

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:

| | |
|----------------------------|---|
| "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 |

| | |
|---------------------|--|
| | normal market prices within the District |
| "Local Connection" | <p>Means any;</p> <ul style="list-style-type: none"> (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 (ii) persons not resident within the District but who have been employed in the District on a permanent basis for a continuous period of three years immediately prior to the Affordable Housing Unit being offered to them, and who need to live closer to their place of employment; or (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. |
| "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"> (a) nominate Designated Persons to occupy the Affordable Housing Units during the Nomination Period; or (b) allow a Registered Provider to allocate Designated Persons to occupy the Affordable Housing Units in accordance with Devon Home Choice or Regional Homebuy 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 th 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) 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

2 NOTICES

- 2.1 Unless provided for otherwise in this Agreement any notice or other communication shall be given by telephone and must be confirmed within two working days by letter for that notice or communication to be effective.

3 PROVISION OF AFFORDABLE HOUSING

- 3.1 The Registered Provider agrees to make the Affordable Housing Units available for sale to or rent by (as appropriate) Designated Persons for the duration of the Nomination Period.
- 3.2 In accordance with EDDC's obligations under Parts II Housing Act 1985 and Parts VI and VII Housing Act 1996 EDDC and the Registered Provider have agreed to enter into a programme for the nomination of Designated Persons to purchase or rent the Affordable Housing Units.

4 NOMINATION RIGHTS

- 4.1 The Registered Provider grants to EDDC the Nomination Rights in respect of the Affordable Housing Units throughout the Nomination Period and the Registered Provider covenants that it shall not allow the occupation of the Affordable Housing Units other than in accordance with this Agreement.
- 4.2 The Nomination Rights may be exercised by EDDC where an Affordable Housing Unit becomes available for occupation by reason of availability for First Occupation or arising upon any subsequent resale, re-let or assignment after the expiry of the First Occupation or any subsequent occupation of that Affordable Housing Unit.
- 4.3 EDDC may appoint the Registered Provider to act on its behalf in relation to this Agreement on such terms as to be agreed in writing from time to time

5 NOMINATION PROCEDURE

Notice of availability

- 5.1 Where an Affordable Housing Unit is available for First Occupation the Registered Provider shall provide notice in writing to EDDC no later than two weeks after the date on which the Affordable Housing Unit becomes available for First Occupation that it is available.
- 5.2 Where an Affordable Housing Unit becomes or is to become available for any reason after the expiry of the First Occupation or any subsequent occupation the Registered Provider shall provide notice in writing of the availability of that Affordable Housing Unit to EDDC no less than four weeks prior to that Affordable Housing Unit becoming available.

Nomination of Designated Persons

- 5.3 Where EDDC receives notice of the availability of an Affordable Housing Unit in accordance with clause 5.1 above it may within four weeks nominate to the Registered Provider in priority order up to three prospective Designated Persons to occupy the Affordable Housing Unit.
- 5.4 Where EDDC receives notice of the availability of an Affordable Housing Unit in

accordance with clause 5.2 above it may within four weeks nominate to the Registered Provider in priority order up to three prospective Designated Persons to occupy the Affordable Housing Unit.

Offer of accommodation to Designated Persons

5.5 The Registered Provider shall within ten working days of receipt of the names of the three Designated Persons pursuant to clauses 5.3 or 5.4 above have the reasonable right of interview and (on reasonable grounds) rejection of any prospective Designated Person so nominated by EDDC.

5.6 Where the Registered Provider:

(a) does not reject all of the prospective Designated Persons nominated by EDDC;

or

(b) where it does reject a Designated Person and it is later determined that the rejection was unreasonable,

it shall make an offer to purchase or offer to lease (as appropriate) to the highest priority Designated Person

5.7 Where EDDC has nominated a Designated Person(s) the Registered Provider shall as soon as practicable notify EDDC if:

(a) the Registered Provider rejects any Designated Person(s) nominated by EDDC;

or

(b) if any Designated Person nominated in respect of a particular Affordable Housing Unit fails to accept or refuses an offer of a lease or an offer to purchase which is made by the Registered Provider.

5.8 Where the Registered Provider rejects a Designated Person and provides notice to EDDC of that rejection in accordance with clause 5.7(a) above that notice shall include the Registered Provider's reasons for that rejection.

5.9 On receipt of a notice of rejection EDDC shall consider the reasons for rejection and if it determines that a rejection was not reasonable it shall set out its reasons for so doing in writing and immediately notify the Registered Provider of those reasons.

5.10 In the event of a dispute between the Registered Provider and EDDC relating to whether a rejection is reasonable or not the matter may be referred by either party for resolution under the terms of clause 10.

Further nominations

5.11 This clause applies where either:

(a) all Designated Persons nominated to an Affordable Housing Unit by EDDC are rejected by the Registered Provider and such reasons are considered reasonable by EDDC;

or

(b) a Designated Person refuses to accept an offer to lease or offer to sale made by the Registered Provider within four weeks of the date of that offer.

- 5.12 Where clause 5.11 applies, the Registered Provider shall notify EDDC and invite further nominations within ten working days.
- 5.13 Within ten working days of receipt of a notification received in accordance with clause 5.12 EDDC may nominate to the Registered Provider a further three prospective Designated Persons in priority order for the purposes of occupying that Affordable Housing Unit. Clauses 5.5 to 5.10 shall apply in respect of those nominations as if they were made under clause 5.3 or 5.4.

Local Connections

- 5.14 If within four weeks of the expiration of a notice served upon EDDC pursuant to clause 5.1, 5.2 or 5.12 above EDDC have failed to nominate a Designated Person the Registered Provider may let the Affordable Housing Unit free from the Nomination Rights to a person or persons with a Local Connection and in accordance with Devon Home Choice without prejudice to the Nomination Rights which shall arise upon the expiry of that person's occupation of the Affordable Housing Unit.

Fit for occupation

- 5.15 Where the Registered Provider gives notice to EDDC under clauses 5.3, 5.4 or 5.12 the Registered Provider shall certify to EDDC that the Affordable Housing Unit to which the notice relates is fit for occupation.

6 VARIATION AND WAIVER

- 6.1 The nomination procedure described in clause 5 above may be varied in respect of any single Affordable Housing Unit provided always that such variation is agreed in writing by the Parties and that no such variation shall constitute a waiver of the Nomination Rights as described in this Agreement.

7 INFORMATION

- 7.1 The Registered Provider shall provide EDDC with information concerning the occupation of the Affordable Housing Units on each anniversary of the date of this Agreement throughout the Nomination Period such information to include evidence concerning voids, sales, re-sales, lets and re-lets.
- 7.2 EDDC may request such further information from the Registered Provider concerning the occupation of the Affordable Housing Unit as it may reasonably require and such information shall be provided by the Registered Provider within twenty-eight days of receipt of a request.

8 ENFORCEABILITY OF COVENANTS

- 8.1 This Agreement is made pursuant to the Local Government (Miscellaneous Provisions) Act 1982 Section 33 and the Localism Act 2011 Section 1 and the covenants on the part of the Registered Provider shall be enforceable without any limit of time against any person deriving title from the Registered Provider in respect of its interest in the Affordable Housing Units and any person deriving title under it in respect of any lesser interest in the Affordable Housing Units as if that person had also been an original covenanting party in respect of the interest for the time being held by him provided always that the obligations contained or referred to in this

Nomination Agreement shall not apply in so far as is provided for in the Section 106 Agreement.

9 COSTS

- 9.1 On completion of this Agreement the Registered Provider shall pay EDDC's legal costs in preparing amending and completing this Agreement.

10 DISPUTES

- 10.1 In the event of a dispute or question arising between the Registered Provider and EDDC in relation to any of the provisions of this Agreement it is agreed that:
- (a) in the absence of agreement the dispute or question shall be referred to an Expert to be agreed by EDDC and the Registered Provider;
 - (b) in the absence of agreement between the Registered Provider and EDDC the Expert shall be determined upon the application of either EDDC or the Registered Provider by the President of the Royal Institution of Chartered Surveyors;
 - (c) any such reference is to be treated as a submission to arbitration within the means of the Arbitration Act 1996; and
 - (d) in the event of a reference to arbitration arising out of the unreasonable withholding of any approval required or sought under this Agreement the timescale for carrying out any required steps under this Agreement may be extended either by written agreement between the parties to the procedure or failing such agreement in accordance with such extended timescale as the Expert may deem fit.
- 10.2 In the event of such election made in clause 10.1 then any resulting finding decision or determination of the Expert shall be binding on the Registered Provider and EDDC.

11 MORTGAGEE EXCLUSION

- 11.1 The provisions of this Agreement shall:
- 11.1.1 not bind any mortgagee or chargee of a Registered Provider holding a charge on such Affordable Housing Unit(s) nor any receiver appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to a Registered Provider any of whom may deal with or dispose of any Affordable Housing Unit(s) free from the covenants and obligations set out in this Agreement
 - 11.1.2 cease to apply to any Affordable Housing Unit(s) which are managed transferred leased or otherwise disposed of by any mortgagee referred to in 11.1.1 above or by any receiver appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to a Registered Provider to the intent (for the avoidance of doubt) that any person deriving title through under or from such mortgagee or receiver and all successors in title thereafter shall not be bound by the covenants and obligations set out in this Agreement
 - 11.1.3 cease to apply to any Affordable Housing Unit(s) which a Registered Provider disposes of pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under Section 16 of the Housing Act 1996 or any

similar or substitute right as applies to the Affordable Housing Unit(s) or any of them from time to time

11.1.4 cease to apply to any Affordable Housing Unit(s) which a Registered Provider sells to a tenant pursuant to a voluntary grantscheme under Section 21 of the Housing Act 1996 or any amendment or replacement thereof

11.1.5 cease to apply to any Affordable Housing Unit(s) in respect of which a shared ownership lease has been granted or where any other shared ownership arrangements equity percentage arrangements or shared ownership trust (as the same are defined in s70 Housing and Regeneration Act 2008) have been entered into but only where a Registered Provider has disposed of 100% of the equity in such units/ under the terms of such lease arrangements or trust

IN WITNESS whereof this Agreement has been executed by the parties hereto the day and year first before written

THE COMMON SEAL of EAST DEVON)
DISTRICT COUNCIL was affixed to this)
Agreement in the presence of)

.....

Authorised Signatory

EXECUTED as a DEED by)
affixing the common seal of)
DEVON AND CORNWALL)
HOUSING LIMITED)
in the presence of:)

Authorised Signatory

.....

Authorised Signatory / Secretary

.....