

- 1.4 Where the context so requires the singular includes the plural
- 1.5 References to any party shall include the successors in title of that party
- 1.6 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval
- 1.7 The County Court in whose district the Land is situate shall have full jurisdiction to hear and determine any proceedings arising from or relating to this Deed or for the enforcement of its terms or any of them
- 1.8 The planning obligations shall only apply and take effect following the Commencement of Development as approved under the Application
- 1.9 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted (whether or not on appeal) after the date of this Deed
- 1.10 This Deed is a local land charge and shall be registered as such

2. DEFINITIONS

The following definitions shall apply:

“The Act”	shall mean the Town and Country Planning Act 1990 as amended or substituted
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“Affordable Housing”	shall mean housing that is affordable to local people who have need of housing and cannot afford to rent or buy
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accommodation generally available on the open market on readily available terms

"Affordable Housing Scheme"

shall mean a scheme first submitted to and approved by the Council (such approval not to be unreasonably withheld or delayed) for the provision of Affordable Housing which secures the provision by a Registered Social Landlord of a number of Affordable Housing Units equal to 40% of the Dwellings forming the Development and the provision by the Developer of a number of Discounted Market Housing equal to 20% of the Dwellings forming the Development such scheme to identify:

- (i) the specification location layout and phasing of construction of the Affordable Housing Units and the Discounted Market Housing; and
- (ii) the mix and anticipated tenure of the Affordable Housing Units (comprising Social Rented Housing and Shared Ownership Housing)
- (iii) the identity and approval of the Registered Social Landlord
- (iv) the Council's rights to nominate occupiers of the Social Rented Housing and the Shared Ownership Housing

"Affordable Housing Units"

shall mean those affordable housing units

to be provided pursuant to the Schedule which shall comprise 26.5% of Social Rented Housing 13.5% of Shared Ownership Housing in accordance with the Affordable Housing Scheme

"Application"

planning application number
2005/251/13/01

"Close Family Association"

shall mean a person^{who} has a spouse parent brother sister child grandparent or grandchild who is resident in the relevant part of the Council's administrative district and has been resident there for a minimum of five continuous years

"Commencement of Development"

shall mean the carrying out of a Material Operation and 'Commence Development' shall be construed accordingly

"Development"

shall mean the development proposed on the Land pursuant to the Permission for residential development purposes pursuant to the Application.

"Discounted Market Housing"

shall mean those dwellings being a mixture of one and two bedroom properties of no more than 70 square metres (750 square feet) in size of which 25% of such number of units will comprise one bedroom properties and 75% of number of such units will comprise two bedroom properties and all

of which will be sold at no more than 87.5% of Market Value the details of which will be determined as part of the Affordable Housing Scheme

"Dwelling"

shall mean a residential dwelling constructed as part of the Development and "Dwellings" shall be construed accordingly

"Employment"

shall mean that a person is permanently employed or has accepted in writing a firm offer of permanent employment or is in full time self employment within the relevant part of the Council's administrative district

"First Owner's Land"

shall mean that part of the Land registered under title number DN439809

"Land"

shall mean that land at Reynell Road Ogwell Cross Newton Abbot Devon which is shown edged red on the Plan

"Market Value"

shall mean the open market value of the dwellings to be agreed between the Council and the Developer upon the basis of the price at which the sale of such dwellings might reasonably expect to be sold within the locality of the Land on the open market to a willing purchaser with vacant possession and a good and marketable title and in the absence of the

restrictions and obligations relating to marketing sale disposal and occupation which are set out in this Agreement and failing agreement between the Council and the Developer upon the Market Value it shall be determined in accordance with clauses 6.6. to 6.9 hereof

"Material Operation"

shall mean operations as defined in section 56(4) of the Act pursuant to the Permission not being Exempt Works and 'Material Operation' shall be construed accordingly

"Permission"

shall mean the grant of outline planning permission pursuant to the Application

"Private Dwellings"

shall mean those dwellings to be constructed on the Land pursuant to the Permission excluding the Affordable Housing Units

"Registered Social Landlord"

shall mean a social housing landlord registered under section 1 of the Housing Act 1996 with the Housing Corporation (as defined in section 56 of the Housing Act 1996) or any successor in function to the Housing Corporation which social housing landlord shall be approved in writing by the Council

"Social Rented Housing"

shall mean a Dwelling let as an assured tenancy as defined by Section 1 of the

Housing Act 1988 (or any statutory extension re-enactment or modification thereof) by the Registered Social Landlord

"Shared Ownership Housing"

shall mean Dwellings in which the occupier of each Dwelling owns a percentage of the Dwelling and the remainder is owned by the Registered Social Landlord or other third party but with the right for the occupier to purchase further percentages of the Dwelling up to 100%

"Unilateral Undertaking"

shall mean the Unilateral Undertaking given by the Developer the First Owner and Redrow dated 21st March 2006

3. UNILATERAL UNDERTAKING

The Council the Developer the First Owner and Redrow agree that the provisions and obligations of clause 3.1 and the relevant definitions set out at clause 2 of the Unilateral Undertaking shall no longer have any legal effect and are superseded by the provisions of this Deed

4. COVENANTS WITH THE COUNCIL

The Developer the First Owner and Redrow covenant with the Council to observe and perform the obligations contained in the Schedule hereto

5. COSTS

The Developer will pay the Council's reasonable and proper costs in connection with the negotiation and completion of this Deed

6. AGREEMENTS & DECLARATIONS

The Parties hereby agree and declare that notwithstanding any other provisions in this Deed:

- 6.1 The Developer the First Owner and Redrow shall only be responsible for complying with the terms of this Deed for so long as they shall retain an interest (within the meaning of Section 106 of the Act) in the Land or in any part thereof which is the subject of the obligations attached to the part of the Land in which its interests subsist and so that having parted with its interest in the Land or the relevant part the subject of the particular obligation any subsequent breach of the terms of this Deed shall be enforced by the Council against the persons who are then owners or occupiers of the Land or any part thereof in respect of which the obligations subsist but nothing in this Clause shall release the Developer the First Owner or Redrow in respect of any breach occurring before it shall have parted with its interest in the Land or the part thereof relating to the breach of obligation aforesaid
- 6.2 If the Permission to which this Deed relates shall expire or is revoked or withdrawn before the Development has begun this Deed shall cease to have effect
- 6.3 With the exception of Clause 5 the provisions of this Deed shall become operative only in the event of the Permission having been granted and the Commencement of Development
- 6.4 Unless the right of enforcement is expressly granted it is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 and the parties may rescind or vary this Deed without the consent of a third party to whom a right to enforce any of its terms exist
- 6.5 Any notices to be served under this Deed shall be directed or posted to the relevant party at the address specified above

- 6.6. If any disagreement shall arise between the parties hereto regarding anything contained or arising out of this Agreement or the constructional effect thereof the matter shall be referred for arbitration to a single arbitrator or in the case of the determination of Market Value to a local valuer (collectively referred to as "the arbitrator") to be appointed by the parties or in default of agreement as to the appointment of such arbitrator within seven days of the disagreement to be nominated on the application of either of the parties hereto by the President for the time being of the Chartered Institute of Arbitrators or in respect of determination of Market Value by President for the time being of the Royal Institute of Chartered Surveyors
- 6.7 The decision of such arbitrator shall be binding on the parties hereto in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or enactment thereof for the time being in force
- 6.8 The costs of the arbitration shall (unless in the opinion of the arbitrator one of the parties hereto shall have acted frivolously or vexatiously) be borne by the parties hereto equally
- 6.9 If the arbitrator considers that either of the parties hereto has acted frivolously or vexatiously then the arbitrator may make such award as to costs as he or she considers appropriate having regard to such behaviour
- 6.10 When approval to any matter is required or requested under the terms of this Deed then the party who is to give the approval shall not unreasonably withhold or delay the giving of such approval
- 6.11 The parties hereto intend this Deed to take effect and have executed as a Deed but have not delivered it until it has been dated.

IN WITNESS whereof this Deed has been executed by the parties hereto as a Deed on the day and year first before written

THE SCHEDULE
AFFORDABLE HOUSING PROVISIONS

1. **The Developer's First Owners and Redrow's Obligations**
 - 1.1 Once the approval of the Council to the Affordable Housing Scheme has been received to immediately approach a Registered Social Landlord and to pursue with all due diligence negotiations with the Registered Social Landlord and to use reasonable endeavours to contract to sell the Shared Ownership Housing and the Social Rented Housing Units at a price which is acceptable to both the First Owner or the Developer and the Registered Social Landlord, both parties acting reasonably in negotiating such price and to provide the Council or its agents with such information concerning such negotiations with the Registered Social Landlord as they may reasonably request
 - 1.2 To procure that any Registered Social Landlord offers the Social Rented Housing and Shared Ownership Housing to a person or persons who satisfy the following criteria in order of priority:-
 - 1.2.1 **FIRSTLY** to persons who in the opinion of the Council are in need of Affordable Housing and who have resided in the in the Parish of Ogwell for at least 12 months immediately preceding the letting of the Social Rented Housing unit or the disposing of the Shared Ownership Housing unit or have strong local connections with the area by reason of Employment or Close Family Association; or
 - 1.2.2 **SECONDLY** (if no person qualifies under paragraph 1.2.1 above) to persons who in the opinion of the Council are in need of Affordable Housing and who reside in the local authority area of the Council and who have done so for a period of at least 12 months or who have strong local connections with the local authority area of the Council by reasons of Employment or Close Family Association; or

1.2.3 **THIRDLY** (if no person qualifies under paragraph 1.2.2 above) to any other person who in the opinion of the Council is in need of Affordable Housing

1.3 Once the approval of the Council to the Affordable Housing Scheme has been received the Developer, the First Owner and/or Redrow shall serve written notice ("the Discounted Market Housing Selling Notice") on the Council prior to the Discounted Market Housing being ready for sales release and such notice shall:

1.3.1 give an estimated date upon which such Discounted Market Housing Dwelling shall be ready for occupation; and

1.3.2 invite the Council to nominate in writing a potential buyer for such Discounted Market Housing Dwelling such potential buyer to be a person ;

1.3.2.1 **FIRSTLY** who is in the opinion of the Council in need of Affordable Housing and who has resided in the local authority area of the Council for at least 12 months immediately preceding the date of the Discounted Market Housing Selling Notice; or

1.3.2.2 **SECONDLY** (if no person qualifies under paragraph 1.3.2.1 above) to persons who in the opinion of the Council are in need of Affordable Housing and who reside in the local authority of the Land and who have done so for a period of at least 12 months immediately preceding the date of the Discounted Market Housing Selling Notice or who have strong local connections with the local authority area of the Council by reasons of Employment or Close Family Association; or

1.3.2.3 **THIRDLY** (if no person qualifies under paragraph 1.3.2.2 above) to any other person who in the opinion of the Council is in need of Affordable Housing

1.3.3 In the event that the Council shall fail to nominate in writing a potential buyer for such Discounted Market Housing Dwelling within 8 weeks of receipt by

the Council of the Discounted Market Housing Selling Notice (time being of the essence) then the Developer, the First Owner and/or Redrow will be at liberty to dispose of such Discounted Market Housing Dwelling at any time thereafter on the open market (for the avoidance of doubt not restricted to disposals to persons in housing need) but otherwise in accordance with the provisions of paragraph 2.5 of the Schedule .

- 1.3.4 In the event that the Council nominates a potential buyer in accordance with this clause 1.3 then the Developer, the First Owner and/or Redrow or their solicitors shall forward a contract and supporting title documentation relating to the sale of such Discounted Market Housing Dwelling to such nominated potential buyer or their solicitors and shall use reasonable endeavours to exchange contracts for the sale of such Discounted Market Housing Dwelling to such nominated potential buyer as soon as is reasonably practicable thereafter.
- 1.3.5 The Developer, the First Owner and/or Redrow or their solicitors having supplied a contract and title documentation and adequately answered all enquiries raised of them the Developer, the First Owner and/or Redrow or their solicitors shall notify the potential buyer or their solicitors in writing that the Developer, the First Owner and/or Redrow is ready willing and able to exchange contracts immediately.
- 1.3.6 In the event that any such nominated potential buyer (through no default or delay by the Developer, the First Owner and/or Redrow) shall fail to exchange contracts with the Developer, the First Owner and/or Redrow within 28 days of the date of service of a notice in accordance with clause 1.3.5 of this Schedule (time being of the essence) then the Developer, the First Owner and/or Redrow will be at liberty to dispose of such Discounted Market Housing Dwelling at any time thereafter on the open market (for the avoidance of doubt not restricted to disposals to persons in housing need) but otherwise in accordance with the provisions of paragraph 2.5 of the Schedule .

2. The Developer's First Owners and Redrow's Covenants

- 2.1 The Developer the First Owner and Redrow covenant with the Council as follows:
- 2.2 no more than 50% Private Dwellings shall be occupied until:
- 2.2.1 50% of the Affordable Housing Units have been constructed and transferred to the Registered Social Landlord(s) approved as part of the Affordable Housing Scheme; and
- 2.2.2 50% of the Discounted Market Housing have been constructed and transferred in accordance with the provisions of paragraph 1.3 of this Schedule as part of the Affordable Housing Scheme
- 2.3 no more than 80% Private Dwellings shall be occupied until:
- 2.3.1 100% of the Affordable Housing Units have been constructed and transferred to the Registered Social Landlord(s) approved as part of the Affordable Housing Scheme; and
- 2.3.2 100% of the Discounted Market Housing have been constructed and transferred in accordance with the provisions of paragraph 1.3 of this Schedule as part of the Affordable Housing Scheme
- 2.4 No Development shall continue after six months from the Commencement of the Development until the Affordable Housing Scheme has been approved in writing by the Council and the Development shall be carried out in accordance with the Affordable Housing Scheme or any amendment which has been approval in writing by the Council Provided that any approvals to be given by the Council under this clause shall not be unreasonably withheld or delayed
- 2.5 To ensure that any assurance of each such Discounted Market Housing unit shall contain a covenant that:-

"(a) no further disposition or sale or a lease to a third party shall take place within 80 years from the date of commencement of material operations as defined by Section 56 of the Act at a price exceeding 87.5% of the Market Value (meaning of Market Value shall be as defined in clause 2 of the Planning Agreement dated [31st July] 2006 subject to the substitution of Developer for transferee lessee or tenant (as appropriate)); and

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(b) that each Discounted Market Unit shall be occupied by the purchasers of such dwelling and their families (if any) and further the Assurance shall contain the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by the Council that the provisions of paragraph 2.5 of the Schedule to the Planning Agreement dated [31st July] 2006 have been complied with"

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- 2.6 to construct the Shared Ownership Housing and the Social Rented Housing to a specification and standard no less than the standards laid down by the Housing Corporation
- 2.7 to construct the Discounted Market Housing to no lesser specification than that used by the Developer in constructing the Private Dwellings

3. Mortgagee in Possession

The obligations of this Deed shall not be enforceable against:

- 3.1 in respect of a Registered Social Landlord's interest in one or more Affordable Housing Units a mortgagee, or receiver appointed by such mortgagee acting pursuant to the terms of the legal charge or mortgage PROVIDED THAT the mortgagee or receiver appointed by such mortgagee has notified the Council in writing immediately the mortgagee has an enforceable power of sale