 50% of the Open Market Dwellings unless or until:
  - 7.1. at least 50% of the Affordable Housing Units have been completed and are ready for Occupation in accordance with the approved Affordable Housing Scheme;
  - 7.2. the freehold interest in the Social Rented Units have been transferred to the Registered Provider notified to or approved in writing, by the District Council and written notification of such has been provided to the Council;
  - 7.3. the freehold interest in the Shared Ownership have been transferred in accordance with Part 2 of this Schedule and written notification of such has been provided to the District Council ; and
  - 7.4. the Building Control Final Certificates have been issued for each of the Affordable Housing Units confirming construction in accordance with the Building Regulations
8. not to Occupy nor permit cause or allow the Occupation of more than 75% of the Open Market Dwellings unless or until:
  - 8.1. all of the Affordable Housing Units have been completed and are ready for Occupation in accordance with the approved Affordable Housing Scheme;
  - 8.2. the freehold interest in the Social Rented Units have been transferred to the Registered Provider notified to or approved in writing by the District Council and written notification of such has been provided to the Council;
  - 8.3. the freehold interest in the Shared Ownership have been transferred in accordance with Part 2 of this Schedule and written notification of such has been provided to the District Council ; and
  - 8.4. the Building Control Final Certificates have been issued for each of the Affordable Housing Units confirming construction in accordance with the Building Regulations
9. Subject to the provisions of paragraphs **Error! Reference source not found.**, **Error! Reference source not found.** and **Error! Reference source not found.** of Part 2 to this Schedule and paragraph 11 of this Part, not to permit the whole or any part of an Affordable Housing Unit to be used for any purpose other than the provision of Affordable Housing in perpetuity
10. Once any Social Rented Unit has been transferred to the Registered Provider notified or approved in accordance with this Schedule, none of the obligations in this Schedule in relation to such units shall apply to:
  - 10.1. Any tenant who exercises a right to buy or a right to acquire under the Housing Act 1985 or the Housing Act 1996 or any statutory modification extension

amendment or re-enactment thereof or any regulations or order made thereunder or any similar or substitute right; or

10.2. Any purchaser from or successor in title to any person specified in paragraph 10.1 of this Part

11. The affordable housing provisions in this Schedule as they relate to the Social Rented Units shall not be binding on 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 relevant Social Rented Unit or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
- (a) such mortgagee or chargee or Receiver shall first give written notice to the District Council of its intention to dispose of the relevant Social Rented Unit and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the relevant unit(s) to another Registered Provider or to the District Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses;
  - (b) if such disposal has not completed within the three-month period the mortgagee chargee or Receiver shall be entitled to dispose of the relevant Social Rented Unit free from the affordable housing provisions in this Deed which provisions shall determine absolutely in respect of such units



**SCHEDULE 4**  
**CUSTOM AND SELF BUILD HOUSING**

1. The Owner covenants with the Council:
2. To provide 5no. (five) Custom and Self-Build Plots on the Custom and Self-Build Land
3. Not to Occupy or cause permit or otherwise allow the Occupation of any Dwelling on the Application Land until a Marketing Strategy for the Custom and Self-Build Housing and a Design Code and Plot Passports (if applicable) for the Custom and Self-Build Housing have been submitted and approved in writing by the District Council, such approval not to be unreasonably withheld.
4. Not to Occupy or cause permit or otherwise allow the Occupation of more than 50% of the Dwellings on the Application Land until the Custom and Self-Build Land (and any Custom and Self-Build Plot thereon) is provided Serviced and marketed as land for Custom and Self-Building Housing.
5. Not to Occupy or cause permit or otherwise allow the Occupation of any Custom and Self-Build Plot on the Custom and Self-Build Land otherwise than for the purpose of Custom and Self-Build Housing unless -
  - 5.1. the Owners have served a notice on the District Council that the Custom and Self-Build Plots are Serviced and available for purchase; and
  - 5.2. the Custom and Self-Build Plots have been marketed for the Marketing Period and offered for sale at Open Market Value by means of the Marketing Strategy; and
  - 5.3. in respect of any such Custom and Self-Build Plot and despite the reasonable endeavours of the Owners, no disposition of that plot has been completed before the end of the Marketing Period.
6. Where (following the conclusion of the process set out in paragraph 5 above) the Owners may dispose of those Custom and Self-Build Plots as they see fit, free from the restrictions and obligations in this Schedule.

## **SCHEDULE 5**

### **PUBLIC OPEN SPACE**

1. The Owner and the District Council the Owner covenants as follows:
  - 1.1 no Dwelling shall be Occupied until the Public Open Space Management Plan has been submitted to and approved in writing by the District Council such approval not to be unreasonably withheld or delayed;
  - 1.2 the Public Open Space shall be delivered in accordance with the approved Public Open Space Management Plan or any amendment update or variation of that plan that may from time to time be approved in writing by the District Council.
  - 1.3 the Owner shall make each area of the Public Open Space available for use by the general public from the date it is completed and fit for public use and shall carry out or procure the carrying out of the management and maintenance arrangements set out in the approved Public Open Space Management Plan in perpetuity or until such time (if ever) that the Owner and the District Council agree by deed that any part of that land shall be released from this obligation;
  - 1.4 unless the Owner agrees with the District Council or other public body the terms on which that body will accept a transfer of the Public Open Space the Owner shall transfer the Public Open Space to the Management Company prior to the Occupation of the 1<sup>st</sup> (First) Dwelling and the Management Company shall thereafter manage and maintain the Public Open Space in accordance with the approved Public Open Space Management Scheme; and
  - 1.5 for the avoidance of doubt in paragraphs 1.3 and 1.4 above the Owner shall mean the owner for the time being of the Public Open Space.

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before written

EXECUTED as a DEED by  
TIDCOMBE HALL LVA LLP acting by  
[ ] director, in the presence of:

[SIGNATURE OF DIRECTOR]  
Director

Robert Tizzard

Witness Signature:

Witness Name: THOMAS MILLER

Witness Address: 11 LARKS MEADOW, STALBRIDGE, DT10 2LF

Witness Occupation: SURVEYOR

LITTLE TIDCOMBE FARM LVA LLP

EXECUTED as a DEED by  
LITTLE TIDCOMBE FARM LVA LLP acting by  
[ ] director, in the presence of:

[SIGNATURE OF DIRECTOR]  
Director

Robert Tizzard

Witness Signature:

Witness Name:

THOMAS MILLER

Witness Address:

11 LARKS MEADOW, STALBRIDGE, DT10 2LF

Witness Occupation:

SURVEYOR

THE COMMON SEAL of  
MID DEVON DISTRICT COUNCIL  
was hereunto affixed in  
presence of:

D. SHARPEY

Executed as a Deed by  
DEVON COUNTY COUNCIL

Whose Common Seal is hereunto affixed in  
presence of:

Authorised Officer

ANNEX A

Plan 1

Document Number: 520938<sup>27</sup>