1.14. The Owner, the Council, the County and the Sewerage Undertaker are willing to enter into this Agreement to mitigate the effects of the Phase 3 Development on the locality in which the Phase 3 Land is situated.

1.15. On 14th June 2011 the Council in exercise of its powers under the 1990 Act has resolved to grant Planning Permission for the Phase 3 Development subject to completion of this Agreement which the Council considers is necessary for the satisfactory development of the Phase 3 Land

2 DEFINITIONS

In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

1990 Act	The Town & Country Planning Act 1990
Accountable Dwellings	The number of dwellings included in the Phase 3 Development less the Exempt Dwellings
Affordable Dwellings	40% of the Accountable Dwellings forming the Phase 3 Development being the Dwellings comprising Affordable Rent Dwellings and Intermediate Affordable Dwellings described in the Affordable Housing Table to be constructed on the Phase 3 Land in accordance with the Planning Permission and Building Regulations and "Affordable Dwelling" shall mean any one of them.
Affordable Housing Table	The table annexed to The First Schedule setting out the location, design, size, and tenure of the Affordable Dwellings.
Affordable Rent Dwelling	An Affordable Dwelling built to the Homes and Communities Agency's Design and Quality Standards which may only be occupied under an Affordable Rent Tenancy
Affordable Rent Tenancy	An assured tenancy (including a shorthold tenancy) whereby an Affordable Dwelling is let to a Designated Person at a rent which does not exceed the maximum rent which an RSP is permitted to charge in accordance with the Tenancy Standard prescribed by the Regulator.

Approved Details	Any details approved by the Council in respect of submissions of details requiring Council approval pursuant to the Planning Permission
Approved RSP or Registered Social Provider	A provider of affordable housing (or as many such providers as the Owner may propose) operating in the area of the Council and authorised to grant Affordable Rent Tenancies which has sufficient resources to acquire the Affordable Dwellings or any of them in accordance with this Agreement, .
Available for Occupation	In respect of any Affordable Dwelling means that the Dwelling and its curtilage is complete and connected to services and fit for occupation
Blue Land	The Land at Chard Road Axminster Devon registered under Title Number DN485218 (part) DN483781 (part) and DN537460 (part shown outlined in Blue on Plan 1 being part of the Phase 3 Land and also part of the Phase 1 Land and part of the Phase 2 Land
Brookside Area	The landscaping shown outlined orange on Plan 4
Brookside Area Works	The works to lay out the Brookside Area as open space. .
Building Regulations	The regulations under the Building Act 1984 in effect at the date of this Deed governing the minimum standards required for the construction of new Dwellings which for the avoidance of doubt shall include compliance with Approved Document L1A 2010 Edition.
Commencement of Development	The carrying out of any material operation as defined by section 56(4) of the 1990 Act in connection with the Phase 3 Development excluding the Play Area Works
Contribution	Any of the Education Contribution, Phase 3 Off Site Sports Contribution, Play Area Capital Contribution, Public Art Contribution, Sewerage Evaluation Contribution, and the Sewerage Network Contribution
Council, County and Owner	Respectively includes their successors in title and assigns and in the case of the Council and County includes any statutory

successors

Deleted POS

The areas of public open space required by the Phase 1 Consent and the Phase 2 Obligation which will not be provided as a result of implementation of the Phase 3 Development being the areas of land shown hatched red and annotated "Deleted POS " on Plan 3.

Designated Person

In relation to the letting of Affordable Rent Dwellings an individual who at all material times prior to the Occupation of the Affordable Dwelling in question is on the Register for Devon Home Choice or on a list for any RSP managing homes in East Devon and is eligible under the relevant priority band for an offer of the relevant Affordable Dwelling under the Council's Allocation scheme or under the Section 167 of the Housing Act 1996 and in relation to the disposal of an Intermediate Affordable Dwelling any such person, or a person listed on the ~~Common Housing~~ Register

Regions Homebuy Agents RP (authorised by all parties)

Discounted Sale or lease

A freehold sale or lease granted for a period of not less than 99 years where the premium on first sale does not exceed the Initial Sale Price and which contains a restriction preventing any future sale prices exceeding of the open market value of the Affordable Dwelling (assuming that the dwelling could be sold without any restriction as to price or occupier) at the time of the future sale

Dwelling

a building or part of a building designed for residential occupation by a single household

Education Contribution

A contribution towards the cost of providing or improving education accommodation in schools in the vicinity of the Phase 3 Land which pupils resident on the Phase 3 Land would normally attend comprising the Primary Education Contribution and the Secondary Education Contribution..

Enhanced Standards

any standard to which the Owner is required to construct an Affordable Dwelling. (including compliance with Code 3 or higher) above that required by Building Regulations

Enhancement Cost	any additional costs incurred by the Owner in constructing any Affordable Dwelling to Enhanced Standards
Equity Mortgage	an interest free equity loan or mortgage granted on first sale and being for the difference between the Open Market Value and the Initial Sale Price for the Affordable Dwelling and expressed as a percentage and which if repaid when the property is sold shall be at the same percentage of the Open Market Value at the time of resale or such reduced percentage where the level of equity owned has changed through Staircasing and any such loan granted on any subsequent sale
Equity Percentage Arrangement	arrangements under which on the first relevant disposal (a) the owner of a freehold or leasehold interest in a dwelling ("seller") conveys it to an individual "(buyer"), (b) the buyer in consideration of the conveyance- (i) pays the seller the Initial Sale Price and (ii) agrees to pay the seller ("Equity Mortgagee") other sums calculated by reference to difference between the Initial Sale Price and Open Market Value expressed as a percentage of the value of the interest at the time when each sum is to be paid, and (c) the liability to make any payment required by the arrangement (apart from the Initial Sale Price) is secured by an Equity Mortgage And any such arrangement on any subsequent sale.
Shared Ownership Dwelling	An Affordable Dwelling that may only be disposed of under an Shared Ownership Lease
Shared Ownership Lease	A lease (of not less than 99 years) of an Affordable Dwelling in the general form of the Regulator's model forms as most recently published from time to time (or such other form as may be agreed between the Council and the Owner) under which the

	tenant: (i) purchases a percentage of the equity of the dwelling with a right to purchase an increased percentage which, except in the case of an Shared Ownership Lease granted by an RSP shall not exceed 80% ; and (ii) pays a rent to the Owner ("Residual Owner") in relation to the share of the equity retained by the Owner under a scheme approved by the Council whereby at the time the scheme is established the sum of the repayments under a mortgage and the rents paid on the retained equity under the lease do not exceed the outgoings of a Halifax Bank variable rate 25 year repayment mortgage in respect of the Initial Sale Price.
Exempt Dwellings	Means 10 of the dwellings to be constructed on the Blue Land in lieu of those permitted by the Phase 1 Consent but not yet constructed namely Plots 201 to 208 and 215 to 216 both inclusive.
Exempt Payment	any payment received by the Equity Mortgagee for the redemption of an Equity Mortgage on the sale of an Affordable Dwelling in circumstances where a new Equity Mortgage is to be granted immediately to a Designated Person in Housing Need who is purchasing that Affordable Dwelling
Head of Housing and Social Inclusion	The officer holding that post or such post as may subsequently be designated to carry out the Council's housing functions
Initial Sale Price	The sum which represents 80% of the open market value of the Affordable Dwelling (assuming that the dwelling could be sold without any restriction as to price or occupier) at the time of the sale
Intermediate Affordable Dwellings	housing at prices and rents above those of Affordable Rent, but below market price or rents. These can include Discounted Freehold or Leasehold Sales, Shared Ownership products, Equity Percentage Arrangements, other low cost homes for sale (e.g. HomeBuy) and Intermediate Rent Housing

Intermediate Rent Tenancy	an assured tenancy at a rent below a market rent which does not exceed:- (i) in relation to a letting by an Owner who purchased an Affordable Dwelling as a Designated Person or who is the Mortgagee of such an Owner; that Owner's outgoings in relation to the aggregate of repayments to that Mortgagee, any rent on the retained equity, the Reasonable Service Charge and any property or contents insurance and (ii) in relation to a letting by any other Owner; at a level in accordance with the published Local Housing Allowance for the relevant property type and in the relevant Rent market area together with any relevant Reasonable Service Charge.
LEAP	Means a local equipped area for play
Local Housing Allowance	The local housing allowance for the Broad Market Rent Area encompassing the Phase 3 Land published by the Valuation Office Agency in effect at the date of any tenancy or rent review
Management Body	A body established by the Owner for the purpose of managing and maintaining the Open Space Land and for other purposes relating to the Phase 3 Development.
Maximum Weekly Rent	a rent in accordance with the Regulator's Tenancy Standard
Meadow Area	The area of informal open space shown ~~hatched~~ outlined blue on Plan 4
Meadow Area Works	The works to landscape and furnish the Meadow Area
Mortgage Default Payment	any receipt received by or payment made to the Equity Mortgagee under an Equity Mortgage following the exercise of a power of sale by a mortgagee with higher priority which is not an Exempt Payment
NEAP	Means a neighbourhood equipped area for play
Occupation	Means use of any Dwelling or part of a Dwelling for residential occupation by a single household

Open Market Dwellings	means the housing to be constructed on the Phase 3 Land other than the Affordable Dwellings
Open Space Land	means the Phase 3 Open Space The Phase 2 Open Space and the Phase 1 Open Space but for the avoidance of any doubt does not includethe Deleted POS
Open Space Works	The works to be carried out on the Open Space Land for the construction and equipping of the Open Space Land in accordance with the provisions of paragraph 1 of The Third Schedule to this Agreement and shall include the Brookside Area Works and the Meadow Area Works
Owner	In relation to Blue Land means the Developer and in relation to the Red Land means the Red Land Owner and in each case includes any person deriving title under them.
Perpetuity Period	the period of eighty years from the date of this Agreement
Phase 1 Consent	The consent granted by a decision letter of the Planning Inspectorate reference APP/7/75/02/P2376/00626 and dated 14th February 2003
Phase 1 Land	Land at Chard Road Axminster Devon shown edged blue on Plan 2
Phase 1 Planning Obligation	The planning obligation by agreement made between (1) Allen James Booth, Sheila Margaret Booth, James William Allen Booth and William Joseph Booth, (2) David John Hayne and Margaret Georgina Hayne, (3) Timothy John Coath and Ruth Coath, (4) the Developer, (5) The Council, (6) the County dated 14th February 2003
Phase 1 Open Space	The areas of land hatched purple on Plan 3
Phase 2 Consent	The planning permission issued by the Council on 22 April 2008 with reference 07/1635/MFUL
Phase 2 Land	Land at Chard Road Axminster Devon shown edged green on the Plan 2

Phase 2 Open Space Provisions	Clause 4 of the Phase 2 Planning Obligation
Phase 2 Open Space	The areas of open space hatched green on Plan 3
Phase 2 Planning Obligation	The planning obligation by agreement made between the parties to this agreement and dated 23 April 2008
Phase 3 Application	The planning application relating to the Phase 3 Development submitted by the Developer to the Council and registered under reference 10/0132/Full
Phase 3 Development	Development of the Phase 3 Land to provide 98 new residential dwellings and site access
Phase 3 Land	Land at Chard Road Axminster Devon shown edged red and edged blue on Plan 1.
Phase 3 Off Site Sports Contribution	The sum of £165,944.76 as a contribution to the provision or improvement of sports facilities in the vicinity of Axminster and £7,745.14 as a contribution to the maintenance of those facilities.
Phase 3 Open Space	The areas of land hatched blue on Plan 3
Plan 1, 2, 3, 4, 5N and 5S	The plans appended to this agreement and respectively titled:- 'Plan 1':The Phase 3 Land 'Plan 2' Phases 'Plan 3' Open Space Plan 4 Public Open Space Works Plan 5N and 5S: Affordable Housing (North and South)
Planning Monitoring Contribution	The sum of £4825 which the Owner shall pay to the council as a contribution to the Council's costs of monitoring compliance with this Deed.
Planning Permission	the planning permission granted by the Council pursuant to the Phase 3 Application and the expression Planning Permission shall include all approvals granted under that permission
Play Area	The area of land shown outlined in red and coloured blue being

	a NEAP and green being a LEAP on Plan 3
Play Area Capital Contribution	The sum of £132,277.68 which the Owner is to pay to either the Management Company or the Council (the Owner to elect whether such payment is made to the Management Body or the Council) for the costs of developing the Play Area to serve all 3 phases of the development
Play Areas Maintenance Contribution	The sum of £24,743.27 which the Owner is to pay to either the Management Company or the Council (the Owner to elect whether such payment is made to the Management Body or the Council) being a contribution to the costs the Council will incur in managing and maintaining the Play Areas if those areas are transferred into the Council's ownership.
Primary Education Contribution	Means part of the Education Contribution relating to primary education being a sum of £55,370 and £1437.50 towards primary ICT equipment
Public Art	The provision on the Phase 3 Land or in the vicinity of the Phase 3 Land of works of art as are approved by the Council pursuant to the Planning Permission which may refer to our heritage or celebrate the future, highlight specific areas and issues or be conceptual. Work can be permanent or temporary, internal or external, integral or free standing, monumental or domestic, large or small scale, design or ornament and may include an ornamental bridge and furniture, and interpretation boards within the Open Space Land.
Public Art Contribution	The sum of £30,000 to be paid to either the Management Body or the Council (the Owner to elect whether such payment is made to the Management Body or the Council) for the costs of providing Public Art on the Phase 3 Land
Public Open Space	an amenity to be dedicated or otherwise made available for use by the general public to the satisfaction of the Local Planning Authority in perpetuity
Red Land	The land registered under Title Number DN558327 outlined in

	red on Plan 1.
Regulator	means the Government agency established pursuant to the Housing & Regeneration Act 2008 being responsible for investment in and delivery of affordable housing and the regulation of Registered Social Providers
RSP	A Registered Provider of Social Housing registered with the Regulator
RSP Sale Price	The maximum price that the RSP can afford to pay to purchase each Affordable Dwelling on the basis that the purchase will be funded from the rent roll of letting that dwelling without Public Subsidy
Secondary Education Contribution	Means part of the Education Contribution relating to secondary education being a sum of £221,641.20 and £19,190 towards secondary ICT equipment
Sewerage Evaluation Contribution	Means the sum (plus any VAT at the rate applicable at the date of payment) payable to the Sewerage Undertaker towards the carrying out of a detailed evaluation of the existing sewerage network, to identify upgrading and/or improvement works necessitated by the development comprising the Accountable Dwellings.
Sewerage Network Contribution	Means the sum or sums determined as payable to the Sewerage Undertaker following its detailed evaluation (plus any VAT at the rate applicable at the date of payment), required to enable the Sewerage Undertaker to execute the upgrading and/or improvement works to the sewerage network, necessary to accommodate the increased foul sewage flows and loads associated with the development comprising the Accountable Dwellings.
Staircase Out	where a tenant under a shared ownership lease purchases an increased share of the equity up to and including the whole of the equity and accordingly becomes the freehold owner of the dwelling or where the buyer under an Equity Percentage Arrangement has exercised a right to redeem the Equity

	Mortgage.
Staircasing Payment	any payment made by a tenant under a Shared Ownership Lease in exercise of its right to Staircase Out
Staircasing Receipts	any receipts received by the owner of the freehold interest under (i) a shared ownership lease as consideration for the grant of additional equity or the tenant exercising his or her right to Staircase Out or (ii) an Equity Mortgage as consideration for the reduction or redemption of the Equity Mortgage which when paid to the Council under the provisions below shall only be used by the Council for the provision of affordable housing to Designated Persons and for no other purpose
Sub Phase 3A	The sub phase of the Phase 3 Development as shown on Plan 2 outlined in red or as subsequently varied by plans submitted by the Developer .
Sub Phase 3B	Those parts of the Phase 3 Development that are not comprised in Sub Phase 3A.

NOW THEREFORE IT IS HEREBY AGREED between the Owner the Council, the County and the Sewerage Undertaker as follows:-

3 General

3.1 This Agreement is made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 and all other powers enabling and any enactments replacing or superseding the same with the intent to bind the Owner's interests in the Phase 3 Land and with the intent that the obligations herein contained shall be planning obligations.

3.2 All covenants given by the Owner are covenants given by the Developer in respect of the Blue Land and by the Red Land Owner in relation to the Red Land

THE FIRST SCHEDULE-

AFFORDABLE DWELLINGS

1. Affordable Dwellings shall comprise 35 Dwellings as described in the Affordable Housing Table.

2. The 25 dwellings described as "Affordable Rent" in column 7 of that table shall subject to paragraph 9 below be Affordable Rent Dwellings and those 10 dwellings described as "Intermediate" shall be Intermediate Affordable Dwellings.

3. The Owner shall upon completion of each Sub Phase of the Phase 3 Development and at all times subsequently dispose of the Intermediate Affordable Dwellings as Intermediate Affordable Dwellings and shall let the Affordable Rent Dwellings on Affordable Rent Tenancies

4. Sub Phase 3A shall include not less than 10 Affordable Dwellings and Sub Phase 3B shall include not less than 35 minus the number of Affordable Dwellings provided under Phase 3A.

5. The Owner shall not (other than with the written approval of the Council)

   (i) occupy any dwelling in Sub Phase 3B nor

   (ii) legally complete the sale of more than 20 of the Open Market Dwellings in Sub Phase 3A

   until all the Affordable Dwellings in Sub Phase 3A have been issued with an NHBC CML notice confirming the Affordable Dwellings are fit for occupation nor

   (iii) legally complete the sale of more than 30 of the Open Market Dwellings in Sub Phase 3B

   until all the Affordable Dwellings in Sub Phase 3B have been issued with an NHBC CML notice confirming the Affordable Dwellings are fit for occupation and in relation to all the Affordable Dwellings in each phase shall either have

   5.1. entered into a contract to sell the affordable homes in that Sub Phase to an a to an Approved RSP for a consideration that does not exceed the RSP Sale Price

   OR if paragraph 11 below applies

5.2. made the Affordable Dwellings in that Sub Phase Available for Occupation by Designated Persons .

6. The Affordable Dwellings shall for the Perpetuity Period not be occupied or permitted to be occupied by the Owner other than as Affordable Dwellings and in accordance with this Schedule and shall not be let or disposed of other than to a Designated Person.

7. The Owner shall prior to the commencement of the construction of the Affordable Dwellings in each Sub Phase offer (either before or after the commencement of construction of that Sub Phase) the Affordable Rent Dwellings and may offer the Intermediate Affordable Dwellings in that Phase for sale to one or more Approved RSPs at the RSP Sale Price and at the same time shall provide the Council's Head of Housing and Social Inclusion with a copy of the offer letter(s)

8. If within 3 months of the offer of the Affordable Dwellings to an RSP or RSPs under paragraph above no RSP has contracted to purchase all of the Affordable Rent Dwellings the Owner shall prior to the completion of the construction of the Affordable Dwellings in each Sub Phase offer (either before or after the commencement of construction of that Phase) the Affordable Rent Dwellings and may offer the Intermediate Affordable Dwellings in that Phase for sale to one or more Approved RSPs at the RSP Maximum Price and at the same time shall provide the Council's Head of Housing and Social Inclusion with a copy of the offer letter(s).

9. If at any time after six months of the offer of the Affordable Rent Dwellings in each Sub Phase to at least three Approved RSPs no Approved RSP has confirmed in writing to the Owner that it is able and willing to purchase the Affordable Rent Dwellings or if an Approved RSP who has accepted an offer fails to exchange contracts for the purchase within four months of the offer then paragraph 11 below shall apply in to the provision of those dwellings as Intermediate Affordable Dwellings..

10. After the Affordable Dwellings has been transferred to an Approved RSP the Second Schedule shall apply to govern nomination arrangements to the Affordable Dwellings unless the Council and that Approved RSP have entered into an agreement specifying alternative arrangements.

11. If any Affordable Dwelling is not transferred to an Approved RSP the following provisions shall apply to its first and any subsequent allocation and letting:-

11.1.1. The Owner shall give written notice to the Council's Head of Housing and Social Inclusion of the date when the Affordable Dwellings shall be Available for Occupation

11.1.2. three months notice shall be given to the Head of Housing and Social Inclusion who shall be invited to submit to the Owner in writing a list of persons for each available dwelling who are Designated Persons within twenty five working days of receipt of such notice

11.2. Any notice served under this paragraph in relation to the first letting of an affordable dwelling after it becomes Available for Occupation shall include details of the offer made to the Approved RSP under paragraph 8 and 9 above and state whether the Owner has exchanged contracts for the sale of the Affordable Dwellings (or any of them) to an RSP.

11.3. The Owner shall offer an Equity Percentage Arrangement or Shared Ownership Lease as appropriate to the persons on the list provided by the Head of Housing and Social Inclusion and shall grant such a tenancy or Shared Ownership Lease or make a Discounted Sale to one of those persons.

12. Protection of RSPs, mortgagees and certain purchasers

12.1. After the date of any transfer of an Affordable Dwelling to a RSP the covenants contained in the First Schedule to this Agreement shall not be enforceable against:-

12.1.1. Any mortgagee or chargee in possession of any Affordable Dwelling exercising a power of sale in respect of default by a RSP or against any person or body deriving title from any such mortgagee or chargee; or

12.1.2. Any person exercising the right to acquire; or

12.1.3. A lessee under a Shared Ownership Lease (if any) who has staircased to 100% and/or taken a transfer of the freehold reversion of that Lease from the purchaser or from a mortgagee of the lessee

13. Equity Percentage Arrangements

13.1 If the Owner wishes to dispose of any Affordable Dwelling by way of an Equity Percentage Arrangement it shall first provide details of the arrangements to the Council. The arrangements shall comply with the following structure:-

13.2 The sale shall be by way of freehold or long leasehold for a payment which does not exceed the Initial Sale Price.

13.3 The Equity Mortgage granted on first sale shall be for the difference between the Open Market Value and the Initial Sale Price for the Affordable Dwelling and expressed as of a percentage of the Open Market Value. The Equity Mortgage shall rank behind any mortgage entered into by the buyer for the purchase of the Affordable Dwelling.

13.4 The buyer shall not be required to pay any interest on the Equity Mortgage. If the buyer is required to pay a fixed or variable annual fee, such fee shall be capitalised and shall be deemed to form part of the Initial Sale Price

13.5 The buyer shall raise the funds needed to meet the Initial Sale Price from his/her own savings and a prior conventional mortgage as mentioned above.

13.6 The cost of redeeming the Equity Mortgage shall be the same percentage of the Open Market Value at the time of sale as at the original purchase date or if the buyer has exercised a right to Staircase the remaining percentage after taking into account the amount purchased.

13.7 The buyer shall be entitled to reduce the Equity Mortgage by means of Staircasing payments.

13.8 The buyer shall be entitled to sell the Affordable Dwelling subject to the Equity Mortgage.

13.9 Unless the buyer has exercised a right to Staircase Out prior to offering an Affordable Dwelling for a subsequent sale the buyer shall not offer the dwelling for sale other than on terms that the subsequent buyer will purchase the property under an Equity Percentage Arrangement with an Initial Payment not exceeding the appropriate Percentage of the Open Market Value of that dwelling.

13.10 The Owner shall be entitled to combine an Equity Percentage Arrangement with a Shared Ownership Lease BUT in no case shall the capital that the purchaser is required to fund (including any capitalised rent or fee) exceed the Initial Sale Price

13.11 The controls over who can own and occupy the dwelling shall apply as set out in Paragraphs 6 of this Schedule above save where the owner for the time being of that dwelling has exercised a right to Staircase Out .

Non RSL Shared Ownership Leases

14 If the Owner wishes to dispose of any Intermediate Affordable Dwelling by way of an Non RSL Shared Ownership Lease it shall first provide details of the arrangements to the Council

Recycling of Staircasing Receipts by Non RSP Owners

15 The Equity Mortgagee or the Residual Owner (as the case may be) shall serve notice on the Head of Planning on the occasion of one of the following events:

15.1 within 10 working days of receiving an application in writing from a borrower to make a Staircasing Payment or receiving a written notice from a mortgagee of a Mortgage Default Payment becoming due together with information on the estimated amount to be received and the contractual date set for completion

15.2 within 10 working days of receiving being notified by the mortgagor under an Equity Mortgage of a request to transfer or grant a new Equity Mortgage which will give rise to an Exempt Payment together with information on the estimated amount to be received and the contractual date set for completion.

16 The Equity Mortgagee or the Residual Owner (as the case may be) shall pay to the Council by electronic transfer:-

16.1 any Staircasing Payment or Mortgage Default Payment it receives within 10 working days of the date of receipt (less the cost of the electronic transfer fee).

16.2 any Exempt Payment it receives if those monies are not expended to grant a new Equity Mortgage on the relevant Affordable Dwelling within 10 working days of the date of receipt (less the electronic transfer fee).

17 The Equity Mortgagee or the Residual Owner (as the case may be) shall permit the owner for the time being of each Affordable Dwelling to dispose of that Affordable Dwelling with the benefit of the Equitable Mortgage either by the transfer of the

Second Schedule

NOMINATION ARRANGEMENTS For Affordable Dwellings By an RSP

In this schedule "the Provider" refers to the Approved RSP

DEFINITIONS AND INTERPRETATION

1 In this Schedule the following words and expressions shall (unless the context otherwise requires) have the following meanings:

1.1 "Designated Person" ~~any person or persons who at all material times immediately prior to the Occupation of the Affordable Dwellings is on the Housing Register or Housing Transfer List of the Council or any RSP managing homes in East Devon and is eligible under the relevant priority band for an offer of the relevant Affordable Dwelling under the Council's Allocation scheme under section 167 of the Housing Act, 1996;~~ shall have the same meaning as Designated Person in clause 2 of the Agreement

RLP (authorised by all parties)

1.2 "the Perpetuity Period" The period of eighty years from the date of the Section 106 Agreement

1.3 "the Initial Nomination Period" The period from completion of the Agreement until the first letting of each Affordable Dwelling

1.4 "the Nomination Period" The period of ten years commencing after the initial letting of the Dwellings

1.5 "the Subsequent Nomination Period" The period of time from the expiration of the Nomination Period to the expiration of the Perpetuity Period

1.6 "the Primary Right" the right to nominate Designated Persons to occupy 100% of the Affordable Dwellings during the Initial Nomination Period in accordance with clause 3 below

1.7 "the Secondary Right" the right to nominate Designated Persons to 100% of all relets of the Affordable Dwellings for the Nomination Period in accordance with clause 3 below

1.8 "the Tertiary Right" The right to nominate Designated Persons to 75% of all relets in the Affordable Dwellings for the Subsequent Nomination Period in accordance with clause 3 below

1.9 "Approved Tenancies" Affordable Rent Tenancies in respect of the Affordable Rent Dwellings and Shared Ownership Leases in respect of the Equity Sharing Dwellings

1.10 "RPI" the United Kingdom General Index of Retail Price (All Items) or if the same shall cease to be published or if the basis upon which it is calculated is changed in any material respect (as to which the Council's decision shall be conclusive) such other index of inflation or the value of money as the Council shall designate in a notice to the Provider

1.11 References herein to any statute or Act of Parliament shall be deemed to include references to any statute, Act of Parliament or statutory instrument for the time being replacing re-enacting or modifying the same and whether or not enacted prior to the execution of this Agreement.

1.12 The expression "the Council" shall in the event of local government reorganisation include its successors in title

1.13 Unless the context otherwise requires neuter words shall include the masculine and the feminine and vice versa and singular words shall include the plural and vice versa

1.14 If there is a conflict between any of the provisions of this Schedule and the provisions of the First Schedule of this Agreement the provisions of that Schedule shall be taken to prevail for all purposes

1.15 Any notice or communication pursuant to this agreement shall be given by telephone followed by facsimile transmission

2 PRELIMINARY

2.1 The Provider has agreed for the duration of the Perpetuity Period to make the Affordable Dwellings available for Occupation by Designated Persons on Approved Tenancies

2.2 In furtherance of the better performance of the Council's obligations under Parts II Housing Act 1985 and Parts VI and VII Housing Act 1996 the Council and the Provider agree to enter into a programme for the nomination of Designated Persons to occupy the Affordable Dwellings as hereinafter appearing

3 PROGRAMME FOR NOMINATIONS

3.1 Subject as hereinafter stated the Provider grants to the Council for the Initial Nomination Period the Nomination Period and the Subsequent Nomination Period the Primary Secondary and Tertiary Rights respectively in respect of those Affordable Dwellings referred to in clauses 1.6, 1.7 and 1.8 whether vacant by reason of first availability for occupation on completion of construction or arising upon any subsequent re-letting or after initial occupation

3.2 The Provider shall endeavour to give to the Council:

3.2.1 Not less than six weeks notice in writing of the completion of construction of the Affordable Dwellings and

3.2.2 Not less than four weeks notice in writing of the Availability for Occupation upon re-letting of any Affordable Dwelling the subject of the Secondary or Tertiary Rights

and the Council shall within 20 working days of receipt of notice pursuant to clause 3.2.1 above or (as the case may be) within 10 working days of notice pursuant to clause 3.2.2 above nominate to the Provider in priority order up to three prospective Designated Persons to occupy any of the Affordable Dwellings in respect of which the Council has received notice pursuant to paragraphs 3.2.1 or 3.2.2 above

3.3 The Provider shall within five working days have the reasonable right of interview enquiry and (on reasonable grounds) ultimate rejection of any prospective Designated Person so nominated by the Council provided that in the event of rejection of all three Designated Persons (in relation to any individual vacancy) or in the event that all three Designated Persons nominated fail to accept or refuse an offer of tenancy made by the Provider the Provider shall as soon as practicable so inform the Council and notify the same of its reasons for rejection (if applicable) and in the case of any of the Affordable Dwellings in respect of which the Council has nominated such person in response to a notice served pursuant to paragraph 3.2.1 above the Provider shall invite further nominations and the Council shall within 10 working days of notification nominate to the Provider a further three prospective Designated Persons in priority order and the Provider shall within 5 working days of such further notification inform the Council as to the identity of the Designated Person (if any) who shall occupy the Affordable Dwelling

3.4 Throughout the Initial Nomination Period the Nomination Period and the Subsequent Nomination Period the Provider will submit to the Council on an annual basis statistical evidence of the occupiers of the Affordable Dwellings (including voids, sales, re-sales,

lets and re-lets) providing such information as the Council may reasonably require and the Provider is reasonably capable of providing

3.5 If within four weeks of the expiration of a notice served upon the Council pursuant to paragraphs 3.2 above the Provider shall fail to identify a Designated Person to occupy an Affordable Dwelling (whether by reason of the Provider's rejection of those persons nominated by the Council pursuant to the Primary Secondary or Tertiary Rights or otherwise) the Provider may let the Affordable Dwelling to a person in housing need living in East Devon and in accordance with the Provider's allocation Procedures but without prejudice to the rights of the Council (if any) arising upon the next occasion of the said Affordable Dwelling falling vacant

PLP (confirmed by all parties)

3.6 With each notice given by the Provider to the Council pursuant to clause 3.2 the Provider shall certify to the Council that the Affordable Dwelling to which the notice relates is fit for Occupation.

4 SALE OF AFFORDABLE DWELLINGS

4.1 Should any of the Affordable Dwellings be purchased by a tenant under the provisions of the Housing Act 1996 the Provider shall be required to use the proceeds of sale to provide a replacement dwelling of a similar size on an approved tenancy at an affordable rent within East Devon in accordance with Housing Circular F120/97 or any amending legislation the Council shall have the right to nominate to the initial letting of such replacement dwelling with 75% of the relets thereafter

5 ENFORCEABILITY OF COVENANTS

5.1 This Agreement is made pursuant to the Local Government (Miscellaneous Provisions) Act 1982 Section 33 and the covenants on the part of the Provider shall be enforceable without any limit of time against any person deriving title from the Provider in respect of its interest in the Affordable Dwellings and any person deriving title under it in respect of any lesser interest in the Affordable Dwellings as if that person had also been an original covenanting party in respect of the interest for the time being held by him PROVIDED THAT the terms of this Agreement shall not be binding upon any mortgagee in possession for the time being of the Affordable Dwellings or part thereof or a receiver appointed by such a mortgagee which or who may sell free from the terms of this Agreement AND PROVIDED THAT the terms of this Agreement shall not be binding upon a person who purchases the property under a statutory right to buy or right to acquire or that persons mortgagee or successors in title