

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 subsidized 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) 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 Shared Ownership Dwelling"	means a Dwelling for sale on a shared ownership basis solely by way of a Shared Ownership Lease
"Affordable Housing Units"	means the six (6) Dwellings to be provided as Affordable Housing comprising at least four (4) Affordable Rented Dwellings and the remaining Affordable Housing Unit/s as Affordable Shared Ownership Dwelling/s 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 as hereinafter defined more particularly the location of and mix of unit types and proposed tenure for those units and the proposed timetable for such provision

NOMINATION AGREEMENT IN RESPECT OF LAND

THIS NOMINATION AGREEMENT is made the day of 201#

BETWEEN:

- (1) **EAST DEVON DISTRICT COUNCIL** of Blackdown House, Border Road, Heathpark Industrial Estate, Honiton, EX14 1EJ ("EDDC"); and
- (2) [##### (co-operative and community benefit society, company number #####) whose registered office is at ##### (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 6 units which are subject to the Transfer to the Registered Provider dated [XX XX 2018] and which shall be made available as Affordable Housing (as defined in the Section 106 Agreement) and which shall comprise# [at least 4]Affordable Rented Dwellings and [the remaining]# Affordable Shared Ownership Dwelling as defined and delivered pursuant to the Section 106 Agreement and Affordable Housing Unit shall be construed accordingly;
"Common Housing Register"	means in the case of Affordable Rented Dwellings the register or list of applicants maintained by Devon Home Choice and in the case of Affordable Shared Ownership Dwellings the register or list of applicants maintained by Help to Buy South West;
"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

"Affordable Housing Site"	means the land to accommodate the Affordable Housing Units as shown within the land shown edged red and labeled in black as "AFFORDABLE" on Plan 2 annexed hereto
"Common Housing Registers"	means in the case of Affordable Rental Dwellings the register or list of applicants maintained by "Devon Home Choice" and in the case of Affordable Shared Ownership Dwellings "Help to Buy South West"
"Design and Quality Standards"	Means that the Affordable Housing Units shall be constructed; (i) strictly in accordance with the plans and elevations deposited and as approved by the District Council as part of the Planning Permission (i) to meet part M4(2) of the Building Regulations Category 2: accessible and adaptable dwellings (or any comparable updated nationally set standards) (ii) in accordance with Homes England's design and quality standards and the Housing Provider's own design standards applicable at the time of Commencement of Development (iii) Tenure blind so as to be indistinguishable from Private Dwellings
"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
"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

"Expert"	means an expert independent arbitrator to be appointed in accordance with clause 7.1 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"	means a connection to the Parish of Dunkeswell demonstrated by one or more of the following in the following priority order; (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 (2) being formerly permanently resident therein for a continuous period of five (5) years; or (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 (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

"Housing Provider"	means a housing association or similar organisation or a social landlord in each such case registered with the Housing Corporation under Section 1 of the Housing Act 1996 or such other body or organization whose main object is the provision of Affordable Housing as agreed in writing by the District Council
"Local Connection"	means a connection to the Parish of Dunkeswell demonstrated by one or more of the following in priority order: (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 (2) being formerly permanently resident therein for a continuous period of five (5) years; or (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 (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 (5) such person as is prescribed by the Allocation of Housing (Qualification Criteria for Right to Move) (England) Regulations 2015 and in the event that no-one satisfying the above requirements can be found within the Parish of Dunkeswell then the process shall be repeated considering persons from the following areas in the following priority order; (1) the Neighbouring Parishes, (2) persons from the District
"Neighbouring Parishes"	means the parishes of Sheldon, Broadhembury, Awliscombe, Coombe Raleigh and Luppitt,

	independent evidence that the family member is in need of support or can give support (5) or such person as is prescribed by the Allocation of Housing (Qualification Criteria for Right to Move) (England) Regulations 2015 and in the event that no-one satisfying the above requirements can be found within the Parish of Dunkeswell 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 Sheldon, Broadhembury, Awliscombe, Coombe Raleigh and Luppitt
"Nomination Period"	means the period of eighty (80) years from the date of this Agreement;
"Nomination Right"	means the right referred to in the Section 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 a Registered Provider to allocate Eligible Persons to occupy the Affordable Housing Units in accordance with Devon Home Choice or Help to Buy South West during the Nomination Period;
"Parties"	means [##### 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) Westward Investment Management Services (UK) Ltd which makes provision for affordable housing on land North of Louis Way Dunkeswell Devon;

“Nomination Agreement”	means the agreement or an agreement substantially in the form of the one appended to this Agreement in the Second Schedule and which governs the ability of the District Council to nominate occupiers for the Affordable Housing Units
“Shared Ownership Lease”	means a long shared ownership lease (as defined in section 622 of the Housing Act 1985 or successor provision) with a Housing Provider substantially in accordance with Homes England (or successor body) Model as at the date of any such lease where the purchaser purchases an initial share of the equity between 25 – 80% and pays rent on the remaining unsold equity [and where additional share of the equity can be purchased provided that no more than 80% of the equity can be purchased] (DPA areas only)
“Staircasing Receipts”	Means any monies received by the approved Housing Provider of an Affordable Shared Ownership Dwelling as a result of the leaseholder exercising a right to increase their share of the equity (and any part of such monies)

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 Third (3rd) Private Dwelling and not to permit Occupation of

- 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 or Help to Buy South West Scheme and if any conflict arises between this Nomination Agreement and the Devon Home Choice or Help to Buy South West Scheme then the Devon Home Choice or Help to Buy South West Scheme shall prevail
- 1.10 The headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement

2 NOTICES

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

3 PROVISION OF AFFORDABLE HOUSING

- 3.1 The Registered Provider agrees to make the Affordable Housing Units available for sale to or rent by (as appropriate) 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.

the Third (3rd) 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 Owners 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 Agreement
- 2.8 To give at least 10 Working Days written notice to the District Council prior to Occupation of the Third (3rd) Private Dwelling
- 2.9 To give one month's 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

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 where an Affordable Housing Unit becomes available for occupation by reason of availability for First Occupation or arising upon any subsequent resale, re-let or assignment after the expiry of the First Occupation or any subsequent occupation of that Affordable Housing Unit.
- 4.3 EDDC appoints the Registered Provider to allocate Eligible Persons to occupy the Affordable Housing Units in accordance with Devon Home Choice or Help to Buy South West during the Nomination Period;

5 ENFORCEABILITY OF COVENANTS

- 5.1 This Agreement is made pursuant to the Local Government (Miscellaneous Provisions) Act 1982 Section 33 and the Localism Act 2011 Section 1 and the covenants on the part of the Registered Provider shall be enforceable without any limit of time against any person deriving title from the Registered Provider in respect of its interest in the Affordable Housing Units and any person deriving title under it in respect of any lesser interest in the Affordable Housing Units as if that person had also been an original covenanting party in respect of the interest for the time being held by him provided always that the obligations contained or referred to in this Nomination Agreement shall not apply in so far as is provided for in the Section 106 Agreement.

6 COSTS

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

7 DISPUTES

- 7.1 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
 - (d) in the event of a reference to arbitration arising out of the unreasonable withholding of any approval required or sought under this Agreement the

- 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 will be enforceable in respect of any mortgagee or chargee or any receiver (including an administrative receiver) 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 a housing administrator (reach a Receiver) of the whole or any part of the Affordable Housing Site or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED ALWAYS that the mortgagee or chargee or Receiver has complied with its obligations contained in paragraphs 4.2 below
- 4.2 The mortgagee or chargee or Receiver 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 shall give not less than three months' prior notice in writing to the District Council of its intention to dispose and;
- (i) In the event that the District Council responds within three months from receipt of the 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 then the mortgagee or chargee or Receiver shall cooperate with such arrangements and use its reasonable endeavours to secure such transfer
 - (ii) If the District Council or any other person cannot within three months of the date of service of its response under paragraph 3.2 (i) secure such transfer then provided that the mortgagee or chargee or Receiver shall have complied with its obligations under paragraph 3.2 the mortgagee or chargee or Receiver shall be entitled to dispose of the Affordable Housing Site or Affordable Housing Unit(s) free of the restriction set out in this First Schedule

timescale for carrying out any required steps under this Agreement may be extended either by written agreement between the parties to the procedure or failing such agreement in accordance with such extended timescale as the Expert may deem fit.

- 7.2 In the event of such election made in clause 7.1 then any resulting finding decision or determination of the Expert shall be binding on the Registered Provider and EDDC.

8 EXCLUSIONS

- 8.1 Nothing in this Agreement shall bind

- 8.1.2 a mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such a mortgagee or chargee to realise its security or any administrator (however appointed) including a housing administrator of the whole or any part of the Affordable Housing units,
- 8.1.2 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
- 8.1.3 In relation to any Shared Ownership Dwelling (as defined in the S106 Agreement) where the owner of the said unit has been granted a waiver to the requirements of the Designated Protected Area Order (SI 2009/2098) (or such other regulations restricting the ability to achieve 100% staircasing) the owner subsequently acquires such percentage that will take their ownership to 100% of the said unit 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 as a DEED by)
affixing the common seal of)
[#####])
in the presence of:)

PROVIDED THAT at all times the rights and obligations in paragraph 4.2 shall not require the mortgagee or chargee or Receiver to act contrary to its duties under the charge or mortgage and that the District Council must give full consideration to protecting the interests of the mortgagee or chargee or Receiver in respect of monies outstanding under the charge or mortgage

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

4.3.2 in relation to any Affordable Shared Ownership Dwelling where the owner of the said unit has been granted a waiver to the requirements of the Designated Protected Area Order (SI 2009/2098) (or such other regulations restricting the ability to achieve 100% staircasing) the owner subsequently acquires such percentage that will take their ownership to 100% of the said unit or to the successors in title to any such persons

4.4 In the event of any Affordable Shared Ownership Dwelling being released from the Affordable Housing restrictions herein contained by virtue of the operation of paragraph 4.3.2 above the Owner shall provide the District Council with details of Staircasing Receipts from the Affordable Shared Ownership Dwellings and in co-operation with the District Council reach agreement to invest 100% of the Staircasing Receipts, if any, arising from the Affordable Shared Ownership Dwellings in the provision of new build Affordable Housing or to invest in measures to enhance the provision of Affordable Housing within the administrative area of the District Council including facilitating the acquisition of market housing or the conversion or refurbishment of existing housing to bring such housing back into beneficial use to enable it to be occupied provided that the use of the Staircasing Receipts is limited to the provision within District

5. Provision of Information

5.1 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 sold or let of the Affordable Housing in accordance with the terms of this Schedule