

DATED 15 February 2017

**EAST DEVON DISTRICT COUNCIL**

and

**DEVON COUNTY COUNCIL**

and

**WESTCO PROPERTIES LIMITED**

**SECTION 106 AGREEMENT**

relating to

**Land at Exebank and Danby House Mudbank Lane  
Exmouth EX8 3EG**

**DEV.2-0372**

THIS DEED is made the 15<sup>th</sup> day of February 2017

**BETWEEN**

1. **EAST DEVON DISTRICT COUNCIL** of Station Road, Knowle, Sidmouth, Devon, EX10 8HL (the "District Council");
2. **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, EX2 4QD (the "Owner"); and
3. **WESTCO PROPERTIES LIMITED** incorporated and registered in England and Wales with company number 0267745 whose registered office is at 72 Paris Street, Exeter, EX1 2JZ (the "Developer")

**WHEREAS:**

1. In this Agreement the following definitions shall apply:

"The 1990 Act"	means the Town and Country Planning Act 1990 as amended
"The Application"	means the full planning application 16/1978/MFUL made to the District Council for the Development
"Commencement of Development"	means the commencement of the Development by the carrying out of any material operation (as defined in Section 56 of the 1990 Act) but for the purposes of this Deed only shall not include operations consisting of site clearance, demolition works, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial works in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the display of site notices or advertisements and the expressions "Commence", and "Commenced" shall be construed accordingly

"Dwelling"	means any dwelling or dwellings to be constructed on the Site pursuant to the Planning Permission
"The Development"	means the 'Demolition of existing buildings and erection of 36 dwellings (of which 50% are to be affordable)' as is more fully described in the Application
"Final Certificate"	means the certificate issued by the Head of Service following the Final Maintenance Inspection of the On Site Open Space confirming that the On Site Open Space has been maintained in accordance with the On Site Open Space Specification and that the plants and trees are in good health
"Final Maintenance Inspection"	means the inspection or inspections of the On Site Open Space conducted by the Head of Service to ensure that the On Site Open Space has been maintained in accordance with the On Site Open Space Scheme and that the plants and trees are in good health and to determine whether it is appropriate to issue either a Remedial Notice or the Final Certificate in the Head of Service's absolute discretion
"Head of Service"	means the Head of Service for Environment or such person in whom the Head of Service for Environment's functions are from time to time vested
"Maintenance Period"	means the period between the issue of the Practical Completion Certificate and the date the On Site Open Space is transferred to the Management Company such period being not less than twelve (12) months (or an alternative time period at the Head of Service's discretion)
"Management Company"	means the private limited company to be established by the Owner (and registered at Companies House) the purpose of which will be (amongst other things) to manage and maintain the On Site Open Space and established in accordance with the provisions in the Schedule 2 hereto
"Occupation"	means occupation of a Dwelling (except for the purposes of construction, fitting out or marketing) on a residential basis and "Occupy" or "Occupied" "Occupancy" shall where the context so requires have the same meaning

"On Site Open Space"	means the area shown shaded grey/green and labelled 'open space provision' on Plan 2 to be used and maintained as ancillary public open space (excluding conveyed residential curtilages and adopted highway) in perpetuity
"On Site Open Space Scheme"	means the scheme to be submitted pursuant to paragraph 6.1 of Part B of the Schedule 1 dealing with the following elements in respect of the On Site Open Space, namely: <ul style="list-style-type: none"> <li>- the programme and timing for the provision of all elements</li> <li>- a detailed plan and specification for the laying out and planting</li> <li>- a detailed plan for the ongoing maintenance</li> </ul>
"Plan 1"	means the plan annexed to this Deed showing the extent of the Site
"Plan 2"	means the plan annexed to this Deed showing the On Site Open Space
"Plan 3"	means the plan annexed to this Deed showing the Affordable Housing Site (as defined in Schedule 1 hereto) shown shaded in light blue and pink
"Planning Permission"	means any planning permission issued pursuant to the Application
"Practical Completion Certificate"	means the certificate or certificates issued by the Head of Service once he is satisfied that the On Site Open Space has been completed
"Private Dwelling"	means any Dwelling constructed on the Site which is intended for private sale or rent on the open market
"Remedial Notice"	means the notice or notices issued by the Head of Service either prior to or during the Maintenance Period (if appropriate) requiring the Owner to carry out any works that he considers (at his absolute discretion) to be necessary for the On Site Open Space to be provided in accordance with the approved details including (without limitation) re-planting of unhealthy dead diseased or dying plants and trees and a timescale within which those works are to be completed
"Rentcharge"	means the perpetual yearly variable estate rentcharge imposed on each

	Dwelling to cover the annual costs of complying with the obligations under the On Site Open Space Scheme such rentcharge to include the administrative and management costs of the Management Company once established in consideration of the Management Company covenanting to perform its obligations under the On Site Open Space Scheme PROVIDED ALWAYS that the rentcharge on each individual Dwelling shall be calculated at a rate proportionate to the Gross Internal Area (GIA) of each individual Dwelling (GIA calculated in accordance with the RICS measurement guidance on completion of the Development and prior to first Occupation)
"Strategic Lead"	means the Strategic Lead – Planning Strategy and Development Management or such person in whom the Strategic Lead's Development Management functions are from time to time vested
"Site"	means the land shown edged red on the Plan and known as land at Exebank and Danby House, Mudbank Lane, Exmouth such land registered at HM Land Registry under title number DN513913
"Working Day"	means a weekday which is neither a statutory bank holiday, nor Good Friday, nor any day falling between 22 December in any year and 2 January in the following year (both dates inclusive)

## Background

- 1.1. The District Council is the Local Planning Authority for the District of East Devon for the purposes of the 1990 Act for the area in which the Site is situated and is the authority by whom the planning obligations in this Deed shall be enforceable.
- 1.2. The Owner is the proprietor of the Site registered at H M Land Registry under Title Number DN513913.
- 1.3. The Developer has entered into an agreement to purchase the Site dated 18<sup>th</sup> May 2016.

- 1.4. The Planning Application was submitted by DCH Group on 18<sup>th</sup> August 2016.
- 1.5. The parties hereto in accordance with the provisions of section 106 of the 1990 Act as amended, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011, section 2 of the Local Government Act 2000 and any other enabling powers have agreed to enter into planning obligations the terms of which are contained in this Deed.

**IT IS HEREBY AGREED AND DECLARED that:**

**2. General**

- 2.1. This Deed is a planning obligation binding the Site made in pursuance of section 106 of the 1990 Act and is enforceable by the District Council under section 106 of the 1990 Act against the Owner and its successors in title.
- 2.2. 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, schedule or recital in this Deed.
- 2.3. This Deed is conditional on the grant of Planning Permission and Commencement of Development save for any covenant restriction or obligation expressed to be required to be complied with prior to the Commencement of Development and the provisions of clauses 1, 2, 5 and 9 which shall take effect from the date of this Deed.
- 2.4. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.5. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons including companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.6. Where more than one person is obliged to observe or perform an obligation, the obligation can be enforced against all such persons jointly and against each individually unless there is an express provisions otherwise.

- 2.7. 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 validly from it.
- 2.8. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party, and references to any local authority shall include the successors to its various statutory functions.
- 2.9. This Deed shall cease to have effect (insofar as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn (without the consent of the Owner) or if it is modified by statutory procedure or expires prior to Commencement of Development.
- 2.10. The contents of this Deed shall be registerable by the District Council as a Local Land Charge pursuant to section 106(11) of the 1990 Act.

### **3. Service of Notices**

- 3.1. Any notice, consent or other document to be served under this Deed shall be in writing and served:
- 3.1.1. by hand or by a next Working Day delivery service;
  - 3.1.2. to the principal address or registered office (as appropriate) of the relevant party or such other address as may be notified in writing from time to time.
- 3.2. For the avoidance of doubt, service via email is not acceptable for the purposes of this Deed.
- 3.3. Any notice, consent or other document shall be deemed to have been duly received:
- 3.3.1. if despatched by first class pre-paid post or other next Working Day delivery service on the second Working Day after posting; or
  - 3.3.2. if despatched by hand delivery on signature of a delivery receipt provided that if delivery occurs before 9:00 am on a Working Day the notice will be deemed to have been received at 9:00 am on that day and if delivery occurs after 5:00 pm on

Working Day or on a day which is not a Working Day the notice will be deemed to have been received at 9:00 am on the next Working Day.

- 3.4. If the Owner fails to serve any notice or other document required under this Deed within the timeframes specified herein then any period within which the District Council is required to give a response thereto shall not commence before the date that the District Council notifies the Owner in writing of its breach to serve the notice or other document.

4. **Liability for future breaches of Deed**

No person shall be liable for any breach of the obligations or covenants contained within this Deed which occurs after that person has parted with their entire interest in the Site or the part of it in respect of which the breach occurs but without prejudice to any liability for any subsisting breach arising prior to parting with such interest.

5. **Legal Fees**

The Developer shall, prior to the completion hereof, pay the District Council's reasonable legal costs in connection with the preparation and completion of this Deed.

6. **Owner's Covenants**

The Owner covenants with the District Council to observe and perform the covenants obligations and restrictions in the Schedule 1 and Second Schedule hereto.

7. **Miscellaneous**

- 7.1. No provisions of this Deed are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to this Deed, except that the application of that Act shall not prevent all or any of the future successors in title or to the statutory functions of any of the parties to this Deed from being able to benefit from or to enforce any of the obligations in this Deed.

- 7.2. Where the agreement approval, consent or expression of satisfaction is required by one party from another party under the terms of this Deed, such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 7.3. Any such agreement, approval, consent or expression of satisfaction shall unless otherwise stated in this Deed be given on behalf of the District Council by the Strategic Lead.
- 7.4. The District Council will upon the written request of the Owner at any time after the obligations of the Owner under this Deed have been fulfilled issue written confirmation of the same, and thereafter cancel all related entries in the Register of Local Land Charges.
- 7.5. Insofar as any clause or clauses in 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.
- 7.6. 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 an appeal) after the date of this Deed.

**8. Waiver**

No waiver (whether express or implied) by any party to this Deed of any breach or default in performing or observing any of the provisions of this Deed by any other party shall constitute a continuing waiver, and no such waiver shall prevent the party granting it (or implied to have done so) from enforcing any of the relevant provisions or from acting upon any subsequent breach or default.

**9. Jurisdiction**

This Deed is governed by and interpreted in accordance with the law of England and Wales; and the County Court in whose district the Site is situated shall have full jurisdiction to hear and determine proceedings arising from or relating to this Deed or for the enforcement of its terms or any of them.

## **10.5.20 Developer Covenant**

- 10.1. The Developer hereby acknowledges and agrees that it will also be bound by the Obligations entered into by the Owner and herein contained in the event that it takes possession of the Site or Commences Development or procures the Commencement of Development.
- 10.2. The Developer shall keep the Owner indemnified against all liabilities, proceedings, costs, claims, demands and expenses incurred or arising from this Deed in the event that it takes possession of the Site or Commences Development or procures the Commencement of Development.

**ara**  
architecture

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# **SCHEDULE 1** **COVENANTS WITH THE DISTRICT COUNCIL**

## **Part A: Affordable Housing Provisions**

The Owner hereby covenants with the District Council as follows:-

### **1. Definitions**

For the purposes of this Schedule the following words will have the following meanings:

"Affordable Housing"	means units of subsidised housing within the meaning of National Planning Policy Framework or any Government policy statement or Circular that replaces it
"Affordable Rented Dwelling"	means a Dwelling available to those whose needs are not adequately served by the commercial housing market at a rent level of up to 80% of local market rent to include the service charge (where applicable) but which do not exceed the Local Housing Allowance as determined by the Valuation Office for the area and which complies with the definition of affordable rented housing in Annex 2 of the National Planning Policy Framework such rent level to be agreed in writing with the District Council
"Affordable Housing Units"	means the 9 Dwellings to be provided as Affordable Housing comprising nine (9) Affordable Rented Dwellings to be provided in accordance with the provisions of this Schedule on the Affordable Housing Site
"Affordable Housing Scheme"	means the scheme for securing the provision of the Affordable Housing Units on the Affordable Housing Site in accordance with the Application as hereinafter defined more particularly the location of and mix of unit types and the proposed timetable for such provision
"Affordable Housing Site"	means the land to accommodate the Affordable Housing Units as shown shaded in light blue and pink in Plan 3 annexed hereto

"Chargee"	means any mortgagee or chargee or any receiver or manager including an administrative receiver (appointed pursuant to the Law of Property Act 1925 or otherwise) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including housing administrator
"Common Housing Registers"	means in the case of Affordable Rental Dwellings the register or list of applicants maintained by "Devon Home Choice"
"Design and Quality Standards"	means that the Affordable Housing Units shall be constructed: <ul style="list-style-type: none"> <li>(i) strictly in accordance with the plans and elevations deposited and as approved by the District Council as part of the Planning Permission; and</li> <li>(ii) to comply with minimum Housing Quality Indicator (HQI) standards as defined by the HCA</li> </ul>
"Designated Person"	means a person or family who is registered on the Common Housing Register or Housing Provider's waiting lists and is in Housing Need
"District"	means the administrative area of the East Devon District Council
"HCA"	means the Homes and Communities Agency or any other body for the time being having or being responsible for providing financial assistance to bodies including Housing Providers for the purpose of improving the supply and quality of housing in England
"Housing Need"	means the circumstances unless provided to the contrary in this Agreement where a household is currently occupying accommodation that is sub standard or unsuitable for its requirements and which has an income that is too low either to buy or rent accommodation appropriate to their circumstances on the open market
"Housing Provider"	means a housing association or similar organisation or a social landlord in

	<p>each such case registered with the HCA under Section 1 of the Housing Act 1996 or such other body or organisation whose main object is the provision of Affordable Housing as approved by the District Council (and for the avoidance of doubt the Registered Provider is a Housing Provider approved by the District Council)</p>
"Local Connection"	<p>means a connection to the Parish of Exmouth demonstrated by one or more of the following in priority order:</p> <ol style="list-style-type: none"> <li>(1) being permanently resident therein for a continuous period of at least three (3) years out of the five (5) years immediately prior to being offered the Affordable Housing Unit; or</li> <li>(2) being formerly permanently resident therein for a continuous period of five (5) years; or</li> <li>(3) having his or her place of permanent work (normally regarded as 16 hours or more a week and not including seasonal employment) therein for a continuous period of at least twelve (12) months immediately prior to being offered the Affordable Housing Unit; or</li> <li>(4) having a connection through a close family member (normally mother, father, brother, sister, son or daughter) where the family member is currently resident therein and has been so for a continuous period of at least five (5) years immediately prior to being offered the Affordable Housing Unit and where there is independent evidence that the family member is in need of support or can give support; or</li> <li>(5) such person as is prescribed by the Allocation of Housing (Qualification Criteria for Right to Move) (England) Regulations 2015</li> </ol> <p>and in the event that no-one satisfying the above requirements can be found within the Parish of Exmouth then the process shall be repeated considering persons from the following areas in the following priority order:</p> <ol style="list-style-type: none"> <li>(1) the Neighbouring Parishes,</li> <li>(2) persons from the District</li> </ol>
"Neighbouring Parishes"	<p>means the parishes of Lympstone, East Budleigh and Budleigh Salterton</p>

"Nomination Agreement"	means the agreement or an agreement substantially in the form of the one appended to this Deed in the Third Schedule and which governs the ability of the District Council to nominate occupiers for the Affordable Housing Units
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## 2. Affordable Housing Provision

- 2.1. Not to carry out or otherwise permit the Commencement of Development unless and until the Affordable Housing Scheme has been submitted to and approved in writing by the District Council.
- 2.2. To construct and provide the Affordable Housing Units in accordance with the Affordable Housing Scheme approved pursuant to paragraph 2.1 above and in accordance with the Design and Quality Standards.
- 2.3. Notwithstanding the requirements of paragraphs 2.1 and 2.2 above to have transferred the freehold interest or leasehold (of a minimum period of 80 years) interest in the Affordable Housing Site to the Housing Provider and to have completed all of the Affordable Housing Units prior to the Occupation of the Thirteenth (13<sup>th</sup>) Private Dwelling and not to permit Occupation of the Thirteenth (13<sup>th</sup>) Private Dwelling until such transfer has occurred and all of the Affordable Housing Units have been completed and are available for Occupation.
- 2.4. The Affordable Housing Units shall only be used for the purpose of providing Affordable Housing and shall be so used in perpetuity (here meaning for a minimum period of 80 years).
- 2.5. The transfer of the Affordable Housing Site and / or the Affordable Housing Units to the Housing Provider shall be in such form as the Owner shall reasonably require to ensure that the Affordable Housing Site and / or the Affordable Housing Units are subject to the same rights and easements and covenants (both restrictive and positive) as are to be granted and reserved in sales of the Private Dwellings.
- 2.6. To ensure that the Affordable Housing Site and / or Affordable Housing Units together with their respective curtilages will abut a publicly adopted highway or roads and footways the subject of a bonded road making agreement under section 38 of the Highways Act 1980 (or enjoy ready and free access thereto via an intervening private drive) and have ready and free

access to all usual domestic services needed for residential occupation of such Affordable Housing Units without the Housing Provider having to make any payment either to the Owner or any third party for any right of way or right to use such services or connect to them

2.7. The transfer of the Affordable Housing Site and the Affordable Housing Units to the Housing Provider will contain a declaration that the Affordable Housing Site is so transferred subject to and with the benefit of the terms of this Deed (and any supplemental agreement or variation thereto).

2.8. To give at least 10 Working Days written notice to the District Council prior to Occupation of the Thirteenth (13<sup>th</sup>) Private Dwelling.

2.9. To give one months' written notice to the District Council of the date when the Affordable Housing Units (or any of them) shall be available for Occupation.

### **3. Restrictions on Occupation of Affordable Housing Units**

3.1. Not to permit Occupation of any Affordable Housing Units unless and until the Owners and/or the Housing Provider (as appropriate) has entered into the Nomination Agreement with the District Council for the purposes of affording the District Council with a Nomination Right as defined in the Nomination Agreement.

3.2. The Owners and/or Housing Provider as appropriate shall not at any time permit the Affordable Housing Units to be Occupied other than as Affordable Housing by a Designated Person (and their dependents) who has a Local Connection

### **4. Release**

4.1. None of the obligations and restrictions referred to in Part A of this Schedule 1 will be enforceable in respect of the Affordable Housing Site or any Affordable Rented Dwelling as appropriate against any Chargee or against any person or body deriving title from such Chargee PROVIDED ALWAYS that the Chargee has complied with its obligations contained in paragraphs 4.2 below.

4.2. The Chargee shall prior to seeking to dispose of the Affordable Housing Site or any Affordable Housing Unit(s) pursuant to any default under the terms of its mortgage or charge:

- (i) give prior notice in writing to the District Council of its intention to dispose (the "Chargee's Notice");
- (ii) in the event that the District Council responds within four weeks from receipt of the Chargee's Notice indicating that arrangements for the transfer of the Affordable Housing Site or Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing (the "District Council's Response") then the Chargee shall cooperate with such arrangements and use its reasonable endeavours to secure such transfer,
- (iii) in the event the District Council does not provide the District Council's Response within 4 weeks from receipt of the Chargee's Notice, then the Chargee shall be entitled to dispose of the Affordable Housing Site or Affordable Housing Unit(s) free of the restrictions set out in Part A of the Schedule 1 to this Deed which restrictions shall determine absolutely;
- (iv) in the event that the District Council or any other person cannot within eight weeks of the service of the District Council's Response secure a completed transfer then provided that the Chargee shall have complied with its obligations under paragraph 4.2(ii) above the Chargee shall be entitled to dispose of the Affordable Housing Site or Affordable Housing Unit(s) free of the restriction set out in Part A of the Schedule 1 to this Deed which restrictions shall determine absolutely.

PROVIDED THAT such Chargee shall not be under any obligation to dispose of the Affordable Housing Units or Affordable Housing Site for any sum less than the monies outstanding pursuant to the said mortgage or charge inclusive of interest, costs and charges

4.3. In relation to any Affordable Housing Units the Affordable Housing obligations in this Deed shall not apply to:

4.3.1 any sale to a tenant in exercising their right to acquire or purchase under a statutory power or to the successors in title to any such persons.

**5. Provision of Information**

The Housing Provider will on request from the District Council allow the District Council to inspect or provide to the District Council such information as is necessary in order to enable the District Council to verify that the Housing Provider has let the Affordable Housing Units in accordance with the terms of this Schedule.

## **Part B: On Site Open Space**

6. The Owner hereby covenants with the District Council as follows:-

- 6.1. Prior to Commencement of the Development the Owner shall submit the On Site Open Space Scheme to the Council for its approval and the Owner shall not Commence the Development until the On Site Space Scheme has been approved by the Council.
- 6.2. To provide the On Site Open Space in accordance with the approved On Site Open Space Scheme.
- 6.3. Within seven (7) days of completion of the On Site Open Space pursuant to paragraph 6.2 above the Owner shall notify the Head of Service in writing of details of their designated contact for queries regarding the On Site Open Space and requesting an inspection following which the Head of Service shall issue either the Practical Completion Certificate or a Remedial Notice which shall be complied with within 28 Working Days (or such longer period as may be agreed in writing by the Head of Service) following which the Owner shall request a further inspection by the Head of Service following which the Head of Service shall issue a Practical Completion Certificate or a Remedial Notice and such process is to be repeated until the Practical Completion Certificate is issued.
- 6.4. Following the issue of the Practical Completion Certificate the Owner shall maintain the On Site Open Space in accordance with the On Site Open Space Scheme to the satisfaction of the Council for the Maintenance Period (or such shorter period as may be agreed to by the Head of Service) and during that time shall comply with any Remedial Notice reasonably served by the Council.
- 6.5. If the Owner does not comply with the requirements of any Remedial Notice to the Council's satisfaction the Council may, after giving the Owner 14 Working Days' written notice of the works it intends to carry out and the Owner failing to carry out the works within that period (or such longer period as may be agreed by the Head of Service in writing), enter upon the Site and carry out those works at the Owner's cost.

- 6.6. One month prior to the expiry of the Maintenance Period (or such shorter period as agreed to pursuant to paragraph 6.4 above) the Head of Service will carry out the Final Maintenance Inspection following which the Head of Service shall either issue the Final Certificate for the Open Space or a Remedial Notice which shall be complied with within 28 Working Days (or such longer period as may be agreed by the Head of Service in writing) following which the Owner shall request a further inspection by the Head of Service following which the Head of Service shall issue the Final Certificate or a Remedial Notice and such process is to be repeated until the Final Certificate is issued.
- 6.7. Not to Occupy or permit Occupation of the last Dwelling prior to issue of the Practical Completion Certificate.
- 6.8. Following the issue of the Final Certificate for the On Site Open Space and in any event prior to Occupation of the last Dwelling to transfer the On Site Open Space to the Management Company in accordance with the Second Schedule hereto and thereafter the On Site Open Space shall be maintained in perpetuity (which for the purpose of this Deed means a minimum of 80 years) in accordance with the maintenance regime set out in the On Site Open Space Scheme subject to any agreed and documented variations over time.
- 6.9. Not to permit Occupation of the last Dwelling unless and until the On Site Open Space has been transferred to the Management Company in accordance with paragraph 6.8 above.

## **SCHEDULE 2**

### **Management Company Provisions**

#### **General**

1. Subject to paragraph 4 of this Schedule not to use or Occupy or cause or suffer or permit the use or Occupation of any of Dwellings until such time as the Owner has at its own expense:
  - 1.1. set up and registered the Management Company as a private limited company incorporated and registered in England at Companies House;
  - 1.2. ensured that the Management Company has at least two named persons as Directors and one Company Secretary that are eligible to be appointed and (if required) removed and replaced by the members of the Management Company;
  - 1.3. procured that the Management Company appoints a named manager ("the MC Manager") responsible for liaising with the Council and owners and occupiers of the Dwellings;
  - 1.4. procured through the Management Company documentation (as set out in paragraph 2.2 below) that the Management Company will:
    - (a) hold at least one (1) public meeting per year;
    - (b) give a minimum of seven (7) days' written notice of each meeting to the Council, all Management Company members and any other interested parties who have expressed interest in receiving notice of such meetings
  - 1.5. procured that the Management Company is responsible for the upkeep and on-going maintenance of the On Site Open Space in accordance with the On Site Open Space Scheme and the obligations in Part B Schedule 1 to this Deed.

#### **Management Company Documents**

2. Subject to paragraph 4 of this Schedule Not to use or Occupy or cause or suffer or permit the use or Occupation of any of Dwellings until such time as the Owner has provided the Council with the following information and documents relating to the Management Company:

- 2.1. a copy of the company Certificate of Incorporation and Articles of Memorandum;
- 2.2. a copy of its rules (including the requirements at paragraph 1.4 above) regulations; and operation manuals;
- 2.3. details of the names and addresses of all directors, members and the company secretary;
- 2.4. full and sufficient details of the financial resources available to the Management Company including evidence that there are adequate mechanisms in place to undertake the maintenance of On Site Open Space in perpetuity (which for the purposes of this Deed means a period of at least 80 years) in accordance with the On Site Open Space Scheme.

#### Operation of the Management Company

3. Subject to paragraph 4 of this Schedule the Owner hereby covenants to:
  - 3.1. ensure that upon the transfer of any Dwellings that all freehold and registerable leasehold owners of the Dwellings are members of the Management Company and eligible to vote at any Annual General and Special Company Meetings (as defined under the Management Company's Articles of Association);
  - 3.2. ensure that the Housing Provider is a member of the Management Company;
  - 3.3. ensure or procure to ensure that the MC Manager's contact details including his name address and telephone number are updated when changed and notified to the Council annually thereafter and distributed to the owners and occupiers of all of the Dwellings on the Site;
  - 3.4. ensure that the Rentcharge is secured on the first transfer or disposal of any Dwelling and that covenants are contained on the transfer to procure that on any subsequent transfer or disposal the Rentcharge is secured in favour of the Management Company;
  - 3.5. provide evidence to the Council of the transfer of the On Site Open Space to the Management Company pursuant to paragraph 6.8 of Part B of Schedule 1 within 20 Working Days of registration at the Land Registry.

4. Should the Management Company be the Housing Provider only paragraphs 1.3, 1.4, 1.5, 3.3. and 3.4 of this Schedule shall apply.



# IMPORTANT NOTES

1. This drawing must be reported to RPS  
2. A structure before any building.  
3. Agreed dimensions only are to be used.  
4. The drawing is not to be used for any other purpose.  
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10. The drawing is not to be used for any other purpose.

DO NOT SCALE OFF THIS DRAWING

## KEY



Authorised Signatory/Secretary

Authorised Signatory



5106 AFFORDABLE TENURE PLAN

scale 1:500 @ A1  
date Jan 2017  
drawing no. 7164 - 332

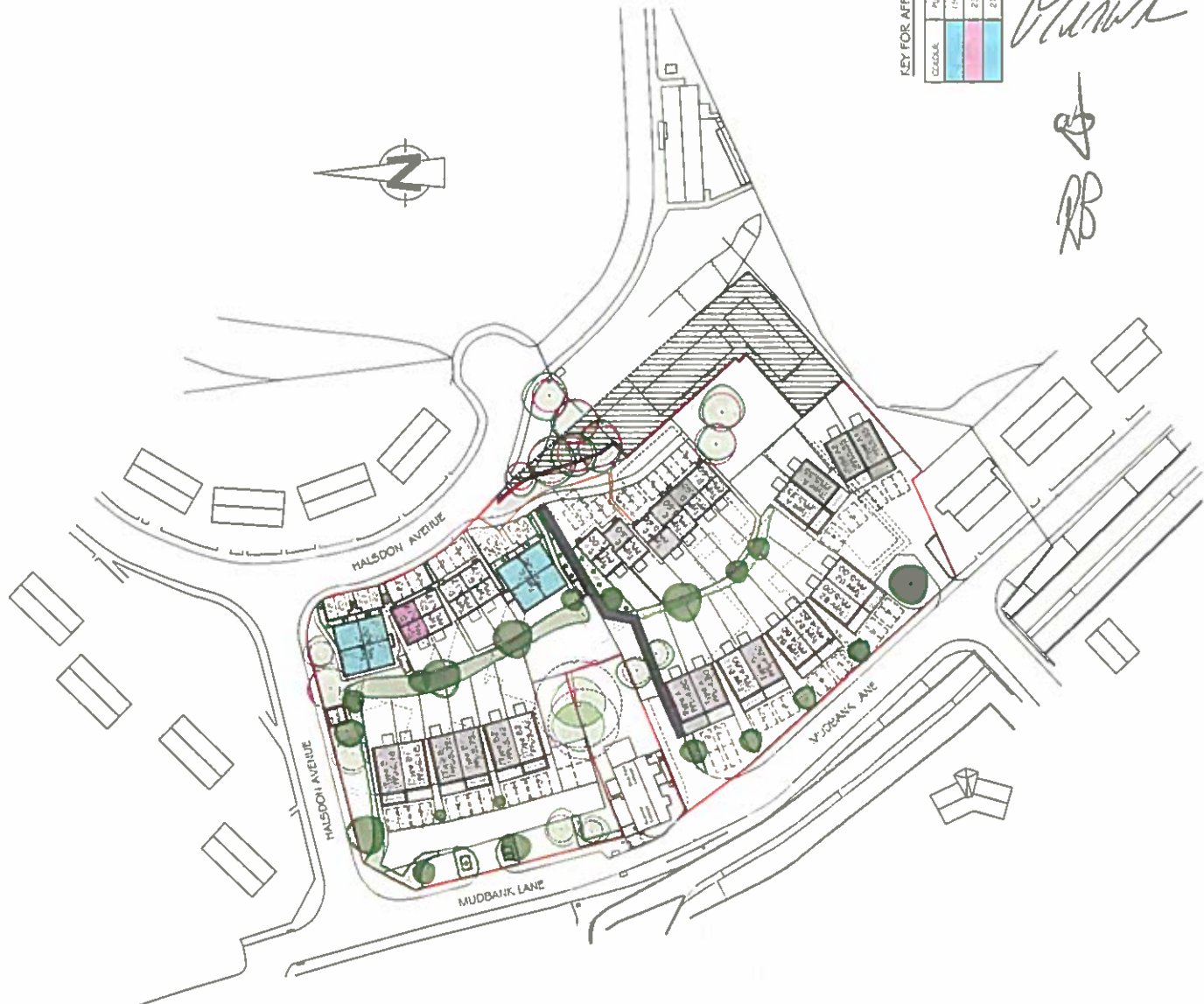
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Tel: (01365) 271819 Fax: (01365) 270386  
e-mail: info@ara-architecture.co.uk

## KEY FOR AFFORDABLE TENURE

CLASS	PLOT NUMBER	APPLICABLE TENURE SIZE
1	1-12	1000
2	13-24	2500
3	25-30	1000

Mark

RB



ATG



### SCHEDULE 3

#### Draft Nomination Agreement

#### NOMINATION AGREEMENT IN RESPECT OF LAND

THIS NOMINATION AGREEMENT is made the                      day of                      2017

#### BETWEEN:

- (1) **EAST DEVON DISTRICT COUNCIL** of Knowle, Sidmouth, EX10 8HL ("EDDC"); and
- (2) **DEVON AND CORNWALL HOUSING LIMITED** registered under the Co-operative and Community Benefit Societies Act 2014 (Number & Suffix: 7096) whose registered office is 72 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 9 units which are subject to the Transfer to the Registered Provider dated [XX XX 2017] and which shall be made available as Affordable Housing (as defined in the Section 106 Agreement) and which shall comprise Affordable Rented Dwellings as defined and delivered pursuant to the Section 106 Agreement and Affordable Housing Unit shall be construed accordingly
"Chargee"	means a means any mortgagee or chargee or any receiver or manager including an administrative

	receiver (appointed pursuant to the Law of Property Act 1925 or otherwise) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security on disposal or any administrator (howsoever appointed) including housing administrator
"Common Housing Register"	means in the case of Affordable Rented Dwellings the register or list of applicants maintained by Devon Home Choice
"Designated Person"	means a person who is in Housing Need within the District and who is registered on the Common Housing Register
"District"	means the administrative area of EDDC
"EDDC"	means East Devon District Council
"Eligible Person"	means a person who is a Designated Person who has a Local Connection
"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"	where a household is currently occupying accommodation that is sub standard or unsuitable for its requirements and which has an income that is too low either to buy or rent accommodation

	appropriate to their circumstances on the open market
"Local Connection"	<p>means a connection to the Parish of Exmouth demonstrated by one or more of the following in the following priority order;</p> <ol style="list-style-type: none"> <li>(1) being permanently resident therein for a continuous period of at least three (3) years out of the five (5) years immediately prior to being offered the Affordable Housing Unit; or</li> <li>(2) being formerly permanently resident therein for a continuous period of five (5) years; or</li> <li>(3) having his or her place of permanent work (normally regarded as 16 hours or more a week and not including seasonal employment) therein for a continuous period of at least twelve (12) months immediately prior to being offered the Affordable Housing Unit; or</li> <li>(4) having a connection through a close family member (normally mother, father, brother, sister, son or daughter) where the family member is currently resident therein and has been so for a continuous period of at least five (5) years immediately prior to being offered the Affordable Housing Unit and where there is independent evidence that the family member is in need of support or can give support</li> <li>(5) or such person as is prescribed by the Allocation of Housing (Qualification Criteria for Right to Move) (England) Regulations 2015</li> </ol>

	and in the event that no-one satisfying the above requirements can be found within the Parish of Exmouth then the process shall be repeated considering persons from the Neighbouring Parishes and in the event that no-one satisfying the above requirements can be found from the Neighbouring Parishes then the process shall be repeated considering persons from the District of East Devon
"Neighbouring Parishes"	means the parishes of Lympstone, East Budleigh and Budleigh Salterton
"Nomination Period"	means the period of eighty (80) years from the date of this Agreement
"Nomination Right"	means the right implied under paragraph 3.1 of Schedule 1 of 106 Agreement and conferred in clause 4 of this Nomination Agreement for EDDC to:  (a) nominate Eligible Persons to occupy the Affordable Housing Units during the Nomination Period; or  (b) allow the Registered Provider to allocate Eligible Persons to occupy the Affordable Housing Units in accordance with Devon Home Choice 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  and entered into pursuant to Section 106 Town and Country Planning Act 1990 between (1) East Devon

	District Council (2) Devon County Council (3) Westco Properties Limited and (4) Devon and Cornwall Housing Limited which makes provision for affordable housing on land at Exebank and Danby House Mudbank Lane Exmouth EX8 3EG
"Working Day"	means a weekday which is neither a statutory bank holiday, nor Good Friday, nor any day falling between 22 December in any year and 2 January in the following year (both dates inclusive)

- 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 and if any conflict arises between this Nomination Agreement and the Devon Home Choice then the Devon Home Choice 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 Five 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 rent by Eligible 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 Eligible 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 (excluding to facilitate decants or mutual exchange) to those who meet the Local Connection criteria
- 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 ten Working Days 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 save in the case of an unforeseen vacancy in which case the Registered Provider shall provide notice in writing as soon as reasonably practicable from becoming aware of the that Affordable Housing Unit becoming available

### **Nomination of Eligible 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 twenty Working Days nominate to the Registered Provider in priority order up to three prospective Eligible 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 Eligible Persons to occupy the Affordable Housing Unit

#### **Offer of accommodation to Eligible Persons**

- 5.5. The Registered Provider shall within ten Working Days of receipt of the names of the three Eligible Persons pursuant to clauses 5.3 or 5.4 above have the reasonable right of interview and (on reasonable grounds) rejection of any prospective Eligible Person so nominated by EDDC
- 5.6. Where the Registered Provider:
- (a) does not reject all of the prospective Eligible Persons nominated by EDDC; or
  - (b) where it does reject a Eligible 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 Eligible Person
- 5.7. Where EDDC has nominated a Eligible Person(s) the Registered Provider shall as soon as practicable notify EDDC if:
- (a) the Registered Provider rejects any Eligible Person(s) nominated by EDDC;  
or
  - (b) if any Eligible 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 an Eligible 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 Eligible 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) an Eligible 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 Eligible 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.
- 5.14. If within twenty Working Days 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 Eligible Person the Registered Provider may let the Affordable Housing Unit free from the Nomination Rights to any Eligible Persons 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 5.1, 5.2 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 Working Days of receipt of a request or such longer period as may be agreed in writing

## **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 subject to clause 11 below 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 reasonable and proper 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;
- (a) any such reference is to be treated as a submission to arbitration within the means of the Arbitration Act 1996; and
- (b) 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 arbitration procedure; or
- (c) 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. EXCLUSIONS**

- 11.1. Nothing in this Agreement shall bind:

11.1.1. a Chargee or any person or body deriving title from such Chargee; or

11.1.2. any sale to a tenant in exercising their right to acquire or purchase under a statutory power or to the successors in title to any such persons

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 by DEVON AND )  
CORNWALL HOUSING by )  
affixing its common seal )  
)  
)

in the presence of:

.....  
Authorised Signatory

.....  
Authorised Signatory / Secretary  
.....

IN WITNESS whereof the parties have executed this document as a Deed the day and year first before written

**EXECUTED AS A DEED**

by affixing the Common Seal of  
**EAST DEVON DISTRICT COUNCIL**

in the presence of :-

  
Authorised Signatory



19503

**EXECUTED AS A DEED**

by affixing the Common Seal of  
**DEVON COUNTY COUNCIL**

in the presence of :-

Authorised Signatory

Document number: 47823

  
**A Duly Authorised Officer**



  
EXECUTED AS A DEED by )

WESTCO PROPERTIES LIMITED )

acting by )

  
Authorised Signatory/Secretary

Director

  
Authorised Signatory Director/Secretary

