

- 1.2 References to clauses and schedules are to the clauses in and schedules to this Deed;
- 1.3 Reference to any party having an interest in land affected by this Deed shall include any successor in title of that party to that land or to any part of it;
- 1.4 Reference to any party having a statutory function referred to in this agreement shall include any successor to that statutory function;
- 1.5 Reference to any Act or Statutory Instrument shall include any subsequent amendment or re-enactment of it;
- 1.6 Where any of the Obligations set out herein apply to more than one person, their liabilities shall be joint and several; and
- 1.7 Insofar as any clause or clauses (or part thereof) of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

2 Definitions

In this Deed, except where the context otherwise requires, the following words and expressions shall have the following meanings:-

- 2.1 **"the Act"** shall mean the Town and Country Planning Act 1990 as amended;
- 2.2 **"Affordable Housing Land"** shall mean the Fully Serviced plots with the Affordable Housing Units built thereon (and their associated parking areas);
- 2.3 **"Affordable Housing Units"** shall mean eight (8) dwelling units comprising 4 Affordable Rented Dwellings (being 2 x 1 bed Dwellings which shall be flats 1 x 2 bed Dwelling and 1 x 3 bed Dwelling) and 4 Shared Ownership Dwellings (being 2 x 2 bed Dwellings and 2 x 3 bed Dwellings) or as shall otherwise be agreed in writing by the Council to be constructed on the Affordable Housing Land and being the Units numbered 3 to 10 inclusive on the Plan and to be constructed pursuant to the Permission or in accordance with any variations from the plans approved as part of the Permission and "Affordable Housing Unit" shall be construed accordingly;
- 2.4 **"Affordable Rented Dwellings"** means rented housing let by registered providers of social housing to households who are eligible for affordable rented housing at a rent of no more than 80 per cent of the local market rents;
- 2.5 **"Application"** means the application for planning permission registered by the Council on 7 October 2014 and given reference number 59/2482/14/F for mixed tenure housing, comprising 9 number open market dwellings and 8 number affordable dwellings
- 2.6 **"BCIS General Building Cost Index"** shall mean the General Building Costs Index published by the Building Costs Information Service of the Royal Institution of Chartered Surveyors;

situated for the marketing of Shared Ownership Dwellings, the assessment of the eligibility of those applying to purchase them and the direction of appropriate applicants to local schemes which best meet their needs;

- 2.19 **“Indexation”** shall mean where any contribution payable by the Owner under the terms of this Deed is not paid on the date of this Agreement then at the date that it is paid it shall be increased (only) in accordance with the following formula:

$$C = \text{£}Y \times \frac{B}{A}$$

where:

A is the value of the BCIS General Building Cost Index last published before the date hereof;

B is the value of such aforementioned Index last published before the relevant contribution has been paid;

C is the contribution to be paid after application of this formula; and

£Y is the relevant contribution to which this formula is applied

and “Indexed” shall be construed accordingly

- 2.20 **“Land”** shall mean the freehold land at Home Field, West Alvington, Devon which is shown edged red on the Plan

- 2.21 **“Local Allocations Policy”** means the policy adopted by the Council in May 2013 to ensure locally based allocation policies for affordable dwellings pursuant to section 167 (2E) of the Housing Act 1996 together with any revisions thereof

- 2.22 **“Local Connection”** means a person who:

- (a) has been resident in the relevant area for a total of 3 (three) years out of the immediately preceding 5 (five) years; or
- (b) has permanent employment in the relevant area, being permanent work with a minimum contract of 16 hours per week which has continued for 3 months preceding the nomination without a break in employment of more than 3 months, such employment to include self-employment but not seasonal employment; or
- (c) is a member of the immediate family (comprising parents, siblings and non-dependent children) of a person who has lived in the relevant area for 5 years prior to the date of nomination
- (d) has been resident in the relevant area for 6 out of the 12 months preceding the nomination

- 2.23 **“Management Company”** means a management company set up by the Owner to fund manage and maintain the Open Space or such other management entity or body as may be approved in writing by the Council;

Schedule 1 – Affordable Housing

- 1 The Registered Provider and Owner covenants to provide the Affordable Housing Units which shall remain as Affordable Housing Units subject to and in accordance with this Schedule.
- 2 Following Commencement of Development the Owner shall without delay make an offer to the Registered Provider (or a corporate body within the same group as the Registered Provider) to sell or let on a long lease to it the Affordable Housing Land and to construct thereon the Affordable Housing Units such offer to be for the consideration and on materially the same terms set out in paragraphs 3 and 4 of Schedule 1 and shall use all reasonable endeavours to exchange contracts thereof as soon as practicable but in the event that the Registered Provider (or other corporate body within the same group) is unwilling or unable to exchange contracts with the Owner for such consideration and on such terms as shall be reasonably required by the Owner within a period of three months from the date of Commencement of Development then subject to the written approval of the Council (such approval not to be unreasonably withheld or delayed) the Owner may nominate another registered provider for the purposes of contracting under Schedule 1 and such approved registered provider shall thereafter be referred to as the Registered Provider in this Deed.
- 3 Prior to the Occupation of the 4th Open Market Unit the Owner shall transfer or let on a long lease the Affordable Housing Land to the Registered Provider.
- 4 The transfer or lease of the Affordable Housing Land shall be in such form as the Owner and the Registered Provider shall agree from time to time PROVIDED that the Owner shall bear any initial cost of providing electricity, water and sewerage to the Affordable Housing Land as well as vehicular and pedestrian access to the nearest public highway (such services and access to be provided to an adoptable standard and, where available, subject to appropriate adoption agreements) PROVIDED ALWAYS THAT after the Owner have parted with any legal interest in the Affordable Housing Land the Owner shall have no liability for ensuring that this intention is achieved or that the Registered Provider complies with its stated objectives
- 5 For the avoidance of doubt, subject to paragraph 2 of this Schedule, the Open Market Units shall be available for sale by the Owner on the open market.
- 6 The Owner shall procure that:
 - 6.1 The Affordable Rented Dwellings shall be made available for letting on probationary tenancies, assured tenancies, starter tenancies or assured shorthold tenancies (or such other form of tenancy as may be approved from time to time by the HCA or a local registered provider) and shall remain as such, subject to any of the Affordable Rented Dwellings being disposed of under the Right to Acquire pursuant to Section 16 Housing Act 1996 or under any other scheme giving the occupier of that dwelling the statutory right to acquire the dwelling or under a voluntary purchase scheme permitting certain tenants of registered providers to purchase their homes pursuant to the Housing Act 1996, whereupon those dwellings will cease to be subject to the Obligations.
 - 6.2 The Shared Ownership Dwellings shall be made available for disposal upon the basis of an equity sharing scheme or shared ownership scheme.

- 6.3 Prior to Commencement of Development, the Owner will provide the Council with a plan or schedule identifying which dwellings fall within sub paragraphs 6.1 and 6.2 of this Schedule respectively
- 7 The Owner and the Council agree that (subject to paragraph 9 of this Schedule) nominations in respect of all initial and subsequent lettings of the Affordable Rented Units will be made through Devon Home Choice (or any successor scheme) subject to the Local Allocations Policy and to a person who has a Local Connection with the administrative area of the Council
- 8 In the event that despite the reasonable endeavours of the Owner the Affordable Rented Unit cannot be allocated to a person who satisfies the criteria in paragraph 7 above within 1 month (or such other period of time as may be agreed in writing by the Council such agreement not to be unreasonably withheld or drawn) of the Affordable Rented Unit being marketed the Affordable Rented Units shall be allocated through Devon Home Choice subject to the Local Allocations Policy and to a person who has a Local Connection with the administrative area of the County Council
- 9 In the event that Devon Home Choice ceases to operate or the register is discontinued an alternative allocation method shall be approved by the Council prior to any further allocations.
- 10 The Owner and the Council agree that if nominations for Affordable Rented Units are not made through Devon Home Choice any alternative method of making nominations will operate so as to ensure that the Council has the right to nominate:
- 10.1 all of the tenants to whom the dwellings are let initially; and
- 10.2 thereafter, 75% of the tenants to whom they are let.
- 11 In so far as it is lawfully able to do so the Owner shall ensure that the Shared Ownership Dwellings are disposed of only to:
- 11.1 those persons who have lived or worked in the County of Devon for three years immediately prior to their acquisition of an interest in the property under the equity sharing scheme or the shared Ownership scheme; and
- 11.2 (in the case of disposal of each Shared Ownership Dwelling upon first occupation) persons chosen by the Registered Provider from the list of eligible applicants which the Registered Provider shall request from the Homebuy Agent provided that if there shall not be sufficient suitable applicants on such list or if any suitable applicants fail to complete the purchase within 3 months of the initial offer then the Registered Provider shall be entitled to dispose of any such Shared Ownership Dwelling to persons of its own choosing who are unable to afford the purchase of suitable accommodation on the open market provided that the Registered Provider shall use all reasonable endeavours to dispose of the Shared Ownership Dwellings to persons from such list of eligible applicants.

12 Chargee Sale Provisions

For the avoidance of doubt the provisions of this Schedule shall not be binding on any Chargee
PROVIDED THAT