

Dated 16th MAY 2017

(1) PENNS MOUNT FARM LLP

In favour of

(2) TEIGNBRIDGE DISTRICT COUNCIL

- and -

(3) DEVON COUNTY COUNCIL

UNILATERAL UNDERAKING  
PURSUANT TO SECTION 106 OF  
THE TOWN AND COUNTRY PLANNING ACT  
1990

Land situated at  
at  
Land East Of Penns Mount NGR 287675 72885, Vicarage Hill,  
Kingssteignton

Appeal References: APP/P1133/W/16/3163573 and APP/P1133/W/16/3150133  
Planning Application References: 16/022222/MAJ and 15/022266/MAJ

DAC Beachcroft LLP  
100 Fetter Lane London EC4A 1BN UK  
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DX 45 London

THIS DEED OF UNDERTAKING is made the 16th day of MAY 2017

BY

(1) PENNS MOUNT FARM LIMITED LIABILITY PARTNERSHIP (LLP REGISTRATION NO OC376436) of whose registered office is Sigma House, Oak View Close, Edginswell Park, Torquay, Devon, TQ2 7FF ("Owner")

IN FAVOUR OF

(2) TEIGNBRIDGE DISTRICT COUNCIL of Forde House, Brunel Road, Newton Abbot, Devon, TQ12 4XX ("Council")

(3) DEVON COUNTY COUNCIL of County Hall, Topsham Road, Exeter, Devon EX2 4QD ("County Council")

RECITALS:

(A) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.

(B) The County Council is the local highway authority the education authority and the county planning authority for the area in which the Site is situated.

(C) The Owner is the freehold owner of the Site the details of which are as set out in the First Schedule

(D) The Applications are alternative proposals for the development of the Site

(E) The Owner submitted the Appeals to the Secretary of State against the Council's respective refusal and non-determination of the Applications

(F) The Owner has entered into this Deed to secure the performance of the planning obligations on the terms set out herein in respect of the development of the Site pursuant to any Planning Permission granted pursuant to the Appeals

NOW IT IS HEREBY AGREED as follows:

OPERATIVE PART

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	means the Town and Country Planning Act 1990 (as amended)
"Affordable Dwelling"	means each unit of Affordable Rented Housing and Intermediate Affordable Housing to be delivered on the Site pursuant to the Second Schedule
"Affordable Housing"	means (subject to the provisions of the Second Schedule housing) housing which is defined in the National Planning Policy Framework at Annex 2 as housing which includes "social rented affordable rented and intermediate housing provided to eligible households whose needs are not met by the market" including provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision and in

<p><b>"AHP"</b></p>	<p>means a registered social landlord or a local or similar authority or a housing association or similar organisation whose social landlord or such other body or organisation whose main object is the provision of Affordable Housing</p>	<p>means the plan to be submitted by the Owner and approved by the Council which identifies the size distribution and mix of the Affordable Dwellings in accordance with the Second Schedule</p>	<p><b>"Affordable Rented Housing"</b></p> <p>means rented housing let by an AHP to households who are eligible for social rented housing at an affordable rent which is not subject to the national rent regime but is subject to other rent controls that require a rent of no more than 80% of the local market rent</p>	<p><b>"Appeal"</b></p> <p>means both:</p> <ul style="list-style-type: none"> <li>the appeal to the Secretary of State with reference number APP/P1133/W/16/3163573 against non-determination of planning application 16/02222/MAJ; and</li> <li>the appeal to the Secretary of State with reference number APP/P1133/W/16/3150133 against the refusal of planning application 15/02266/MAJ</li> </ul> <p>and the term 'Appeals' shall be construed accordingly</p>	<p><b>"Application"</b></p> <p>means both:</p> <ul style="list-style-type: none"> <li>the planning application with reference 16/02222/MAJ for erection of up to 90 dwellings</li> <li>the planning application with reference 15/02266/MAJ to vary condition 24 of planning permission 14/03324/MAJ to permit building on the green open space; and</li> </ul> <p>and the term 'Applications' shall be construed accordingly</p>	<p><b>"Commencement of Development"</b></p> <p>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, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, any laying out or pegging out operations, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly</p>	<p>means Devon County Council</p>	<p><b>"County Council"</b></p>
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"County Director"	means the Head of Planning, Transportation and Environment or his appointed representative of the time being of the County Council
"Custom Build Dwelling"	means a Dwelling to be either constructed or commissioned by the person or persons who intend to live in the said Dwelling in accordance with policy WE7 and supporting text of the Teignbridge Local Plan 2013 - 2033
"Custom Build Plot"	means the plot on the Development upon which the Custom Build Dwelling is to be constructed
"Decision Letter"	means a decision letter issued by or on behalf of the Secretary of State granting the Planning Permission
"Development"	means the residential development of the Site pursuant to the Planning Permission
"Dwelling"	means a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission (and for the avoidance of doubt this shall include Affordable Dwellings, Custom Building Dwellings and Open Market Dwellings)
"Expert"	means the expert appointed pursuant to clause 15.1
"Fully Serviced"	means the utility connections provided to the boundary of each Custom Build Plot and such utilities to be commensurate to the utilities provided to the Open Market Dwellings
"HCA"	means the Homes and Communities Agency or any successor in function thereof and any alternative provider of grant funding
"HCA Scheme Development Standard"	means the minimum Design and Quality Standards of the HCA
"Index"	means the BCIS All-In Tender Price Index
"Interest"	means interest at 4% per cent above the base lending rate of the Bank of England from time to time
"Intermediate Affordable Housing"	means housing for sale or rent provided at a cost above social rent but below market rent and which meets the criteria set out in the National Planning Policy Framework Annex 2 (which can include shared equity e.g. Homebuy and other low cost homes for sale and intermediate rent but not Social Rented Housing or Affordable Rented Housing)
"Manager"	means the appointed manager for the relevant service area of the Council
"Occupation" "Occupied" "Occupy" and "Occupier"	means first occupation of a Dwelling or any part thereof 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

<b>"Open Market Dwelling"</b>	means each of the Dwellings to be constructed pursuant to the Planning Permission which are not Affordable Dwellings
<b>"Plan"</b>	means the plan attached to this Deed
<b>"Planning Permission"</b>	means a planning permission granted pursuant to the Appeals
<b>"Regulations 122 and 123"</b>	means regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended)
<b>"Reserved Matters Application"</b>	means an application for reserved matter details to be submitted by the Owner to the Council pursuant to the Planning Permission
<b>"Site"</b>	means the land against which this Deed may be enforced as shown indicatively edged red on the Plan
<b>"Sustainable Travel Voucher"</b>	shall mean a voucher to the total value of £300 per Dwelling to be provided by the Owner which shall entitle the holder to redeem the voucher on application against the cost of using sustainable travel modes (such as the cost of bus travel in the vicinity of the Site or the cost of bicycles or cycling equipment) to a value of (a) £250 per household in respect of bus travel in the vicinity of the Site and (b) £50 per household in respect of bicycle and/or cycling equipment provision
<b>"Teignbridge Local Plan"</b>	means the Teignbridge Local Plan 2013 - 2033 adopted by the Council on 6 May 2014
<b>"Travel Pack"</b>	means a package of travel information produced and to be provided to the residents of the Development by the Owner aimed at encouraging residents of the Development to use sustainable modes of transport (including a location plan of bus stops near to the Site, a bus timetable and bus route plan, cycle route map and any other information which the County Council or Owner considers appropriate towards promoting sustainable transport objectives)
<b>"Welcome Pack"</b>	shall mean a welcome pack for new residents containing a Travel Pack a Sustainable Travel Voucher and any other information, which the Owner or County Council consider appropriate towards promoting sustainable transport objectives

## 2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause paragraph schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in 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 as being 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 person deriving title through or under that party and in the case of the Council and the County Council the successors to their respective statutory functions.

### 3. LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act.

3.2 The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority (in respect of the Second Schedule) against the Owner and by the County Council as local planning authority and highways authority (in respect of the Third Schedule) against the Owner.

### 4. CONDITIONALITY

This planning obligations in this Deed are conditional upon:

- (a) the grant of the Planning Permission and
- (b) the Commencement of Development

save for the provisions of paragraph 1.2 of the Second Schedule and paragraph 1.1 of the Third Schedule (and the provisions required for their interpretation) which shall come into effect upon the grant of the Planning Permission

### 5. THE OWNER'S COVENANTS

5.1 The Owner undertakes to perform the covenants in favour of the Council as set out in the Second Schedule.

5.2 The Owner undertakes to perform the covenants in favour of the County Council as set out in the Third Schedule.

### 6. MISCELLANEOUS

6.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

6.2 This Deed shall be registrable as a local land charge by the Council.

6.3 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or

(without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

6.4 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or the part of the Site to which obligations or other provisions relate but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.5 This Deed shall not be enforceable against individual owner occupiers or tenants of the individual Dwellings nor against those deriving title from them nor against any mortgagees or chargees of any individual Dwelling or receivers appointed by any such mortgagee or chargee and as a consequence of the release given in this clause this Deed may be modified varied or released without the consent or approval of any such owner occupier tenant mortgagee chargee or receiver without them being a party to any document or deed required to effect such modification variation or release but such document or deed shall take effect as if they had been a party to such document or deed.

6.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed

6.7 Insofar as any parts of this Deed are found (for whatever reason) 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 AND including for the avoidance of doubt the finding of the Secretary of State pursuant to Clause 6.8

6.8 The planning obligations in this Deed shall only apply and be enforceable by the Council and the County Council (as applicable) if and to the extent that the Secretary of State concludes in a Decision Letter that any obligation so specified meets the requirements of Regulations 122 and 123 and without which the Planning Permission would not otherwise be granted

## 7. NOTICE OF COMMENCEMENT AND OCCUPATION

The Owner shall give the Council and County Council written notice of Commencement of Development, Occupation of 50% of the Open Market Dwellings, Occupation of 50% of the Dwellings and Occupation of 75% of the Open Market Dwellings.

## 8. WAIVER

No waiver (whether expressed or implied) by the Council or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

## 9. CHANGE IN OWNERSHIP

The Owner agrees with the Council and the County Council to give the Council and the County Council written notice of any change in ownership of any of their interests in the Site within seven days of such occurrence before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan save that such notice need not be given in the case of the

change in ownership of any individual Dwelling.

**10. INDEXATION AND INTEREST**

- 10.1 Any sum payable by the Owner and referred to in the Second Schedule and Third Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable
- 10.2 If any payment due to be paid by the Owner under this Deed is paid late interest will be payable from the date payment is due to the date of payment.

**11. VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable which shall be payable in addition to such consideration upon the production of a valid invoice therefor.

**12. JURISDICTION**

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

**13. DELIVERY**

The provisions of this Deed shall be of no effect until this Deed has been dated.

IN WITNESS whereof the Owner has executed this Deed on the day and year first before written.



# FIRST SCHEDULE

## Details of the Owner's title and description of the Site

The freehold land on the South side of Vicarage Hill, Kingsteignton known as Penns Mount and registered at the Land Registry Plymouth with title absolute under title numbers DN207847 and DN488660.

## SECOND SCHEDULE

### Covenants in favour of the Council

The Owner covenants in favour of the Council as follows:

#### 1. Affordable Housing

- 1.1 20% of the Dwellings shall be provided as Affordable Dwellings. The Affordable Dwellings shall be constructed to the HCA Scheme Development Standard. Where the total number of Affordable Dwellings to be provided includes part of a whole number then the number of Affordable Dwellings shall be rounded up where the part of the whole number is 0.5 or more and shall be rounded down where the part of the whole number is less than 0.5.
- 1.2 The Owner shall not Commence Development on any part of the Site until it has submitted to the Council for approval the Affordable Housing Units Layout and Mix Plan and once approved in writing by the Council the Affordable Dwellings shall be provided in accordance with the Affordable Housing Units Layout and Mix Plan.
- 1.3 70% of the Affordable Dwellings shall be provided as Affordable Rented Housing and 30% of the Affordable Dwellings shall be provided as Affordable Intermediate Affordable Housing. Where the total number of Affordable Dwellings to be provided as Affordable Rented Housing and/or Intermediate Affordable Housing (as the case may be) includes part of a whole number then the number of Affordable Dwellings to be provided as Affordable Rented Housing and/or Intermediate Affordable Housing (as the case may be) shall be rounded up where the part of the whole number is 0.5 or more and shall be rounded down where the part of the whole number is less than 0.5.
- 1.4 Not to Occupy more than 50% of the Open Market Dwellings without transferring to an AHP not less than 50% of the Affordable Dwellings on such terms and subject to existing encumbrances reservations and the imposition of such covenants as may be agreed between the Owner and the AHP with the AHP with the intention that the Affordable Dwellings shall at all times be occupied and managed by and in accordance with the aims and objects of the AHP.
- 1.5 Not to Occupy more than 75% of the Open Market Dwellings without transferring to an AHP all the Affordable Dwellings on such terms and subject to existing encumbrances reservations and the imposition of such covenants as may be agreed between the Owner and the AHP with the intention that the Affordable Dwellings shall at all times be occupied and managed by and in accordance with the aims and objects of the AHP.
- 1.6 Once the Owner has transferred its interest in the Affordable Dwellings to the AHP the Owner shall bear no liability for ensuring that this intention is achieved or that the AHP complies with the following obligations.
- 1.7 The AHP shall upon completion of the transfer of the Affordable Dwellings and at all times subsequently allocate each Affordable Dwelling to a person who is considered by the AHP to be in need of such accommodation and who in the opinion of the AHP is unable to afford other accommodation in the locality suitable to the needs of himself and his household and who:
  - 1.7.1 has immediately prior to such allocation been resident within the parish of Kingsteignton; or

1.7.2 has a strong local connection with the parish of Kingsteignton

and in seeking to allocate the Affordable Dwellings under this paragraph 1.7 the AHP shall (but without limiting its wider discretion in this regard) consider

1.7.3 family associations of such person or persons in the parish of Kingsteignton;

1.7.4 any periods of ordinary residence of such person or persons in the parish of Kingsteignton not immediately before the date upon which any Affordable Dwelling becomes vacant; and/or

1.7.5 whether such person or persons has to have permanent employment in Kingsteignton;

1.8 If the AHP is unable to allocate any of the Affordable Dwellings in the manner referred to in paragraph 1.7 above within 20 Working Days (from the date of the transfer referred to at paragraph 1.6 above) then the AHP shall allocate any such Affordable Dwelling by applying the procedures contained in paragraph 1.7 above but in lieu of the reference therein to the parish of Kingsteignton there shall be substituted references to the surrounding parishes and/or towns.

1.9 If the AHP is unable to allocate any of the Affordable Dwellings in the manner referred to in paragraphs 1.7 and 1.8 above within a further period of 20 Working Days then the AHP shall subject to the provisions of paragraphs 1.10 and 1.11 below allocate any such Affordable Dwelling to a person or persons ("nominee") nominated by the Manager for Housing for the time being of the Council from the Council's list of persons of priority housing need within its administrative area provided that the AHP shall have the right to reject such nominee if one of the following criteria is met:

1.9.1 the nominee has no housing need as defined within the criteria for preference within the Housing Act 1996 (as amended by the Homelessness Act 2002)

1.9.2 the nominee is not a suitable tenant as defined within the criteria of the AHP's allocations and lettings policy

1.9.3 in the case of an Affordable Dwelling to be let on a shared ownership lease the nominee does not have sufficient cash or income to purchase the required equity share

and the AHP has the right (whilst acting reasonably at all times in respect of each nomination) to reject the nominee by giving notice to the Council and such notice shall state reasons for the rejection and the Council shall have the right to nominate an alternative person.

1.10 In the circumstances set out in paragraph 1.11 below the AHP shall be released from the obligation under paragraph 1.9 above and shall be entitled to allocate any vacant Affordable Dwelling to any person who is considered by the AHP to be in need of such accommodation and who is resident in the district of Teignbridge or has a strong local connection with the district of Teignbridge or falling that within the county of Devon.

1.11 The circumstances referred to in paragraph 1.10 above are the following:  
1.11.1 if no nomination is made by the Manager for Housing within 10 working days of notification by the AHP of a vacancy  
1.11.2 if a nomination has been made by the Manager for Housing and

the nominee has failed either:

- (a) if the Dwelling is being made available on a shared ownership lease to exchange contracts for the grant of the shared Ownership lease within a six week period or
- (b) in any other case to complete a tenancy agreement or lease within a seven day period

and in these circumstances the Manager for Housing may not make a second nomination.

1.12

Upon any disposal by the AHP of the freehold reversion of any Affordable Dwelling in respect of which a shared ownership lease has been granted there shall be included in the transfer a covenant on the part of the purchaser in favour of the AHP that the said purchaser will not dispose of the said Affordable Dwelling (other than by way of mortgage or charge) without first offering to convey the Affordable Dwelling to the AHP at open market value.

1.13

The planning obligations and other provisions contained in paragraph 1 of this Second Schedule shall not apply:

1.13.1

Subject to the terms of paragraph 1.14 below to any mortgagee or chargee of the Affordable Dwellings nor to any receiver appointed by any such mortgagee or chargee to the intent that any such mortgagee chargee or receiver may deal with or dispose of any dwelling or dwellings comprising the Affordable Dwellings free from the said obligations and on the basis that any person deriving title through or under such mortgage chargee or receiver shall not be bound by any of the said obligations nor

1.13.2

to any tenant of any rented dwelling comprised in the Affordable Dwellings who exercises any right to acquire his dwelling (or any interest in it) or acquires the said rented dwelling pursuant to any voluntary sales policy of his landlord and nor to any person deriving title through or under such tenant nor

1.13.3

to any person holding a shared ownership lease of any dwelling comprised in the Affordable Dwellings from time to time in the event that such person exercises any right to staircase which may be included in such shared Ownership lease and such leaseholder acquires a 100% leasehold or freehold interest in the relevant dwelling and nor to any person deriving title through or under such leaseholder.

1.14

Any mortgagee or chargee of the Affordable Dwellings shall prior to seeking to dispose of the Affordable Dwellings pursuant to any default under the terms of its mortgage or charge give prior written notice ("Chargee's Notice") to the Council of its intention to dispose and:

1.14.1

in the event that the Council responds within two months from receipt of the Chargee's Notice indicating that arrangements for the transfer of the Affordable Dwellings can be made in such a way as to safeguard them as Affordable Housing and to secure repayment of all sums outstanding under the mortgage or charge (including all accrued principal monies, interest and reasonable and proper costs and expenses in connection with the mortgage or charge) then the mortgagee or chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer

- 2.1 In addition to the Affordable Dwellings, the Owner shall provide 5% of the total number of Dwellings as Custom Build Plots. Where the total number of Custom Build Plots to be provided includes part of a whole number then the number of Custom Build Plots shall be rounded up where the part of the whole number is 0.5 or more and shall be rounded down where the part of the whole number is less than 0.5.
- 2.2 As part of the Reserved Matters Application the Owner shall specify those plots which are to be Custom Build Plots and shall confirm that the Custom Build Plots shall be Fully Serviced prior to the Occupation of 50% of the Dwellings.
- 2.3 The Owner shall not permit Occupation of more than 50% of the Dwellings until the plots for the Custom Build Dwellings are Fully Serviced.

## 2. Custom Build Plots

- 1.14.2 if the Council does not serve its response to the Chargee's Notice served under paragraph 1.14.1 within the two months then the mortgagee or chargee shall be entitled to dispose of the Affordable Dwelling free of the restrictions set out in paragraph 1 of this Second Schedule
- 1.14.3 if the Council or any other person cannot within three months of the date of the Chargee's Notice secure such transfer then provided that the mortgagee or chargee shall have complied with its obligations under this paragraph 1.14 the mortgagee or chargee shall be entitled to dispose of the Affordable Dwelling free of the restrictions set out in paragraph 1 of this Second Schedule.
- 1.15 Any grant funding element of any capital receipts generated by the exercise of a right referred to in paragraph 1.12 above shall be recycled in accordance with the procedure set out in the Housing Corporation Capital Funding Guide (or such similar guide as may exist from time to time) and the AHP making such provision shall furnish the Council with such evidence as the Council shall reasonably require to show how that receipt has been spent.



### THIRD SCHEDULE

#### Covenants in favour of the County Council

##### 1. Sustainable Travel

- 1.1 Prior to the Commencement of Development the Owner shall submit to and obtain the written approval of the County Council to the Welcome Pack which shall be provided to the first Occupier(s) of each Dwelling and once written consent from the County Council is received the Owner shall produce the Welcome Pack.
- 1.2 The Owner is to provide a Welcome Pack for each Dwelling prior to the first Occupation of each Dwelling.

(PLEASE COMPLETE IN CAPITALS)

Occupation PHYSICIAN

1012 4TH

Address NEWTON HARBOR, NEW YORK

Name ANDREW BUCHHEIT

Signature [Signature]

WITNESS:

OC376436)

Liability Partnership (LLP Registration No

for and on behalf of Penns Mount Farm Limited

SIGNED by

[Signature]

(Signature) 16th MAY, 2017  
(Date)

Alle. R. Workman



## Amendments

Date \_\_\_\_\_

