

- 1.3 **"Advertising"** means the advertising for disposal or rent of any interest in the relevant Affordable Dwelling in accordance with a scheme to be approved by the Council (such approval not to be unreasonably withheld or delayed) which shall include unless otherwise agreed with the Council:
- 1.3.1 an advertisement on the Council's website;
 - 1.3.2 In the case of Shared Ownership Homes or an Affordable Rented Home an advertisement on the website of South West Homes and/or Devon Home Choice or any other similar organisation promoting intermediate market housing
 - 1.3.3 an advertisement in the printed media circulating within the Primary Area and/or the Borough including at least one newspaper and where applicable Parish or community magazines;
 - 1.3.4 marketing material made publicly available at the Council's offices
 - 1.3.5 public notices and/or posters displayed within the Primary Area and/or Borough
 - 1.3.6 notification to the relevant Parish/Town Council operating within the Primary Area and/or Borough
- 1.4 **"Affordable Dwelling"** means each of the seventeen (17) dwellings constructed pursuant to the Planning Permission on the Land (including any associated parking space(s) and residential curtilage) and in each case for Qualifying Persons in Housing Need to be constructed on the Land pursuant to the Planning Permission and the "Affordable Dwellings" means all of them
- 1.5 **"Affordable Housing Provider"** means either:
- 1.5.1 a body registered as a provider of social housing with the Social Housing Regulator under Part 2 of the Housing and Regeneration Act 2008 or such other class of body approved by the Council as may be constituted under any legislation replacing that provision; or
 - 1.5.2 such other body eligible to receive grant monies from the Council or the Homes and Communities Agency and able to lawfully own or manage housing for Qualifying Persons in Housing Need and approved by the Council
- 1.6 **"Affordable Housing Scheme"** means a Scheme for the provision of the Affordable Dwellings to Qualifying Persons in Housing Need which shall include (unless otherwise agreed with the Council):
- 1.6.1 Arrangements for the provision of the Affordable Dwellings as 2 no. Shared Ownership Homes and 15 no. Affordable Rented Homes (The precise tenure of each Affordable Dwelling shall be agreed with the Council)

- 1.6.2 Location of the Affordable Dwellings
- 1.6.3 The name of the Affordable Housing Provider (if appropriate);
- 1.6.4 Details of the Price of the relevant Affordable Dwellings;
- 1.6.5 Arrangements for the transfer of the Affordable Dwellings;
- 1.6.6 Details of the design and quality standards to be applied to the Affordable Dwellings;
- 1.6.7 Details of the unit size of the Affordable Dwellings;
- 1.7 **"Affordable Rent"** means a rent which is at or below eighty percent (80%) local market rent (including service charge) which rent shall not exceed the Local Housing Allowance Rates applicable when the unit is let
- 1.8 **"Affordable Rented Home"** means an Affordable Dwelling constructed to Housing Standards and let by an Affordable Housing Provider pursuant to prevailing guidance from the Department for Communities and Local Government and/or the Homes and Communities Agency or at a rent (including any service charge) not to exceed an Affordable Rent
- 1.9 **"Application"** means the application for outline planning permission to carry out the Development submitted to the Council on 8th March 2013 and validated on 22nd of March 2013 and allocated reference number 00262/2013
- 1.10 **"Area Local Connection"** means a connection with the Primary Area or the Borough (as appropriate) and demonstrated by that person or a member of their Household to the reasonable satisfaction of the Council as follows:
 - 1.10.1 The person has lived in the parish/ town for 3 (three) out of the 5 (five) years preceding the allocation;
 - 1.10.2 The person has immediately prior to the allocation lived in the parish/town for 6 (six) out of the 12 (twelve) months preceding the allocation;
 - 1.10.3 Immediate family have lived in the Primary Area or the Borough (as appropriate) 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;
 - 1.10.4 The person has permanent employment in the Primary Area or the Borough with a minimum contract of 16 (sixteen) hours per week which has continued for the 6 (six) months preceding the allocation without a break in employment of more than 3 (three) months such employment to include self employment. This should not include employment of a casual nature;
 - 1.10.5 Any periods of (ordinary) residence of the person in the Primary Area or the Borough.

- 1.11 **"Assured Tenancy"** means an Assured Tenancy under the Housing Act 1988 or such other form of periodic tenancy for the time being permitted by law for use by an Affordable Housing Provider
- 1.12 **"Borough"** means the administrative area of the Council
- 1.12.1
- 1.13 **"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 or otherwise
- 1.14 **"Chargee's Duty"** means the tasks and duties set out in Paragraph 8 of the Second Schedule
- 1.15 **"Commencement of Development"** means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose):
- 1.15.1 operations consisting of site clearance;
 - 1.15.2 archaeological investigations;
 - 1.15.3 investigations for the purpose of assessing ground conditions;
 - 1.15.4 remedial work in respect of any contamination or other adverse ground conditions;
 - 1.15.5 diversion and laying of services;
 - 1.15.6 erection of any temporary means of enclosure;
 - 1.15.7 the temporary display of site notices or advertisements;
- and "Commence Development" shall be construed accordingly
- 1.16 **"Development"** means the construction of seventeen (17) Affordable Dwellings including access, landscaping and associated works pursuant to the Planning Permission
- 1.17 **"Devon Home Choice Register"** means the choice based lettings scheme operating within the Council's administrative area
- 1.18 **"Exempt Person"** means any person who:
- 1.18.1 has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Dwelling;

- 1.18.2 has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Dwelling;
- 1.18.3 has been granted a Shared Ownership Lease by an Affordable Housing Provider in respect of a particular Affordable Dwelling and the person has subsequently purchased one hundred percent (100%) of the equity in the said Affordable Dwelling on final staircasing
- 1.19 **"Expert"** means a person having appropriate qualifications and experience in the matters in dispute as agreed by the Relevant Parties or failing agreement such person as is nominated by the President for the time being of the Royal Institute of Chartered Surveyors on the application of the Relevant Parties
- 1.20 **"Homes and Communities Agency"** means the body of that name for the time being having or being responsible for providing financial assistance to bodies including Registered Providers of Social Housing for the purpose of improving the supply and quality of housing in England now conferred on such body under the Housing and Regeneration Act 2008 or any legislation replacing or amending the same
- 1.21 **"Household"** means anyone who may reasonably be expected to reside with the Qualifying Person
- 1.22 **"Housing Need"** means being 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 dwelling 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 persons infirmity, physical or mental disability or specific social or care needs.
- 1.23 **"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:
 - 1.23.1 the minimum Housing Quality Indicator (HQI) scores specified by the Homes and Communities Agency for the relevant tenure;
 - 1.23.2 the appropriate level of the Code for Sustainable Homes the attainment of which is to be certified by the Owner;
 - 1.23.3 a minimum specified score against the Building for Life criteria
- 1.24 **"Insecure"** means accommodation which the Qualifying Person does not have a legal right to occupy in the long term

- 1.25 **"Interest"** means the interest at four percent (4%) above the base lending rate of the Bank of England from time to time
- 1.26 **"Land"** means the Land referred to in the First Schedule
- 1.27 **"Landscape and Biodiversity Management Plan"** means details (including a plan) setting out the management and maintenance arrangements for the Open Space to be managed for biodiversity, ecology and landscape purposes
- 1.28 **"Letting Notice"** means a notice the content of which is to be agreed with the Council which contains details of the property to let and which shall include unless otherwise agreed with the Council:
- 1.28.1 the name and address of the landlord;
 - 1.28.2 address of the property;
 - 1.28.3 weekly or monthly rent;
 - 1.28.4 amount and breakdown of any service charge per week, month or annum;
 - 1.28.5 details of any additional charges;
 - 1.28.6 any age or other occupancy restrictions;
 - 1.28.7 property type;
 - 1.28.8 property size;
 - 1.28.9 heating type;
 - 1.28.10 details of mains services in the property;
 - 1.28.11 availability of parking space/garage;
 - 1.28.12 any disabled adaptations;
 - 1.28.13 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

- 1.29 **"Local Housing Allowance"** means the flat rate rental allowance providing financial assistance towards the housing costs of low income households for different rental market areas and property types, set and reviewed by rent officers on a monthly basis under a framework introduced by the Department of Works and Pensions or in the absence of such approval by the Council
- 1.30 **"Mortgagee"** means the mortgagee of an individual Shared Ownership Home where the individual mortgagor has defaulted on the particular mortgage

- 1.31 **"Mortgagee's Duty"** means the tasks and duties set out in Paragraph 8 of the Second Schedule of this Deed
- 1.32 **"Occupation"** means occupation for the purposes of residential use permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and the terms "Occupied" and "Occupy" shall be interpreted accordingly
- 1.33 **"Offer"** means an offer in writing made by the Owner to the Affordable Housing Provider and which provides the details set out in the Fourth Schedule
- 1.34 **"Open Market Value"** means the price which one hundred percent (100%) of the relevant Freehold interest in Affordable Dwelling affected would fetch if sold on the open market by a willing vendor and disregarding the obligations and restrictions contained in this Deed
- 1.35 **"Open Space"** means those parts of the Land shown coloured green on the Plan or any revision thereof which may be agreed between the Council and Owner which fall outside the curtilage of an individual Affordable Dwelling
- 1.36 **"Percentage"** means the percentage rise in the Retail Prices Index when the last published index figure before the date of payment is compared with the last published index figure before the date of this Deed but if the basis for calculation of the Retail Prices Index has changed and any method of calculation between the new and the old figures is officially published that method shall be used for the purposes of comparison under this provision
- 1.37 **"Plan"** means the Plan annexed hereto
- 1.38 **"Planning Monitoring Administration Fee"** means the Council's charge of £1,000.00 to recover the expenses incurred by the council in monitoring compliance with the obligations contained in this Deed
- 1.39 **"Planning Permission"** means the Planning Permission granted pursuant to the Planning Application and the expression Planning Permission shall include all approvals granted thereunder
- 1.40 **"Practical Completion"** means the issue of a certificate of practical completion by the Affordable Housing Provider's employer's agent;
- 1.41 **"Price"** means the sum agreed with the Owner by the Affordable Housing Provider for the provision of the Affordable Housing Scheme
- 1.42 **"Primary Area"** means the civil parish of Bere Ferrers within the Borough
- 1.43 **"Qualifying Person(s)"** means person(s) who (unless otherwise agreed with the Council) has / have an Area Local Connection with:
- 1.43.1 the Primary Area; or

1.43.2 if no person satisfying the requirement of (a) above has been identified by the Affordable Housing Provider in consultation with the Council within a period of

(a) 20 Working Days of Advertising of an Affordable Rented Home

(b) 15 Working Days of Advertising of a Shared Ownership Home

from the date upon which the relevant Affordable Dwelling is available to Occupy has a Area Local Connection with the Borough; or

SAVE THAT any Qualifying Person with an Area Local Connection with the Primary Area shall take precedence over any person with an Area Local Connection with the Borough

PROVIDED THAT the Council reserves the right not to allow the sale or letting of an Affordable Dwelling to a Qualifying Person with an Area Local Connection with the Primary Area should the sale or letting result in an under occupancy of the Affordable Dwelling by more than one bedroom;

PROVIDED FURTHERMORE THAT the Council reserves the right not to allow the sale or letting of an Affordable Dwelling to a Qualifying Person with an Area Local Connection should the sale or letting result in a dwelling which has been constructed or adapted to meet the needs of disabled persons being occupied by a person without a disability

1.44 **"Reasonable Service Charge"** means an affordable sum that may be payable to a residents management company that covers those services and facilities which are of a nature and to a standard reasonably required in connection with affordable housing, but do not significantly exceed that standard, such as maintaining, repairing and keeping secure the Affordable Dwellings and their common parts, the cleaning and lighting of common parts and the maintenance of any gardens and landscaping areas that directly benefit the Affordable Dwellings in the Development. For the avoidance of doubt such charge may be subject to an annual increase in accordance with the Percentage

1.45 **"Relevant Parties"** means the parties to a dispute arising from this Deed

1.46 **"Shared Ownership Homes"** means dwellings which are owned and managed by an Affordable Housing Provider, constructed to Housing Standards and sold subject to a Shared Ownership Lease approved by the Council and a "Shared Ownership Home" shall mean any of the said Dwellings

1.47 **"Shared Ownership Lease"** means a lease substantially in the form approved or published by the Homes and Communities Agency whereby the tenant having paid a premium calculated by reference to a maximum of seventy-five percent (75%) of the Open Market Value of the particular unit pays a rent in respect of the remaining equity held by the landlord plus (if appropriate) a Reasonable Service Charge and whereby the tenant (after a period of twelve (12) months has expired from the date of the

6.1 Not to permit or otherwise allow any of the Affordable Dwellings to be Occupied on first and all subsequent Occupations otherwise than:

6.1.1 as the sole private residence of the Qualifying Person; and

6.1.2 by a Qualifying Person in Housing Need as at the time of the commencement of his Occupation of the Affordable Dwelling with or without a Household PROVIDED THAT nothing shall prevent any former joint owner spouse partner civil partner or other co-habitant from continuing to reside at the Affordable Dwelling after the Qualifying Person ceases to reside there

MORTGAGEE IN POSSESSION

7 Part 2 and Part 3 and Part 4 of the Second Schedule of this Deed shall not be binding on:

7.1 Exempt Person or any mortgagee or chargee of an Exempt Person or any person deriving title from the Exempt Person

7.2 any Mortgagee or Chargee provided that the Mortgagee or Chargee shall have first complied with the Mortgagee's Duty; or

7.3 any purchaser from the Mortgagee or Chargee subject to the Mortgagee or Chargee having complied with the Mortgagee's Duty EXCEPT FOR any purchaser under 8.1.1 below

8 The Mortgagee or Chargee shall prior to seeking to dispose of the Affordable Dwelling pursuant to any default under the terms of its mortgage or charge give not less than 3 month's prior notice to the Council of its intention to dispose and:

8.1.1 In the event that the Council responds within two (2) months from receipt of the notice indicating that arrangements for the transfer of the Affordable Dwelling can be made in such a way as to safeguard the relevant unit as Affordable Housing then the Mortgagee or Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer;

8.1.2 If the Council does not serve its response to the notice served under paragraph 8.1.1 above within two (2) months then the Mortgagee or Chargee shall be entitled to dispose free of the restrictions set out in Part 2 and Part 3 and Part 4 of the Second Schedule

If the Council or any other person cannot within 4 weeks of the date of service of its response under paragraphs 8.1.1 above secure a binding contract for sale then provided that the Mortgagee or Chargee shall have complied with its obligations under paragraph 8 the Mortgagee or Chargee shall be entitled to dispose free of the restrictions set out in Part 2 and Part 3 and Part 4 of the Second Schedule PROVIDED THAT for the avoidance of doubt such Mortgagee or Chargee shall not be under any obligation to dispose of the Affordable Dwellings for any sum less than the monies outstanding pursuant to the said mortgage.

PART 3 – SHARED OWNERSHIP HOMES

9 The Owner covenant as follows;

9.1 Not to permit or otherwise allow any of the Affordable Dwellings provided as Shared Ownership Homes pursuant to the approved Affordable Housing Scheme to be sold or let on first and all subsequent disposals other than:

9.1.1 in accordance with the terms of the Shared Ownership Lease; and

9.1.2 to a Qualifying Person in Housing Need

9.2 Not to complete the sale of any interest in the relevant Shared Ownership Home until the Council has given its approval that the purchaser satisfies the obligations contained in this Deed (such approval not to be unreasonably withheld) and if no response is given by the council within 10 working days of receipt of a request for approval then approval will be deemed to have been given.

PART 4 – AFFORDABLE RENTED HOMES

The Owner covenants as follows;

10 Not to permit or otherwise allow any of the Affordable Dwellings provided as Affordable Rented Homes pursuant to the Affordable Housing Scheme to be let on first or all subsequent letting other than:

10.1 to a Qualifying Person in Housing Need;

10.2 at a sum exceeding the Affordable Rent; and

10.3 to persons nominated by the Council within thirty (30) Working Days (or such longer period agreed by the Affordable Housing Provider) of receipt of a Letting Notice for the particular Affordable Rented Home or in the absence of the Council making such a nomination within thirty (30) Working Days (or such longer period agreed by the Affordable Housing Provider) by persons selected by the Affordable Housing Provider and approved by the Council (such approval not to be unreasonably withheld or delayed) and if no response is given by the Council within ten (10) working days of receipt of a request for approval then approval will be deemed to have been given.

11 To serve upon the Council a Letting Notice each time an Affordable Rented Home becomes available for letting