

## WEST CLYST NOMINATION AGREEMENT

THIS NOMINATION AGREEMENT is made the                      day of                      2013

### BETWEEN:

- (1) **EAST DEVON DISTRICT COUNCIL** of Knowle, Sidmouth, EX10 8HL ("EDDC"); and
- (2) **DEVON AND CORNWALL HOUSING LIMITED** an industrial and provident society (IPS Number 31573) whose registered office is at The Mount, Paris Street, Exeter EX1 2JZ ("the Registered Provider")

IT IS AGREED THAT:

### 1 DEFINITIONS AND INTERPRETATION

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

|                            |                                                                                                                                                                                                                                                                                                                                                                             |
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| "Affordable Housing Units" | means the 2 - 9 (inclusive) Hay Webb Close, Exeter EX1 3UY which are subject to the Transfer to the Registered Provider dated 21 March 2013 and which shall be made available as Affordable Housing (as defined in the Section 106 Agreement) and which shall comprise Rented Units and Shared Equity Units as defined and delivered pursuant to the Section 106 Agreement; |
| "Common Housing Register"  | means in the case of Rented Units the register or list of applicants maintained by Devon Home Choice and in the case of Shared Equity Units the register or list of applicants maintained by the Regional HomeBuy Agent;                                                                                                                                                    |
| "Designated Person"        | means a person or persons who are registered on the Common Housing Register and deemed to be in Housing Need;                                                                                                                                                                                                                                                               |
| "District"                 | Means the administrative area of EDDC                                                                                                                                                                                                                                                                                                                                       |
| "EDDC"                     | Means East Devon District Council                                                                                                                                                                                                                                                                                                                                           |
| "Expert"                   | means an expert independent arbitrator to be appointed in accordance with clause 10.1 of this Agreement;                                                                                                                                                                                                                                                                    |
| "First Occupation"         | means First Occupation as defined in the Section 106 Agreement;                                                                                                                                                                                                                                                                                                             |
| "Housing Need"             | Means a person or family whose income does not allow them to rent or to buy at                                                                                                                                                                                                                                                                                              |

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|                     | normal market prices within the District                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| "Local Connection"  | <p>Means any;</p> <ul style="list-style-type: none"> <li>(i) persons who have been ordinarily resident in the District for a continuous period of three years immediately prior to the Affordable Housing Unit being offered to them, or for a continuous period of five years at some time in the past; or</li> <li>(ii) persons not resident within the District but who have been employed in the District (working a minimum of 16 hours per week) and need to live closer to their place of employment; or need to live in the District to take up firmly committed employment of a minimum of 16 hours per week; or</li> <li>(iii) persons who can demonstrate a close family connection to the District in that the person's mother father son daughter or sibling has been ordinarily resident in the District for a continuous period of three years immediately prior to the Affordable Housing Unit being offered to them and where a caring dependency relationship can be demonstrated.</li> </ul> |
| "Nomination Period" | means the period of eighty (80) years from the date of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| "Nomination Right"  | <p>means the right referred to in the Section 106 Agreement and conferred in clause 5 of this Nomination Agreement for EDDC to:</p> <ul style="list-style-type: none"> <li>(a) nominate Designated Persons to occupy the Affordable Housing Units during the Nomination Period; or</li> <li>(b) allow a Registered Provider to allocate Designated Persons to occupy the Affordable Housing Units in accordance with Devon Home Choice or Regional Homebuy</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

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|                         | Agent during the Nomination Period;                                                                                                                                                                                                                                                                                                                                                                                                        |
| "Parties"               | means Devon and Cornwall Housing Limited and EDDC and "Party" shall be construed accordingly;                                                                                                                                                                                                                                                                                                                                              |
| "Section 106 Agreement" | means the agreement dated 5 <sup>th</sup> December 2011 and made pursuant to Section 106 Town and Country Planning Act 1990 between (1) East Devon District Council, (2) Devon County Council, (3) Roy Anthony Stuart, Ross Stuart and Troy Stuart, (4) Patricia Margaret Bainborough and Jenny Brown, (5) BDW Trading Limited and (6) South West Water Limited which makes provision for affordable housing on land at West Clyst, Devon; |

- 1.2 Words denoting the singular only shall include the plural and vice versa
- 1.3 Words denoting one gender shall include all genders and words denoting persons shall include firms and corporations and vice versa
- 1.4 References to any statute or statutory provision includes a reference to:
  - (a) that statute or statutory provision as from time to time amended extended re-enacted or consolidated; and
  - (b) all statutory instruments or orders made pursuant to it.
- 1.5 References to any party in this Agreement shall include that party's successors in title and assigns
- 1.6 References to a body exercising statutory powers and/or functions in this Agreement shall unless otherwise specified include any successor in function
- 1.7 Every covenant in this Agreement not to do a particular thing shall be deemed to include (a covenant not to cause authorise or permit that thing to be done by another person
- 1.8 Where there is conflict between any of the provisions of this Nomination Agreement and the provisions of the Section 106 Agreement the provisions of the Section 106 Agreement shall be taken to prevail for all purposes.
- 1.9 Nothing in this Nomination Agreement shall be taken to override the Devon Home Choice or Homebuy Scheme and if any conflict arises between this Nomination Agreement and the Devon Home Choice or Homebuy Scheme then the Devon Home Choice or Homebuy Scheme shall prevail
- 1.10 The headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement