

1 Definitions

“Act” means the Town and Country Planning Act 1990;

“Administrative Area” means the District of South Hams;

“Affordable Housing” means affordable housing available to specific eligible households whose needs are not met by the market as set out within the glossary at Annex 2 of the National Planning Policy Framework and being permanent dwellings to be let as Affordable Housing Units or disposed of as Shared Ownership Housing Units through an Affordable Housing Provider pursuant to this Agreement;

“Affordable Housing Provider” or “AHP” means a registered provider as defined in the Housing & Regeneration Act 2008 who is registered with Homes England or any other provider of Affordable Housing first approved in writing by the Council;

“Affordable Housing Unit” means each of the 7 Dwellings to be delivered as Affordable Housing pursuant to this Agreement and being those Dwellings to be constructed on Plot Numbers 3-4 and plots 11-15 inclusive as shown on Drawing Number 1015-921-0101 Rev X (or such other alternative plots as may be first agreed in writing between the Owner and the Council) and delivered as either Social Rented Units or Shared Ownership Units pursuant to this Agreement;

“Application” means the application for Full planning permission registered by the Council on 29th November 2018 and given reference number 3445/18 to develop the land by way of the construction of new housing development comprising 20 dwellings.;

“BCIS Index” means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institute of Chartered Surveyors;

“Chargee” means any mortgagee or charge of either:

- (a) the Land or any part thereof; or
- (b) an individual Affordable Housing Unit where the mortgagor has defaulted on the particular mortgage; or
- (c) any mortgagee or chargee of the Affordable Housing Provider (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;

“Chargee’s Duty” means the tasks and duties set out in Paragraph 1.10 of Part 1 of Schedule 1;

“Commencement of Development” means the carrying out of a material operation on the Land pursuant to the Permission as defined in Section 56 of the Act other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and similar phrases such as **“Commence Development”** and **“Commence”** shall be construed accordingly;

“Contribution” means all or any of the Index Linked Education Contribution, as the context requires;

“Designated Person” means any person or persons who immediately prior to the occupation of an Shared Ownership Unit has a Local Connection with Devon and the expression **“Designated Persons”** shall be construed accordingly;

“Development” means the development of the Land pursuant to the Permission;

“Devon Home Choice” means the choice based letting scheme introduced in the County of Devon with a view to allocating those most in need of housing accommodation owned by local authorities and registered providers;

“Dwelling” means any residential unit (including a house, flat or maisonette) constructed on the Land pursuant to the Permission and being either an Affordable Housing Unit a Shared Ownership Unit or an Open Market Dwelling;

“Education Contributions” means the Primary Education Contribution, Secondary Education Contribution and Secondary Education Transport Contribution collectively;

“Expert” means a person of not less than 10 (ten) years recent and relevant experience in the matter in dispute as may be appointed by the Parties to this Agreement;

“Homebuy Agent” means Help to Buy South West Limited (Company Number 01683645) whose registered office is at Collins House Bishopstoke Road Eastleigh Hampshire SO50 6AD or such other organisation(s) as may be designated by Homes England as being responsible in relation to the area in which the Land is situated for the marketing of Shared Ownership and Discount Open Market Dwellings the assessment of the eligibility of those applying to purchase them and the direction of an appropriate applicants to the local schemes which best meet their needs;

“Index Linked” means increased in accordance with the Indexation Formula set out at Paragraph 1 of Schedule 4 to this Agreement;

“Interest Rate” means 4% above the Bank of England base rate calculated on a day to day basis from time to time in force;

“Land” means the land shown edged red on the Plan namely land at Beechwood House Sparkwell Plymouth PL7 5DA

“Landscape and Ecology Management Plan” means details (including a plan) setting out the management and maintenance arrangements for the LEMP Land (to be managed for biodiversity, ecology and landscape purposes both on the Land and off-site), SUDS, Open Space and NEAP. For the avoidance of doubt the plan shall include all areas of Open Space,, SUDS and incidental open space which falls outside the curtilage of any Dwelling;

“LEMP Land” means the land shown on Landscape Plan No. 681/01 & 02 together with Ecology Plan 1015-922-0103 Rev J;

“Local Allocations Policy” means the policy adopted by the Council in September 2015 (Revised November 2017) to ensure locally based allocations for Affordable Housing Units pursuant to section 167(2E) of the Housing Act 1996 together with any revisions thereof;

“Local Connection” means a local connection to the Administrative Area of the Council having regard to the local connection criteria set out in the Local Allocations Policy applicable at the date when the relevant Affordable Housing Unit(s) are being allocated (or in the event of there being no Local Allocations Policy in force such other criteria as may be agreed by the Council in writing);

“Management Company” means an existing management company or a management company set up by the Owner to fund manage and maintain the Open Space, the LEMP Land [and SUDS] and which is limited by guarantee, or such other management entity or body (including a Town or Parish Council) as may be first approved in writing by the Council;

“Obligations” and “Obligation” means the planning obligations, covenants, requirements and restrictions on the part of the Owners contained in this Agreement;

“Occupation” or “Occupy” means occupation for residential use permitted by the Permission but not including occupation by personnel engaged in construction, fitting out, decoration, marketing, display or security operations;

“Open Market Dwelling” means a Dwelling that is for sale on the Open Market and is not an Affordable Housing Unit;

“Open Market Value” means the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm’s-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion;

SCHEDULE 1

Owner's Covenants with the Council

PART 1 - AFFORDABLE HOUSING

- 1.1 Subject to the provisions of this Schedule the Seven Affordable Housing Units are hereby designated as Affordable Housing and shall not be occupied other than as Affordable Housing.
- 1.2 To construct and provide the Affordable Housing Units:
 - 1.2.1 in accordance with the Homes & Communities Agency's Design and Quality Standards 2007 or any other standards which supersede it for grant funding purposes regardless of whether the Affordable Housing Units will receive grant funding or not; and
 - 1.2.2 in accordance with the requirements of Homes England's "Code for Sustainable Homes" so that the completed Affordable Housing Units achieve Code Level 3 or any other standards which supersede it.
- 1.3 Unless otherwise agreed in writing with the Council Plot Numbers 11-15 of the Affordable Housing Units shall be provided and occupied as Social Rented Units and Plot Numbers 3-4 of the Affordable Housing Units shall be provided and occupied as Shared Ownership Units in accordance with the schedule of accommodation indicated on the Site Layout Plan.

Mechanism for Provision of Affordable Housing

- 1.4 The Owner shall enter into a contract with an AHP within 18 months of the date of this Agreement for the transfer of the Affordable Housing Units to the AHP.
- 1.5 If the Owner has not contracted to sell the Affordable Housing Units to the AHP within six months of the date of this Agreement (despite having used reasonable endeavours to do so) the Owner shall demonstrate to the Council why it was unable to do so and PROVIDED THAT the Council, acting reasonably, is satisfied that all reasonable endeavours have been undertaken to secure a contract with an AHP in respect of the Affordable Housing Units, the Owner and the Council shall seek to agree an alternative mix of the Affordable Housing Units within 20 Working Days to be agreed in writing with due consideration to the viability of the Owner's development.
- 1.6 From the date of Practical Completion of the Affordable Housing Units those Units shall not be used other than for Affordable Housing and shall only be occupied by persons with a Local Connection in accordance with the Council's Local Allocations Policy.

- 1.7 The Shared Ownership Units shall only be occupied by Designated Persons who cannot afford to rent or buy housing generally available on the open market immediately prior to Occupation save that this Obligation shall not be binding on:
- 1.7.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and charges; or
- 1.7.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty set out in this Agreement.
- 1.8 No more than ten of the Open Market Dwellings shall be Occupied until all of the Affordable Housing Units have been constructed to Practical Completion and are ready for Occupation and have been transferred to the Affordable Housing Provider.
- 1.9 Prior to the first Occupation of any Dwelling the Owner shall notify the Council of the name of the Affordable Housing Provider(s) to whom the Social Rented Units and the Shared Ownership Units shall be transferred.

Chargee's Duty

- 1.10 The Chargee shall prior to seeking to dispose of an Affordable Housing Unit pursuant to any default under the terms of its mortgage or charge give prior written notice ("Chargee's Notice) to the Council of its intention to dispose and:
- 1.10.1 In the event that the Council responds within two months from the date of receipt of the Chargee's Notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing and to secure repayment of all sums outstanding under the terms of the relevant security documentation (including all accrued principal monies, interest and reasonable and proper costs and expenses) then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer;
- 1.10.2 If the Council does not serve its response to the Chargee's Notice served under Paragraph 1.10.1 within the two months then the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restriction set out in this Part of Schedule 1 which provisions shall determine absolutely;

- 1.10.3 If the Council or any other person cannot within three months of the date of the Chargee's Notice secure such transfer then provided that the Chargee shall have complied with its obligations under Paragraph 1.10 the Chargee shall be entitled to dispose free of the restriction set out in this Part of Schedule 1 which provisions shall determine absolutely;

Nominations – Social Rented Units

- 1.11 Not to allocate the Social Rented Units except in accordance with the Devon Home Choice Register subject to the Local Allocations Policy and each Social Rented Dwelling shall only be let to a person:
- 1.11.1 who falls within the selection and allocations criteria set out in Devon Home Choice; and
- 1.11.2 who is considered by the AHP to be in need of the accommodation; and
- 1.11.3 who has a Local Connection with the Administrative Area of the Council.
- 1.12 In the event of a conflict between the Local Allocations Policy and the Devon Home Choice Register the Local Allocations Policy shall take precedence.
- 1.13 In the event that Devon Home Choice ceases to operate or the register is discontinued an alternative allocation method shall be approved by the Council prior to any further allocations.

Nominations – Shared Ownership Units

- 1.14 Insofar as it is lawfully able to do so the Owner shall ensure that the Shared Ownership Units are disposed of only to persons who:
- 1.14.1 are Designated Persons; and
- 1.14.2 have been chosen by the AHP from the list of eligible applicants which the AHP shall request from the Homebuy Agent provided that if there shall not be sufficient suitable applicants on such list or if any suitable applicants fail to proceed with the purchase within 3 (three) months of being made an offer by the AHP then the AHP shall be entitled to dispose of the Shared Ownership Unit to a person of its own choosing who is unable to afford the purchase of suitable accommodation on the open market PROVIDED THAT the AHP shall use reasonable endeavours to dispose of the Shared Ownership Unit to persons from such list of eligible applicants.