

DATED _____ **2023**

Draft: 15/09/23

(1) GREENGAGE DEVELOPMENTS (SOUTH WEST) LIMITED

(2) JM & CW LIMITED

(3) JONATHAN MARK CLAPP

(4) NATIONAL WESTMINSTER BANK PLC

(5) WADDETON PARK LIMITED

TO

(6) MID DEVON DISTRICT COUNCIL

AND

(7) DEVON COUNTY COUNCIL

**UNILATERAL UNDERTAKING PURSUANT TO
SECTION 106 OF THE TOWN AND
COUNTRY PLANNING ACT 1990
relating to land at
Hartnolls Business Centre,
Tiverton, Devon**



Pinsent Masons

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THIS DEED is made on

2023

FROM:

- (1) **GREENGAGE DEVELOPMENTS (SOUTH WEST) LIMITED** (Company Registration Number 06745895) whose registered office is at Red Linhay, Crown Hill, Halberton, Tiverton EX16 7AY (the “**First Owner**”);
- (2) **JM & CW LIMITED** (Company Registration Number 9055299) whose registered office is at Red Linhay, Crown Hill, Halberton, Tiverton EX16 7AY (the “**Second Owner**”);
- (3) **JONATHAN MARK CLAPP** of The Red Linhay, Hartnoll Farm, Post Hill, Tiverton, Devon EX16 4NG (the “**Third Owner**”);
- (4) **NATIONAL WESTMINSTER BANK PLC** (Company Registration Number 929027) of 250 Bishopsgate, London, EC2M 4AA (the “**Bank**”);
- (5) **WADDETON PARK LIMITED** Company Registration Number 05827399 of whose registered office is at Greendale Court, Clyst St Mary, Exeter, Devon EX5 1AW (the “**Developer**”);

To:

- (6) **MID DEVON DISTRICT COUNCIL** of Phoenix House, Phoenix Lane, Tiverton, Devon EX16 6PP (the “**District Council**”); and
- (7) **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter, Devon EX2 4QD (the “**County Council**”).

WHEREAS:

- (A) The District Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Site is situated.
- (B) The County Council is the local highway authority for the purpose of the Highways Act 1980 the local education authority and the waste authority for the area in which the Site is situated.
- (C) The First Owner is the freehold owner of the part of the Site with title absolute registered at HM Land Registry under title number DN597668.
- (D) The Second Owner is the freehold owner of the part of the Site with title absolute registered at HM Land Registry under title numbers DN659066 and DN583024. Title numbers DN659066 and DN583025 are subject to a legal charge in favour of the Bank dated 12 April 2022.
- (E) The Third Owner is the freehold owner of the part of the Site with title absolute registered at HM Land Registry under title number DN490502. Title number DN490502 is subject to a legal charge in favour of the Bank dated 12 April 2022.
- (F) The Developer entered into an option agreement with the First Owner and the Third Owner in relation to the Site dated 3 January 2013.
- (G) The Developer submitted the Planning Application which was validated by the District Council on 10 August 2021.
- (H) On 19 December 2022 the Developer lodged the Appeal.
- (I) The Owners enter into this Deed with the intention that the planning obligations contained in this Deed may be enforced by the District Council or the County Council (as the context

provides) against the Owners and their successors in title however the Owners do not intend that the obligations in this Deed will take effect unless and until the Secretary of State or his Inspector confirms that each planning obligation contained in this Deed is necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development and therefore constitutes a reason for granting planning permission in accordance with Clause 5 of this Deed in the event that the Secretary of State or the Inspector allows the Appeal.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed the following words and phrases (including those contained in the Recitals above) shall unless the context otherwise requires bear the following meanings:

"Affordable Housing"	means the housing provided by way of Affordable Rented Dwellings, Intermediate Dwellings and/or Social Rented Dwellings in accordance with the provisions of Schedule 1 of this Deed for occupation by Qualifying Persons whose needs are not met by the market
"Affordable Housing Provider"	means a registered provider as defined in the Housing and Regeneration Act 2008 who is registered with Homes England or any other provider of Affordable Housing first approved in writing by the District Council
"Affordable Housing Scheme"	means a scheme for the provision of the Affordable Housing prepared in accordance with paragraph 1.3 of Schedule 1 to this Deed
"Affordable Housing Dwelling"	means any of the Dwellings provided as Affordable Housing
"Affordable Rented Dwelling"	means a Dwelling for affordable rent by way of an Assured Shorthold Tenancy Agreement at a rent of no more than 80% of the local market rent (including service charges where applicable) which allows for the occupation of such housing by a Qualifying Person in accordance with the terms contained in Schedule 1 to this Deed
"Appeal"	means the appeal lodged by the Developer on 19 December 2022 in respect of the Planning Application having PINS Reference: APP/Y1138/W/22/3313401
"Assured Shorthold Tenancy Agreement"	means an agreement complying with arrangements for the letting of houses and flats by private landlords as defined by the Housing Act 1988 and subject to the amendments and requirements as introduced by the Housing Act of 1996 and the Housing Act of 2004
"Assured Tenancy"	means a tenancy as defined by section 1 of the Housing Act 1988 and subject to letting at a Target Rent
"Base Rate"	means the base rate from time to time of Barclays Bank plc
"BCIS Index"	means the Building Costs All In Tender Price Index published by the Building Cost Information Service of the

	Royal Institute of Chartered Surveyors or any successor organisation
"CIL Regulations"	means the Community Infrastructure Levy Regulations 2010 (as amended)
"Commence"	means the carrying out in relation to the Development in accordance with the Planning Permission any material operation within the meaning of section 56(4) of the TCPA 1990 save for the following operations which for the purposes of this Deed shall not be considered to commence the Development: demolition works; site clearance; archaeological investigations; investigations for the purposes of assessing ground conditions; earthworks associated with underground drainage sewers and services and/or the diversion of and laying of services; site survey works; construction of temporary accesses; temporary facilities; construction compounds; erection of any gates fences or hoardings and the temporary display of site notices or advertisements and "Commenced" and Commencement" shall be construed accordingly
"Contributions"	means: <ul style="list-style-type: none"> (a) the Early Years Education Contribution (b) the Education Land Contribution (c) the GP Provision Contribution (d) the Monitoring Fee (e) the NHS Funding Gap Contribution (f) the Primary School Education Contribution (g) the Secondary School Education Contribution (h) the Special Education Provision Contribution; (i) the Transport Infrastructure Contribution; and (j) the Waste and Recycling Contribution
"Default Interest Rate"	4% per annum above the Base Rate
"Development"	means the development of the Site in accordance with the Planning Permission
"District"	means the district of Mid Devon
"Dwelling"	means any residential unit (including a house, flat or maisonette) forming part of the Development
"Early Years Education Contribution"	means the sum of £250.00 (two hundred and fifty pounds) per Dwelling

"Education Land Contribution"	means the sum of £806.00 (eight hundred and six pounds) per Dwelling towards the provision of a serviced site for a new primary school required as a result of the Development
"Expert"	means an independent and suitable person holding appropriate professional qualifications and of at least ten (10) years post qualification experience appointed in accordance with the provisions of Clause 16 of this Deed to determine a dispute
"Force Majeure"	means any circumstance(s) which are outside the reasonable control of the Owners and which adversely affects its ability to perform any obligation provided for in this Deed, including without limitation acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, any law or any action taken by a government or public authority, collapse of buildings, fire, explosion or accident, any labour or trade dispute, strikes, industrial action or lockouts, PROVIDED THAT the same is not due to the negligence or default of the Owners
"Framework"	means the framework for the Travel Plan dated July 2021 submitted with the Application and attached hereto at Annex A
"GP Provision Contribution"	means the sum of £608 (six hundred and eight pounds) per Dwelling up to a maximum of £91,200.00 (ninety-one thousand two hundred pounds)
"Green Travel Voucher"	means a voucher to be provided by the Owners to the first Occupier(s) of each Dwelling which shall entitle the holder to redeem the voucher on application against the cost of using sustainable transport modes (such as the cost of public travel in the vicinity of the Site or the cost of bicycles or cycling equipment) to the value of £250 (two hundred and fifty pounds) per Dwelling
"Index Linked"	means the application of the BCIS Index to a Contribution in accordance with Clause 7
"Inspector"	means a planning inspector appointed by the Secretary of State to consider the Appeal under delegated powers
"Intermediate Dwelling"	means a Dwelling for sale or rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition and which can include shared equity (shared ownership and equity loans) and other low cost homes for sale and intermediate rent but which cannot be an Affordable Rented Dwelling
"Monitoring Fee"	means the sum of £10,227.00 (ten thousand two hundred and twenty-seven pounds)
"NHS Funding Contribution"	Gap means the sum of £1,105.46 (one thousand one hundred and five pounds and forty-six pence) per Dwelling up to a

	maximum of £165,819.00 (one hundred and sixty-five thousand pounds eight hundred and nineteen pounds)
"Occupation"	means occupation of any Dwelling or building 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 or display or occupation in relation to security operations and "Occupy" and "Occupiers" shall be construed accordingly
"Open Market Dwelling"	means those Dwellings that are not provided as Affordable Housing
"Open Space"	means all publicly accessible open spaces comprised within the Development including footpaths and areas of public realm but excluding areas of public highway any private communal spaces provided for the exclusive use of a single Dwelling and/or areas solely or mainly for parking vehicles
"Open Space Management Plan"	means a plan submitted by the Owners to the District Council for the management of the Open Space in accordance with the provisions of paragraph 6.6 of Schedule 1
"Owners"	means the First Owner the Second Owner and the Third Owner
"Planning Application"	means the phased outline planning application for the extension to the existing business park for up to 3.9ha of employment land and up to 150 residential dwellings with associated open space and infrastructure (with means of access to be determined only) validated by the District Council on 10 August 2021 under reference number 21/01576/MOUT
"Planning Permission"	means any planning permission granted by the Inspector in respect of the Appeal
"Primary School Education Contribution"	means the sum of £4,974.72 (four thousand nine hundred and seventy-four pounds and seventy-two pence) per Dwelling towards primary school provision required as a result of the Development
"Qualifying Person"	means a person or persons who (together with their resident dependents) is in need of housing and who by reason of their income is/are unable to rent or buy at normal market rents or prices within the District
"Reserved Matters Application"	means an application for reserved matters approval pursuant to the Planning Permission
"Reserved Matters Approval"	means an approval pursuant to a Reserved Matters Application
"Reserved Matters Area"	means an area of land within the Site bound by a Reserved Matters Approval
"Secondary School Education Contribution"	means the sum of £1,529.92 (one thousand five hundred and twenty-nine pounds and ninety-two pence) per Dwelling

“Secretary of State”	means the Secretary of State for the Department for Levelling Up, Housing and Communities (or any successor body)
"Self-Build and Custom Build Dwelling"	means a Dwelling provided for self-build and custom build housing in accordance with paragraph 5 of Schedule 1
"Self-Build and Custom Build Plot"	means a plot within the Development upon which a Self-Build and Custom Build Dwelling will be constructed
“Self-Build and Custom Build Marketing Strategy”	means a document setting out details of the proposed marketing of the Self-Build and Custom Build Plots prepared in accordance with paragraph 5.3 of Schedule 1
"Serviced"	means Services having been provided to the boundary of any Self-Build and Custom Build Plot
"Services"	means the ability to access a public highway and connections for electricity, water and waste water
“Social Rented Dwelling”	means a Dwelling let under an Assured Tenancy through the involvement of an Affordable Housing Provider and/or private registered provider (as defined in Section 80 of the Housing and Regeneration Act 2008) at rents which do not exceed local Target Rents as recommended by Homes England
“Site”	means the land on which the Development is to be located shown edged red on the Site Plan
“Site Plan”	means the plan showing the Site contained herein
"Sustainable Travel Pack"	means a Travel Information Pack together with a Green Travel Voucher to be provided by the Owners to the first Occupiers of each Dwelling
“Special Education Provision Contribution”	means the sum of £719.79 (seven hundred and nineteen pounds seventy-nine pence) per Dwelling towards special school places required as a result of the Development
“Target Rent”	means the rent which is derived by applying the formula set out in the Housing Corporation’s publication “Rent Influencing Regime – implementing the rent restructuring framework” (October 2001) that will be applied to each completed unit and subject to the rent review arrangements provided in the annually published guidance of Homes England (as the successor to the Housing Corporation and HCA) or such equivalent measure of rental affordability as may be published or agreed instead by Homes England or the District Council or as agreed between the Affordable Housing Provider and the District Council
“Transport Infrastructure Contribution”	means any contribution towards transport infrastructure as may be determined pursuant to the approved Transport Infrastructure Strategy such contribution to be calculated and payable on a per Dwelling basis
“Transport Infrastructure Strategy”	means a strategy prepared by the Owners for approval by the District Council pursuant to paragraph 7 of Schedule 1

in order to determine whether a Transport Infrastructure Contribution is required

"Travel Plan"

means a travel plan prepared in accordance with the Framework to be approved in writing by the County Council in accordance with paragraph 4 of Schedule 2

"TCPA 1990"

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

"VAT"

means Value Added Tax chargeable under the Value Added Tax Act 1994

"Waste and Recycling Contribution"

means the sum of £128.00 (one hundred and twenty-eight pounds) per Dwelling up to a maximum of £19,200.00 (nineteen thousand two hundred pounds)

"Working Day"

means any day, other than a Saturday, Sunday, or public holiday in England when banks in London are open for business

- 1.2 Clause headings are for ease of reference and shall not affect the interpretation of this Deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and vice versa and a reference to one gender shall include a reference to other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the District Council or the County Council the successors to their respective statutory functions.
- 1.7 A reference to a particular statute or statutory provision shall include unless otherwise specified any statutory extension, modification, amendment or re-enactment of such statute and shall also include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 The Interpretation Act 1978 shall apply to this Deed.
- 1.9 A reference to writing or written does not include faxes or e-mails.
- 1.10 Where a reference is made to a Clause, part, plan, paragraph, recital, Schedule or appendix such reference (unless the context requires otherwise) is a reference to a Clause, part, paragraph, recital or Schedule in this Deed or in the case of plans and appendices attached to this Deed.
- 1.11 Any covenant by the parties not to do any act or thing shall be deemed to include an obligation not to permit agree or allow such act or thing to be done.
- 1.12 The word "include" shall mean "including without limitation or prejudice to the generality of any description defining term or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly.

1.13 In the event of any conflict between the provisions of this Deed and any document attached hereto the provisions of this Deed will prevail.

2. **LEGAL BASIS**

2.1 This Deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.

2.2 The covenants, restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owners with the intention that they bind the Owners' interests in the Site and their respective successors in title and assigns.

3. **LEGAL EFFECT**

3.1 The obligations contained in this Deed shall not be enforceable against:

3.1.1 save for the provisions of Schedule 1 of this Deed as they relate to Affordable Housing, any owner, tenant occupier or operator of any individual Dwelling or individual non-residential unit forming part of the Development nor against those deriving title from them nor against a mortgagee or chargee of any such individual Dwelling or individual non-residential unit;

3.1.2 any Affordable Housing Provider except in relation to the obligations in paragraphs 1 to 4 of Schedule 1;

3.1.3 any occupier or tenant of an Affordable Housing Dwelling who has either exercised a statutory right to acquire or buy that dwelling from the Affordable Housing Provider or who has acquired 100% (one hundred per cent) of the equity in an Intermediate Dwelling;

3.1.4 subject to paragraph 3 of Schedule 1, any mortgagee or chargee of the whole or any part of an Affordable Housing Dwelling or any persons or bodies deriving title through such mortgagee or chargee;

3.1.5 any successors in title to the persons categorised in this Clause 3;

3.1.6 where the Open Space is transferred to an estate management company such estate management company except in relation to the obligations in paragraph 6 of Schedule 1; and

3.1.7 any statutory undertaker or other person with any interest in any part(s) of the Site solely for the purpose of the supply of electricity gas water drainage sewers telecommunication services, highways or public transport services.

3.2 The covenants, restrictions and obligations contained in Clause 6.1 and Schedule 1 of this Deed are enforceable by the District Council and the covenants, restrictions and obligations contained in Clause 6.2 and Schedule 2 are enforceable by the County Council in accordance with section 106 of the TCPA 1990.

4. **CONDITIONALITY**

4.1 None of the terms covenants provisions or obligations contained in this Deed shall take effect unless and until Planning Permission has been granted and Commencement has occurred save that:

4.1.1 the terms covenants provisions or obligations in Clauses 1, 2, 4, 5, 8, 15, 18, 22, 23, and 25 shall take effect immediately upon completion of this Deed; and

4.1.2 the terms covenants, provisions or obligations in Clauses 3.1, 9, 10, 11, 13, 16, 17, 20, 21 and 24 shall take effect on the grant and issue of the Planning Permission.

5. APPEAL DECISION

5.1 Any and each planning obligation in this Deed shall not take effect and shall not be enforceable by the District Council or the County Council (as the context so requires) unless the Inspector appointed by the Secretary of State states in their decision letter in the Appeal that in their opinion the planning obligation in question constitutes a reason for granting the Planning Permission in accordance with Regulation 122 of the CIL Regulations.

5.2 In the event the Inspector fails to state in their decision letter whether any planning obligation in this Deed meets the tests for planning obligations set out in Regulation 122 of the CIL Regulations or states their decision letter that any obligation in this Deed fails to meet the tests for planning obligations set out in Regulation 122 of the CIL Regulations then the Owners shall not be bound by that obligation and this Deed shall be read as if such planning obligation were not included.

6. COVENANTS TO THE DISTRICT COUNCIL AND COUNTY COUNCIL

6.1 The Owners covenant with the District Council to:

6.1.1 observe and perform the covenants, restrictions and obligations contained in Schedule 1; and

6.1.2 give at least ten (10) Working Days' written notice to the District Council of the intended date that the Development will be Commenced.

6.2 The Owners covenants with the County Council to:

6.2.1 observe and perform the covenants, restrictions and obligations contained in Schedule 2; and

6.2.2 give at least ten (10) Working Days' written notice to the County Council of the intended date that the Development will be Commenced.

7. INDEXATION

7.1 All of the Contributions save for the Early Years Education Contribution, the Education Land Contribution, the Primary School Education Contribution, the Secondary School Education Contribution and the Special Education Contribution shall be Index Linked such that the amount specified in this Deed (or relevant part thereof) is increased in accordance with the formula in Clause 7.2.

7.2 $C = \text{£}Y \times \frac{A}{B}$

where:

C = the amount actually payable after application of this formula;

Y = the level of Contribution to which this formula is applied;

A = the figure for the BCIS Index that applied immediately preceding the date the relevant Contribution is due; and

B = the figure for the BCIS Index that applied when the BCIS Index was last published prior to the date of this Deed.

7.3 The Early Years Education Contribution, the Primary School Education Contribution, Secondary School Education Contribution and the Special Education Contribution shall be Index Linked such that the amount specified in this Deed (or relevant part thereof) is increased in accordance with the formula in Clause 7.4.

7.4
$$C = \text{£}Y \times \frac{A}{B}$$

where:

C = the amount actually payable after application of this formula;

Y = the level of Contribution to which this formula is applied;

A = the figure for the BCIS Index that applied immediately preceding the date the relevant Contribution is due; and

B = the figure for the BCIS Index that applied in June 2020

7.5 The Education Land Contribution shall be Index Linked such that the amount specified in this Deed (or relevant part thereof) is increased in accordance with the formula in Clause 7.6.

7.6
$$C = \text{£}Y \times \frac{A}{B}$$

where:

C = the amount actually payable after application of this formula;

Y = the level of Contribution to which this formula is applied;

A = the figure for the BCIS Index that applied immediately preceding the date the relevant Contribution is due; and

B = the figure for the BCIS Index that applied in June 2017

7.7 Where reference is made to the BCIS Index and that index ceases to exist or is replaced or rebased then it shall be deemed to include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the District Council or County Council (as applicable according to whom the relevant Contribution is payable) shall advise the Owners in writing.

8. **BANK**

The Bank acknowledges and declares that this Deed has been entered into by the Owners with its consent and that the Site shall be bound by the obligations contained herein PROVIDED THAT the Bank will not incur any liability for any breach of the obligations contained in this Deed unless it becomes a mortgagee in possession of the Site or that part of the Site in which it has a mortgage or charge.

9. **RELEASE**

9.1 No person shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with its relevant interest in the Site or part of the Site in which the breach occurs, except in respect of any breach subsisting prior to parting with such interest.

9.2 For the avoidance of doubt nothing in this Deed shall restrict or prevent any of the parties from requesting or applying for a discharge or modification of the planning obligations contained in this Deed at any time.

10. **DETERMINATION OF DEED**

10.1 The obligations in this Deed shall cease to have effect if:

10.1.1 Planning Permission is not granted by the Inspector following the Appeal;

10.1.2 before Commencement, the Planning Permission expires; or

10.1.3 if at any time the Planning Permission is quashed or revoked so as to render this Deed or any part of it irrelevant, impractical or unviable.

11. **LOCAL LAND CHARGE**

The Owners hereby consent to the registration of this Deed by the District Council as a Local Land Charge pursuant to section 106(11) of the TCPA 1990.

12. **INTEREST ON LATE PAYMENT**

Where any sum or amount has not been paid to the District Council or the County Council (as applicable) by the date on which it is due the Owners shall as the context requires pay the District Council or the County Council interest at the Default Interest Rate on that amount for the period from the due date such payment (or part thereof) fell due to and including the date of payment.

13. **OWNERSHIP**

13.1 Until the covenants, restrictions and obligations in Schedule 1 have been complied with the Owners will give to the District Council the following details within ten (10) Working Days of any conveyance, transfer, lease, assignment, mortgage, charge or other disposition entered into in respect of all or any part of the Property:

13.1.1 the name and address of the person to whom the disposition was made; and

13.1.2 the nature and extent of the interest disposed of.

14. **CANCELLATION OF ENTRIES**

14.1 Any time after each or all of the obligations contained in this Deed have been performed or otherwise discharged (and subject to the payment of the District Council's reasonable and proper costs) the Owners may request in writing that the District Council issues a written confirmation of such performance or discharge.

14.2 Following the performance and full satisfaction of all the terms of this Deed the Owners may request in writing that the District Council cancels all entries made in the local land charges register in respect of this Deed.

15. **EXECUTION IN COUNTERPARTS**

This Deed may be executed in any number of counterparts each of which when executed shall constitute a duplicate original but all the counterparts together shall constitute one agreement.

16. **APPOINTMENT OF EXPERT**

16.1 In the event of any dispute arising between the parties to this Deed in respect of any matter contained in this Deed (including any matter to be agreed, achieved or approved under this Deed) the same may be referred by any of the parties to this Deed to an Expert who shall be appointed by agreement between the parties. In the absence of such agreement within ten (10) Working Days following a written request by one party to the other(s), the Expert shall be

appointed upon the application of any party to this Deed by or on behalf of the President for the time being of the Law Society of England and Wales and the President's decision as to the Expert shall be final and binding on the parties to the dispute.

- 16.2 The Expert howsoever appointed shall be subject to an express requirement that he reaches his decision and communicates it to the parties to the dispute within the minimum practical timescale allowing for the nature and complexity of the dispute and in any event not more than thirty (30) Working Days from the date of his appointment to act.
- 16.3 The Expert shall be required to give notice to each of the parties to the dispute inviting each of them to submit to him within ten (10) Working Days written submissions and supporting material and shall afford to the parties an opportunity to make counter submissions within a further ten (10) Working Days in respect of any such submission and material.
- 16.4 The Expert so appointed shall act as an expert and not as an arbitrator and save in case of manifest error, his decision shall be final and binding on the parties to the dispute and the costs of the procedure and the Expert's costs shall be payable by the parties to the dispute in such proportion as the Expert shall determine and failing such determination the parties shall pay their own costs and the Expert's costs shall be borne by the parties to the dispute in equal shares.
- 16.5 The provisions of this Clause 16 shall not apply to disputes in relation to matters of law which may be subject to the jurisdiction of the courts including applications for declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

17. **SECTION 73 TCPA 1990**

In the event that the District Council or the Secretary of State shall at any time hereafter grant a planning permission pursuant to an application made under Section 73 of the TCPA 1990 in respect of the conditions relating to the Planning Permission save and in so far as this Deed has been amended by way of a deed of variation prior to the grant of such planning permission references in this Deed to the Planning Application shall (save for the purposes of the definition of Planning Permission in Clauses 4, 10 and 20) be deemed to include any such subsequent applications and this Deed shall henceforth take effect and be read and construed accordingly.

18. **NO FETTER OF DISCRETION**

Nothing (contained or implied) in this Deed shall fetter or restrict the District Council's or the County Council's statutory rights powers discretions and responsibilities.

19. **WAIVER**

No waiver (whether express or implied) by the District Council or the County Council of any breach or default by the Owners in performing or observing any of the covenants, restrictions or obligations of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council or the County Council from enforcing any of the relevant terms or conditions contained in this Deed or acting on any subsequent breach or Default of this deed.

20. **FUTURE PERMISSIONS**

Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

21. **NOTICES**

21.1 Any notice required to be given under this Deed shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any party required to receive the notice at its address as set out below:-

21.1.1 District Council: Head of Planning, Mid Devon District Council, Phoenix House, Phoenix Lane, Tiverton, Devon EX16 6PP;

21.1.2 County Council: County Solicitor, Devon County Council, County Hall, Topsham Road, Exeter, Devon EX2 4QD;

21.1.3 Developer: Waddeton Park Limited, Greendale Court, Clyst St Mary, Exeter, Devon EX5 1AW;

21.1.4 First Owner: the address at the start of this Deed;

21.1.5 Second Owner: the address at the start of this Deed;

21.1.6 Third Owner: the address at the start of this Deed;

21.1.7 Bank: the address at the start of this Deed,

or as otherwise specified by the relevant party by notice in writing to each other party.

21.2 Any notice shall be deemed to have been duly received:-

21.2.1 if delivered personally, when left at the address and for the contact referred to in this clause;

21.2.2 if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; or

21.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

22. **THIRD PARTY RIGHTS**

No person other than a party to this Deed and their respective successors and permitted assigns shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

23. **SEVERANCE**

23.1 If any court or competent authority finds that any provision of this Deed (or part of any provision) is invalid illegal or unenforceable that provision or part-provision shall to the extent required be deemed to be deleted and the validity and enforceability of the other provisions of this Deed shall not be affected.

23.2 If any invalid unenforceable or illegal provision of this Deed would be valid enforceable and legal if some part of it were deleted such provision shall be amended so that as amended it is legal valid and enforceable and to the greatest extent possible achieves the parties' original commercial intention.

24. **VALUE ADDED TAX**

24.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.

24.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

25. **GOVERNING LAW**

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

This document has been executed as a deed and is delivered and takes effect on the date hereof.

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SCHEDULE 1 - COVENANTS BY THE OWNERS TO THE DISTRICT COUNCIL

The Owners covenant with the District Council as follows:

- 1. PROVISION OF AFFORDABLE HOUSING**
- 1.1 Unless agreed otherwise in writing with the District Council to provide not less than 30% (thirty percent) of the total number of Dwellings as Affordable Housing and where 30% (thirty percent) of the total number of Dwellings results in a fraction of a whole number that is equal to or greater than 0.5 (a half) that fraction shall be rounded-up to the next whole number and where any resulting fraction is less than 0.5 (a half) then that fraction shall be rounded down.
- 1.2 Not to Commence or cause or allow Commencement of any Reserved Matters Area containing Dwellings unless or until the Affordable Housing Scheme for that Reserved Matters Area has been submitted to and approved in writing by the District Council.
- 1.3 The Affordable Housing Scheme for any Reserved Matters Area containing Dwellings shall identify:
 - 1.3.1 the location and layout of the Affordable Housing Dwellings;
 - 1.3.2 the tenure and mix of the Affordable Housing Dwellings;
 - 1.3.3 the number of Affordable Housing Dwellings confirming:
 - (a) the number of one bedroomed Affordable Housing Dwellings;
 - (b) the number of two bedroomed Affordable Housing Dwellings;
 - (c) the number of three (or more) bedroomed Affordable Housing Dwellings;or such other Affordable Housing Scheme for a Reserved Matters Area as may otherwise be approved in writing by the District Council.
- 1.4 The approved Affordable Housing Scheme for any Reserved Matters Area may be updated in writing from time to time with the approval of the District Council.
- 1.5 To construct and provide the Affordable Housing Dwellings in any Reserved Matters Area in accordance with the latest approved Affordable Housing Scheme for that Reserved Matters Area.
- 1.6 Not to Occupy more than 75% of the Open Market Dwellings to be constructed as part of the Development until:
 - 1.6.1 all of the Affordable Housing has been constructed and is ready for Occupation in accordance with the relevant Affordable Housing Scheme; and
 - 1.6.2 the Affordable Housing has been transferred to an Affordable Housing Provider.
- 1.7 Any transfer of an Affordable Housing Dwelling pursuant to paragraph 1.6.2 of this Schedule shall be in such form as the Owners shall reasonably require to ensure that the Affordable Housing Dwelling is subject to the same rights easements and covenants (both restrictive and positive) as are to be granted and reserved in sales of the Open Market Dwellings.
- 1.8 Any transfer of an Affordable Housing Dwelling to an Affordable Housing Provider will contain a declaration that the Affordable Housing Dwelling is transferred subject to and with the benefit of the terms of this Deed.
- 1.9 In the event that:

- 1.9.1 an Affordable Housing Dwelling is not exempt from the statutory right to buy and/or statutory right to acquire; and
- 1.9.2 it becomes legally possible to exclude the statutory right to buy and/or right to acquire,

the Affordable Housing shall be excluded from the statutory right to buy and/or statutory right to acquire.

2. RESTRICTIONS ON OCCUPATION OF AFFORDABLE HOUSING

- 2.1 Subject to the provisions of Clauses 3.1.3 and 3.1.5 and paragraph 3 of this Schedule 1 the Intermediate Dwellings the Affordable Rented Dwellings and/or the Social Rented Dwellings (as the case may be) are not to be Occupied otherwise than strictly in accordance with the provisions of paragraphs 2.2 and 2.3 of this Schedule.
- 2.2 Not to allow the Occupation of any Intermediate Dwellings the Affordable Rented Dwellings and/or the Social Rented Dwellings (as the case may be) other than by a Qualifying Person and their dependents unless otherwise approved by the District Council in writing and in any event:
 - 2.2.1 in accordance with the provisions of any shared ownership lease or other similar lease let by way of an Intermediate Dwelling (unless the lessee has staircased out); and/or
 - 2.2.2 for an Affordable Rented Dwelling and Social Rented Dwelling only by way of the grant of an Assured Shorthold Tenancy Agreement or Assured Tenancy (as the case may be).
- 2.3 That it will include a covenant in every lease or transfer of an Affordable Rented Dwelling and/or Social Rented Dwelling that the lessee shall not use or occupy the Affordable Rented Dwelling or Social Rented Dwelling as a holiday home or second home or otherwise than as a single private dwelling.

3. PROVISIONS RELATING TO MORTGAGEES

- 3.1 The provisions relating to Affordable Housing in Schedule 1 of this Deed 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 Affordable Housing or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
 - 3.1.1 such mortgagee or chargee or Receiver shall first give written notice to the District Council of its intention to dispose of the Affordable Housing and shall have used reasonable endeavours over a period of 3 (three) months from the date of the written notice to complete a disposal of the Affordable Housing 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 costs and expenses; and
 - 3.1.2 if such disposal has not completed within the 3 (three) month period the mortgagee chargee or Receiver shall be entitled to dispose of the Affordable Housing free from the obligations relating to the affordable housing provisions in Schedule 1 (One) of this Deed which provisions shall determine absolutely.

4. PROVISION OF INFORMATION

To procure that at the request of the District Council the Affordable Housing Provider will allow the District Council to inspect the register in order to enable the District Council to verify that the Affordable Housing Provider has disposed of the Affordable Housing in accordance with the relevant terms of this Schedule.

5. SELF-BUILD AND CUSTOM BUILD HOUSING

5.1 To provide 5% (five per cent) of the total number of Dwellings as Self-Build and Custom Build Dwellings and where 5% (five per cent) of the total number of Dwellings results in a fraction of a whole number that is equal to or greater than 0.5 (a half) that fraction shall be rounded-up to the next whole number and any resulting fraction that is less than 0.5 (a half) shall be rounded down.

5.2 With any Reserved Matters Application containing Dwellings the Owners shall include a written statement setting out whether or not any Self-Build and Custom Build Plots will be provided within that Reserved Matters Area.

5.3 On or before Occupation of any Open Market Dwellings within the first Reserved Matters Area containing Self-Build and Custom Build Dwellings the Owners shall submit the Self-Build and Custom Build Marketing Strategy to the District Council for its approval in writing setting out:

5.3.1 how where and when the Self-Build and Custom Build Plots are to be offered on the open market;

5.3.2 information on the sizes of any Self-Build and Custom Build Plots together with any design and siting parameters;

5.3.3 the period for which the Self-Build and Custom Build Plots are to be marketed which shall be for a period of not less than 12 months in respect of any Self-Build and Custom Built Plot unless such Self Build and Custom Build Plot is sold sooner; and

5.3.4 any alternative or additional marketing proposed to be undertaken in the event that interest in the Self-Build and Custom Build Plots is low,

and the approved Self-Build and Custom Build Marketing Strategy may be updated from time to time as approved in writing by the District Council.

5.4 Not to Occupy more than 75% (seventy five percent) of the Open Market Dwellings on the Site until all Self-Build and Custom Build Plots have been laid out and Serviced.

5.5 To market the Self-Build and Custom Build Plots in accordance with the latest approved Self-Build and Custom Build Marketing Strategy.

5.6 Following the provision of evidence to the District Council's reasonable satisfaction demonstrating compliance with the Self-Build and Custom Build Marketing Strategy, where in respect of any Self-Build and Custom Build Plot the Owners have been unable to sell such Self-Build and Custom Build Plot, the Owners may dispose of the Self-Build and Custom Build Plot as they see fit free from the restrictions and obligations in this paragraph 5.

6. OPEN SPACE

6.1 To provide and manage the Open Space in accordance with this paragraph 6 for the lifetime of the Development and if the Open Space is transferred to an estate management company the Owners will procure that the company will adhere to the obligations within this paragraph 6 for the lifetime of the Development.

6.2 To lay out construct and otherwise complete in a proper and workmanlike manner to the reasonable satisfaction of the District Council the areas of Open Space within the Site.

- 6.3 Not to Occupy or permit or suffer the Occupation of any Dwelling within a Reserved Matters Area containing Dwellings until the Owners have practically completed the Open Space for that Reserved Matters Area.
- 6.4 To notify the District Council in writing of the completion of the Open Space or part thereof within ten (10) Working Days of its completion.
- 6.5 To submit the Open Space Management Plan to the District Council for approval prior to Occupation of the first Reserved Matters Area containing Dwellings and the Owners shall comply with the approved Open Space Management Plan for any Reserved Matters Area containing Dwellings from first Occupation of that Reserved Matters Area (or such amended Open Space Management Plan as may be agreed in writing with the District Council from time to time).
- 6.6 The Open Space Management Plan will include measures to:-
- 6.6.1 cleanse retain maintain and keep in repair and working order the lighting and drainage to the Open Space;
 - 6.6.2 cleanse retain maintain and keep in repair and working order any furniture and structures;
 - 6.6.3 cleanse retain maintain and keep in repair and working order the hard and soft landscaping;
 - 6.6.4 keep the Open Space unobstructed and open to the public for access on foot for recreational purposes everyday throughout the year (which access may be gained by members of the public free of charge) PROVIDED THAT this obligation shall not be deemed to be breached by closure in the case of the following provided prior written notice is given to the District Council (save in the case of an emergency):
 - (a) Force Majeure;
 - (b) the requirement to carry out maintenance cleaning other structural or non-structural alterations except that any works under this sub-paragraph shall be undertaken in such a way as to cause minimum disruption to the public; or
 - (c) occasional temporary closure (not exceeding one (1) day's length at any time in any calendar year) for sufficient time to assert rights of proprietorship preventing public or private rights from coming into being by means of prescription or other process of law;
 - 6.6.5 to keep the Open Space properly insured and in the event of damage pay out any insurance payments on making good such damage; and
 - 6.6.6 to maintain full insurance against all third party public liability claims in relation to the Open Space.
- 6.7 The District Council by its officers workmen or agents will be allowed access to the Open Space in order to ensure that the provisions of paragraph 6 Schedule 1 are being complied with and in the event of there being a breach by the Owners of any of their obligations under paragraph 6 of Schedule 1 the District Council may serve a default notice upon the Owners requiring any breach to be remedied within a period of twenty one (21) Working Days from the date of the said notice (or such lesser period as the District Council reasonably specifies in an emergency) and the Owners shall either remedy the breach accordingly to the reasonable satisfaction of the District Council or if the Owners do not accept the requirements of the said default notice they shall (except in the case of emergency) notify the District Council in writing whereupon PROVIDED THAT if the District Council and the Owners cannot agree a position in relation to the default notice within twenty one (21) Working Days from the date

of the Owners' written notice then a dispute shall be deemed to have arisen to be determined by an Expert and the provisions of Clause 16 shall apply.

7. TRANSPORT INFRASTRUCTURE

7.1 Prior to Commencement to prepare and submit to the District Council in writing a Transport Infrastructure Strategy in order to determine the value of any Transport Infrastructure Contribution.

7.2 Not to Commence until the Transport Infrastructure Strategy has been approved in writing by the District Council and if the Transport Infrastructure Strategy has not been approved within 8 (eight) weeks of its receipt by the District Council the matter shall be referred to the Expert in accordance with Clause 16.

7.3 If the Transport Infrastructure Study shows that a Transport Infrastructure Contribution is necessary, not to Occupy any Reserved Matters Area until the Transport Infrastructure Contribution (Index Linked) for the Dwellings within that Reserved Matters Area has been paid to the District Council.

8. GP PROVISION AND NHS FUNDING GAP

8.1 Not to Occupy any Dwellings within a Reserved Matters Area until the GP Provision Contribution for the Dwellings within that Reserved Matters Area has been paid to the District Council Index Linked for onwards transmission to the NHS Devon Integrated Care Board to be spent on a new branch surgery within the Tiverton Eastern Urban Extension or if such new branch surgery is not proceeding at the time the payment is made then the GP Provision Contribution shall be spent on the reconfiguration of Clare House surgery, Castle Place Practice and Sampford Peverell Surgery.

8.2 Not to Occupy any Dwellings within a Reserved Matters Area until the NHS Funding Gap Contribution for the Dwellings within that Reserved Matters Area has been paid to the District Council Index Linked for onwards transmission to the Royal Devon University Healthcare NHS Foundation Trust.

9. MONITORING FEE

Not to Commence until the Monitoring Fee has been paid to the District Council Index Linked.

SCHEDULE 2 – COVENANTS BY THE OWNERS TO THE COUNTY COUNCIL

The Owners covenant with the County Council as follows:

1. EDUCATION CONTRIBUTIONS

1.1 Not to Occupy more than 10% (ten percent) of the Dwellings unless and until 50% (fifty percent) of the following contributions have been paid to the County Council Index Linked:

- 1.1.1 the Special Education Provision Contribution;
- 1.1.2 the Primary Education Contribution;
- 1.1.3 the Early Years Contribution;
- 1.1.4 the Secondary School Education Contribution; and
- 1.1.5 the Education Land Contribution.

1.2 Not to Occupy more than 50% (fifty percent) of the Dwellings unless and until the balance of the following contributions has been paid to the County Council Index Linked:

- 1.2.1 the Special Education Provision Contribution;
- 1.2.2 the Primary Education Contribution;
- 1.2.3 the Early Years Contribution;
- 1.2.4 the Secondary School Education Contribution; and
- 1.2.5 the Education Land Contribution

2. WASTE AND RECYCLING CONTRIBUTION

Not to Occupy any Dwellings within a Reserved Matters Area until the Waste and Recycling Contribution for the Dwellings within that Reserved Matters Area has been paid to the County Council Index Linked.

3. SUSTAINABLE TRAVEL PACK AND GREEN TRAVEL VOUCHER

3.1 Within 12 (twelve) months of Commencement or prior to Occupation of the first Dwelling (whichever event is the sooner) to submit to the County Council for its written approval the form and content of the Sustainable Travel Pack which shall include the Green Travel Voucher.

3.2 Not to Occupy or permit or suffer the Occupation of any Dwelling unless and until the first Occupiers of that Dwelling have been provided with a Sustainable Travel Pack which shall include the Green Travel Voucher.

4. TRAVEL PLAN

4.1 Before Commencement to submit the Travel Plan to the County Council for the County Council's approval in writing.

4.2 The Travel Plan shall:

- 4.2.1 provide for the appointment of one or more travel plan co-ordinators to be responsible for sustainable travel to and from the residential uses and the non-

- residential uses within the Development having regard to paragraph 4 (four) of the Framework;
- 4.2.2 set out the targets to be achieved in relation to the residential uses and the non-residential uses within the Development having regard to paragraph 5 (five) of the Framework;
- 4.2.3 detail the monitoring requirements having regard to paragraph 6 (six) of the Framework.
- 4.3 To implement the approved Travel Plan or such updated Travel Plan as may be submitted to and approved in writing by the County Council from time to time.

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ANNEX A

FRAMEWORK TRAVEL PLAN

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IN WITNESS whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

Executed as a Deed by **WADDETON PARK LIMITED**
acting by

.....
Full Name (Director)

.....
Signature of Director

in the presence of

.....

Witness signature

Witness name:

Address:

Occupation:

Executed as a Deed by **GREENGAGE DEVELOPMENTS (SOUTH WEST) LIMITED** acting by

.....
Full Name (Director)

.....
Signature of Director

in the presence of

.....

Witness signature

Witness name:

Address:

Occupation:

Executed as a Deed by **JM & CW LIMITED** acting by

.....
Full Name (Director)

.....
Signature of Director

in the presence of

.....

Witness signature

Witness name:

Address:

Occupation:

Signed as a Deed by **JONATHAN CLAPP**

.....

in the presence of

.....

Witness signature

Witness name:

Address:

Occupation:

Signed and delivered as a Deed for and on behalf of
NATIONAL WESTMINSTER BANK PLC
By a duly authorised attorney

.....

in the presence of

.....

Witness signature

Witness name:

Address:

Occupation:

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