

Date:

2015

Parties:

- (1) **SOUTH HAMS DISTRICT COUNCIL** of Follaton House, Plymouth Road, Totnes, Devon, TQ9 5NE ("**the Council**")
- (2) **SOUTH DEVON RURAL HOUSING ASSOCIATION** (Registered Society No. IP14949R) of South Devon House, Babbage Road, Totnes TQ9 5JA ("**the Owner**")

RECITALS

- (A) The Council is the local planning authority for the purposes of the Act for the Administrative Area in which the Land is situated
- (B) The Owner owns the freehold estate in part of the Land with title absolute subject to the entries disclosed on the Property, Proprietorship and Charges Registers of title numbers DN495153 DN 658281 and DN 95240 ("**the Title**") but otherwise free from encumbrances and shown edged in red on Plan 1 **AND** it also owns the freehold estate in part of the Land with title possessory under title number DN662616 coloured blue on Plan 1
- (C) The Owner has submitted the Application to the Council
- (D) The Council is minded to grant the Permission provided that all persons with an interest in the Land enter into this Agreement

1. GENERAL DEFINITIONS

- 1.1 The general definitions in this Clause and the specific definitions in the Schedules to Agreement shall apply to this Agreement:-

"Act"	means the Town and Country Planning Act 1990
"Administrative Area"	means the District of South Hams
"Application"	means the applications for full planning permission registered by the Council for the Development and given reference number 14/0142/15/F
"BCIS Index"	means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors
"Chargee"	means any mortgagee or chargee of the Affordable Housing Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925
"Commencement of Development"	means the carrying out of a material operation on the Land pursuant to the Permission as defined in Section 56 (4) of the Act other than 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, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, the provision of contractors' offices and compounds and similar phrases such as "Commence Development" and "Commence" shall be construed accordingly

"Development"

means the development of the Land pursuant to the Permission comprising the redevelopment of the existing Brimhay bungalows at Forder Lane, Dartington TQ9 6HT to provide 32 new Dwellings:

12 x 1 bed apartments to be used as Affordable Rented Homes and

12 x houses to be used as Open Market Dwellings and

8 flats (2 x 1 bed; 5 x 2 bed and 1 x 3 bed) to be used as Supported Housing

and associated highway pursuant to the Application

"Dwelling"

means a residential unit constructed on the Land pursuant to the Permission being both Affordable Housing and Open Market Dwellings

"Expert"

means a person of not less than 10 years recent and relevant experience of the matter in dispute as may be appointed by the parties to this Agreement or in default by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute

"Index Linked"

means calculated in accordance with the indexation formula set out at Paragraph 1 of Schedule 1 to this Agreement

"Interest Rate"

means 2% above the Barclays Bank base rate calculated on a day to day basis from time to time in force

"Land"

means the land shown edged red and coloured blue on Plan 1 namely land at Brimhay Bungalows, Forder Lane, Dartington, Devon TQ9 5JA

**"Obligations" and
"Obligation"**

means the planning obligations, covenants, requirements and restrictions on the part of the Owners contained in this Agreement

"Occupation" or "Occupy" or "Occupied"	means occupation for residential use permitted by the Permission but not including occupation by personnel engaged in construction, fitting out, decoration, marketing, display or security operations
"Open Market Dwelling"	means a Dwelling which is for sale on the open market and which is not an Affordable Dwelling
"Parties"	means the Council and the Owner and all successors in title thereto
"Permission"	means such conditional planning permission as may be granted by the Council in respect of the Application
"Plan 1"	means the plan attached to this Agreement showing the Land
"Plan 2"	means the plan numbered 1416-100 Rev B attached to this Agreement showing the Permissive Footpath and landscaping
"Practical Completion"	means the issue of a certificate of practical completion by the Owner's qualified agent or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's qualified agent
"Working Day"	means any Monday to Friday (other than any statutory or bank or public holiday)

2. INTERPRETATION

In this Agreement except where the context requires otherwise:-

2.1 The singular includes the plural, the masculine includes the feminine, and vice versa

2.2 References to Clauses and Schedules are to the Clauses in and Schedules to this Agreement

SCHEDULE 2

OWNERS COVENANTS: AFFORDABLE HOUSING

In this Deed and in this Schedule the following expressions in respect of Affordable Housing shall apply **IN ADDITION** to the definitions and expressions contained in Clause 1:

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| "Advertising" | means the advertising for disposal or rent of any interest in an Affordable Dwelling on the Council's website or in Council marketing media or on the website of Help to Buy or Devon Home Choice or any other similar organisation promoting Affordable Housing |
| "Affordable Dwelling" | means a Dwelling (whether under construction or completed) which is intended to be or is let or sold as an Affordable Rented Home or as Supported Housing to Qualifying Persons in Housing Need |
| "Affordable Housing" | means housing which is available to persons who have a Housing Need or are on a low income insufficient to meet their Housing Need in the open market either to rent or purchase including Supported Housing |
| "Affordable Housing Provider" | means a body whose function or aim is to provide and manage Affordable Housing (including Affordable Housing of the type and amount proposed within the Development) including a housing association or associations or housing company or companies or a trust or trusts registered as a registered provider of social housing (as defined in Section 80 of the Housing and Regeneration Act 2008) with the Homes and Communities Agency (or successor body) and as agreed by the Council in writing (acting reasonably and without delay) |

"Affordable Housing Scheme"

means a scheme for the provision of the Affordable Rented Homes to Qualifying Persons in Housing Need which shall include (unless otherwise agreed in writing with the Council):

1. The arrangements for the provision of the 12 Affordable Rented Homes with all Affordable Rented Homes to be built prior to Occupation of the 6th Open Market Dwelling
2. The location, plot, and size of the Affordable Rented Homes
3. The name of the Affordable Housing Provider(s) (if appropriate)
4. The details of the price or rent of the Affordable Rented Homes
5. The arrangements for the transfer of the Affordable Rented Homes
6. The details of the design and quality standards to be applied to the Affordable Rented Homes

"Affordable Rent"

means a rent which is at or below 80% local market rent (including service charge) which rent shall not exceed the Local Housing Allowance Rates applicable when the Affordable Rented Home is first let and on subsequent lettings

"Affordable Rented Home"

means an Affordable Rented Home let by an Affordable Housing Provider in accordance with the provisions of this Schedule **AND** pursuant to prevailing guidance from the Department for Communities and Local Government and/or the Homes and Communities Agency at a rent (including any Service Charge) not to exceed an Affordable Rent **Save That** this rent restriction shall not apply to the 8 flats to be used for Supported Housing

"Area Local Connection"

means a Decanted Tenant or a person with a connection with the Parish of Dartington and demonstrated by a person or a member of their Household to the reasonable satisfaction of the Council as follows:

1. The person has lived in the Parish of Dartington for 3 out of the 5 years preceding the allocation
2. The person has immediately prior to the allocation lived in the Parish of Dartington for 6 out of 12 months preceding the allocation
3. Immediate family have lived in the Parish of Dartington themselves for 5 years preceding the allocation. For the avoidance of doubt The Local Government Association guidelines define immediate family as parents, siblings and non-dependent children
4. The person has permanent employment in the Parish of Dartington with a minimum contract of 16 hours per week which has been continued for the 6 months preceding the allocation without a break in employment of more than 3 months such employment to include self-employment such employment not to include employment of a casual nature
5. Any periods of ordinary residence of the person in the Parish of Dartington

"Chargee's Duty"

means the tasks and duties set out in Paragraph 3 of this Schedule

"Designated Person"

means a person with an Area Local Connection

"Devon Home Choice"

means the method agreed by the Council for the allocation of homes to Designated Persons in the administrative district of South Hams.

"Decanted Tenant"	means an existing tenant of the existing Brimhay bungalows at Forder Lane, Dartington TQ9 6HT prior to the Commencement of Development and who are to be decanted from their existing accommodation at Brimhay as part of the Development and who shall be granted new tenancies of some of the Affordable Dwellings
"Homes and Communities Agency"	means the body of that name or the body for the time being having or being responsible for providing financial assistance to bodies including Affordable Housing Providers under the Housing and Regeneration Act 2008
"Household"	means anyone who may reasonably be expected to reside with the Qualifying Person
"Housing Need"	means Decanted Tenants or persons who are homeless or threatened with homelessness or living in accommodation which in the opinion of the Council is insecure or unsuitable and/or being unable to purchase or rent reasonably suitable accommodation in the open market for property in the locality where the Affordable Rented Home is situated taking into account the person's income and capital and other financial circumstances. Accommodation may be unsuitable on the grounds of cost overcrowding unfitness lack of basic amenities or because of a person's infirmity physical or mental disability or specific social or care needs
"Housing Standards"	means homes built to the standards relating to but not limited to space, design, quality and sustainability approved in writing by the Council (such approval not to be unreasonably withheld or delayed) and for schemes provided with subsidy to the Homes and Communities Agency's "Design and Quality Standards" in force at the Commencement of Development including the need to achieve:

- The minimum Housing Quality Indicator (HQI) scores specified by the Homes and Communities Agency for the relevant tenure
- A minimum specified score against the Building for Life criteria

“Local Allocations Policy”

means the policy adopted by the Council in May 2013 to ensure locally based allocations for Affordable Housing Dwellings (pursuant to Section 167(2E) of the Housing Act 1996) together with any revisions or replacement thereof

"Letting Notice"

means a written notice which contains details of the Affordable Rented Home to be let and which shall include (unless otherwise agreed in writing with the Council) details of:

- Charges
- Any age or other the name and address of the landlord
- Address of the Dwelling
- Weekly or monthly rent
- Amount and breakdown of any Service Charge per week month or annum
- Details of any additional occupancy restrictions
- Dwelling type
- Dwelling size
- Heating type
- Details of mains services in the Dwelling

- Availability of parking space/garage
- Any disabled adaptations
- Provision of any support services

and which is delivered to the Council, addressed and marked for the urgent attention of the Head of Housing Services

“Qualifying Persons“

means person(s) who (unless otherwise agreed in writing with the Council) has/have an Area Local Connection as per the Local Allocations Policy **PROVIDED THAT** the Council reserves the right not to allow the sale or letting of an Affordable Rented Home to a Qualifying Person should the sale or letting result in an under occupancy of the Affordable Rented Home by more than 1 bedroom **OR** result in an Affordable Rented Home which has been constructed or adapted to meet the needs of a disabled person being occupied by persons without disabilities unless no appropriate Qualifying Person becomes available within 2 months of Advertising the Affordable Rented Home

“Service Charge”

means a sum that covers the contributions required from time to time for those services and facilities which are of a nature and to a standard reasonably required in connection with the Affordable Dwelling such as maintaining repairing and keeping secure the relevant Affordable Dwelling and its common parts the cleaning and lighting of common parts and the maintenance of any communal gardens or landscaping areas that directly benefit the Affordable Dwelling

“Supported Housing”

means a person with learning or other disability who requires support to maintain independent living