

dated

2014

Tarka Housing Limited (1)

Unilateral Undertaking given under Section 106 of the Town and Country Planning Act 1990 (as amended)

in relation to land at Northgate, Hartland, Bideford

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This Unilateral Undertaking

dated

Parties

Is given by:

- (1) **Tarka Housing Limited** (Industrial and Provident Society registration number IP30101R) whose office for service is Tarka House, Clovelly Road Industrial Estate, Bideford EX39 3HN (the **Owner**)

In favour of:

- (2) **Torridge District Council** of Riverbank House, Chanters Road, Bideford EX39 2QG (the **Council**)

Introduction

- (A) The Council is the Local Planning Authority for the purposes of the 1990 Act for the area that includes the Site, by whom the obligations imposed by this Agreement shall be enforceable.
- (B) The Application has been made to the Council for Planning Permission for the Development
- (C) The First Owner is the registered proprietor with Title Absolute under Title Number DN515958 of the Site subject to the entries disclosed on the Charges Register of the said title but otherwise free from encumbrances
- (D) The Council in exercise of its powers under the 1990 Act has resolved to grant the Planning Permission for the Development subject to completion of this Undertaking, which the Council considers is necessary for the satisfactory development of the Site; and the terms of which the Council has approved.
- (E) This Undertaking is conditional upon the matters hereinafter referred to.

Agreed terms

1 Definitions and Interpretations

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

1990 Act means the Town and Country Planning Act 1990 (as amended);

Affordable Housing means housing which is available to people who have a housing need or are on a low income insufficient to meet their housing need in the open market either to rent or purchase; and which falls within the definition of 'social housing' in section 68 of the Housing and Regeneration Act 2008

Affordable Rented Dwelling means any of the dwellings on the Site to be used as Affordable Housing and let in accordance with the terms set out in the Schedule of this Undertaking

Application means the application for planning permission for the Development registered by the Council under the 1990 Act registered on the [] and given reference [].

Commencement of Development the date upon which a material operation within the meaning of Section 56 of the Act is carried out in relation to the Development, and similar expressions such as "Commence the Development" shall be interpreted the same way;

Development means the erection on the Site of 8 Affordable Rented Dwellings, with ancillary access and parking;

Mortgagee means any person who is granted a charge over the Site or any part of it (including over any Affordable Rented Dwelling) or any receiver or manager or administrative receiver appointed by such mortgagee or chargee;

Obligations means the planning obligations contained in the Schedule hereto;

Occupation means the occupation for the purposes permitted by the Planning Permission but does not include occupation by personnel at the time engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly;

Owners means the First Owner and the Second Owner and (where the context so admits) either of them

Plan means the plan attached hereto as Appendix 1;

Planning Permission means the planning permission to be granted by the Council pursuant to the Application and the expression Planning Permission shall include all approvals granted thereunder;

Proper Officer means the Head of Community and Planning services, or any other officer of the Council given the authority and responsibility of that post.

RP means a registered provider of social housing under section 80 the Housing and Regeneration Act 2008.

Site means the land at Northgate, Hartland shown edged red on the Plan comprising title DN515958;

and additional expressions are defined in the Schedule in which they appear.

1.2 In this Undertaking, except where the context requires otherwise:-

1.2.1 The singular includes the plural, the masculine includes the feminine, and vice versa;

1.2.2 References to clauses and schedules are to the clauses in and schedules to this Undertaking;

- 1.2.3 Reference to any party having an interest in land affected by this Undertaking shall include any successor in title of that party to that land or to any part of it;
- 1.2.4 Reference to any party having a statutory function referred to in this Undertaking shall include any successor to that statutory function;
- 1.2.5 Reference to any Act or Statutory Instrument shall include any subsequent amendment or re-enactment of it;
- 1.2.6 Where an Obligation applies to more than one person, their liabilities shall be joint and several;
- 1.2.7 Referenced to the **Council**, the **Owner** and the **Second Owner** shall include their respective successors and assigns;

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2.1 The obligations in this Undertaking are conditional upon:

- i the Council granting the Planning Permission; and
- ii the Commencement of Development

and shall only come into effect when both such conditions are satisfied

- 2.2 If the Planning Permission granted pursuant to the Application should expire before the Development is Commenced or shall at any time be revoked this Undertaking shall forthwith determine and cease to have effect;
- 2.3 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted (whether or not on appeal) after the date of this Undertaking;
- 2.4 This Undertaking is a Local Land Charge and shall be registered as such;
- 2.5 The Council will upon the written request of the Owners at any time after the obligations of the Owners under this Undertaking have been fulfilled issue written confirmation thereof.
- 2.6 Nothing in this Undertaking is or amounts to or shall be construed as a planning permission or approval;
- 2.7 The County Court in whose district the Site is situated shall have full jurisdiction to hear and determine proceedings arising from or relating to this Undertaking or for the enforcement of its terms or any of them;
- 2.8 This Undertaking is made pursuant to Section 106 of the 1990 Act and is a planning obligation made with the intent to bind the Owners' interests in the Site;
- 2.9 None of the provisions of this Undertaking are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to or addressee of this Undertaking, but for the avoidance of doubt the exclusion of the application of that Act shall not prevent all or any of the future successors

in title to any of the parties to this Deed from being able to benefit from or to enforce any of the obligations in this Deed;

2.10 The Owners and their successors in title to the Site shall only retain any liability under this Undertaking whilst it or they shall retain any interest in the Site, save for any pre-existing breach of this Undertaking;

2.11 The Owner hereby undertakes to observe and perform the Obligations, which are intended to bind the Site (and every part of it) as planning obligations under section 106 of the 1990 Act.

3 General

Upon the completion of this Undertaking the Owner shall pay the reasonable legal fees of the Council in respect of the preparation of this Undertaking, not to exceed £150.

4 Mortgagee's Interest

4.1 For the avoidance of doubt, subject to the requirements of clauses 4.3 and 4.4, any Mortgagee will be bound by the terms of this Undertaking upon exercising any power to take possession lease or sell or otherwise deal with any Affordable Rented Dwellings on the Site PROVIDED THAT this Undertaking shall not be enforceable against any Mortgagee until it takes possession and thereafter the Mortgagee shall only be liable for any breach of the obligations arising during the period of time that it is in possession.

4.2 Once the requirements of clauses 4.3 and 4.4 have been complied with, the terms of this Undertaking will no longer apply to any Affordable Rented Dwelling and the Mortgagee will be free to sell any Affordable Rented Dwelling to the intent that this Undertaking will not thereafter be binding on any person deriving title from the Mortgagee.

4.3 In the event that the Mortgagee wishes to dispose of any Affordable Rented Dwelling (whether pursuant to a power of sale or otherwise), it will first offer to sell the Affordable Rented Dwelling to an RP nominated by the Council within 14 days of receipt of a request to do so

4.4 If:

4.4.1 the Council fails to make a nomination under clause 4.3 within 14 days of receipt of a request so to do; or

4.4.2 the nominated RP does not complete the purchase of the Affordable Rented Dwelling(s) or the Site within 56 days of being nominated; or

4.4.3 the nominated RP chooses not to proceed with its purchase and advises the Council of this;

then the Mortgagee will be free to dispose of the Affordable Rented Dwelling(s) or the Site to any person and the obligations and restrictions contained in this Undertaking will cease to apply to the Affordable Rented Dwelling(s) or Site to the intent that this Undertaking will not thereafter be binding on any person deriving title from the Mortgagee;

4.5 PROVIDED ALWAYS that the rights and obligations under paragraphs 4.3 and 4.4 shall not require the Mortgagee to act contrary to its duties or rights under its charge or

mortgage and that the Mortgagee shall not be required to sell the Affordable Rented Dwelling(s) for an amount less than that amount required to redeem its borrowing against such Affordable Rented Dwelling including interest costs and charges.

Schedule

Affordable Rented Dwellings

Part A - Definitions

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

Affordable Rent a rent which does not exceed 80% of open market rent for the relevant dwelling in accordance with guidance published by the Regulator from time to time.

Exempt Person means any person who in relation to an Affordable Rented Dwelling has:

- (a) exercised the right to acquire an 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 Rented Dwelling;
- (b) exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right).

Housing Need where a person does not have available to him or her and cannot afford (personally or jointly with other members of his or her household) to acquire or rent a home suitable for his or her needs and the needs of their household at normal market values prevailing in the district.

Local Requirement

- (c) a minimum continuous residence by a prospective occupier of five years in the Parish immediately prior to the Offer Date; or
- (d) residence by a prospective occupier in the Parish for five years within the ten years preceding the Offer Date; or
- (e) where one or both parents or guardians of a prospective occupier have resided in the Parish for a minimum period of ten years prior to the Offer Date; or
- (f) where a prospective owner or occupier has had continuous employment in the Parish for the past five years prior to the Offer Date; or
- (g) a key worker under a scheme approved by the Council.

Offer Date the date an Affordable Rented Dwelling is offered to a prospective occupier

Parish the Parish of Hartland

Regulator means the Homes and Communities Agency acting through the Regulation Committee established by it pursuant to Part 2 of the Housing and Regeneration Act 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions.

Part B - The Planning Obligation

1 The Owner undertakes: -

- 1.1 not to provide nor allow the Occupation of any Affordable Rented Dwelling other than for rent by a tenant of the Owner; and
- 1.2 not to charge or levy a rent in respect of the Affordable Rented Dwelling which exceeds an Affordable Rent; and
- 1.3 not do anything in relation to the provision of an Affordable Rented Dwelling which conflicts with the Council's requirement that such dwelling shall always be available as Affordable Housing

PROVIDED THAT this paragraph 1 shall not apply to an Exempt Person or any Mortgagee or Chargee of an Exempt Person or any person deriving title from an Exempt Person or any successor in title thereto and their respective Mortgagees and Chargees.

2 No person shall Occupy an Affordable Rented Dwelling unless that person: -

- 2.1 was a person in Housing Need and had a Local Requirement at the time of his or her first Occupation of an Affordable Rented Dwelling; or
- 2.2 is a member of a household of and living with a person who had a Local Requirement at the time of his or her first Occupation of the Affordable Rented Dwelling; and (in either case)
- 2.3 occupies that Affordable Rented Dwelling as his or her sole or main residence

but nothing in this clause shall require any person who satisfied the requirement in paragraph 2.2 above when they first Occupied the Affordable Rented Dwelling to vacate the Dwelling if they cease to qualify under paragraph 2.2 by virtue of death, hospitalisation or breakdown of a relationship with a person who qualified under paragraph 2.1.

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- 3.1 If no prospective occupier meeting the Local Requirement wishes to Occupy the Affordable Rented Dwelling within a period of 1 month from the date that the Affordable Rented Dwelling becomes available for Occupation, Occupation is permitted by a person in Housing Need with a Local Requirement applied to the following parishes: Clovelly, Woolfardisworthy, Bradworthy and Welcome.
- 3.2 If after a period of 2 months from the date the Affordable Rented Dwelling becomes available for Occupation, no prospective occupier in Housing Need meeting the Local Requirement wishes to Occupy the Affordable Rented Dwelling, then an occupier in Housing Need who meets a Local Requirement applied to any parish within the District of Torridge shall be permitted
- 3.3 Should there still be no suitable prospective occupier after a further period of 4 months from the date the Affordable Rented Dwelling becomes available for Occupation, an occupier from any parish within the County of Devon or within the former District of North Cornwall may Occupy the relevant Affordable Rented Dwelling

PROVIDED THAT during the said periods the Affordable Rented Dwelling shall have been continually marketed within the Parish or District, as appropriate, at a rent not exceeding the Affordable Rent.

- 4 The Owner shall not allow the Occupation of the Affordable Rented Dwelling by any person unless that person complies with the requirements of paragraph 2 to this Schedule as applicable.
- 5 All nominations of proposed occupiers of Affordable Rented Dwelling shall be made in accordance with "Choice Based Lettings" (DCLG Guidance – Allocation of Accommodation: Choice Based Lettings: August 2008 and subsequent guidance) or any subsequent replacement scheme agreed to by the Council and the Registered Provider. In the event that Choice Based Lettings has ceased to operate and a replacement scheme has not been agreed or has ceased to operate the Council shall have 100% nomination rights.
- 6 For the avoidance of doubt the provisions and restrictions contained or referred to in this Schedule shall not apply to any Mortgagee or its successors in title provided that the provisions of Clause 4 have been complied with and Clause 4 will prevail

Appendix 1

The Plan

In witness whereof the parties hereto have executed this document as a deed the day and year first before written

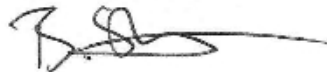
Executed and delivered as
a Deed by affixing the common seal
of **TARKA HOUSING LIMITED**
in the presence of:

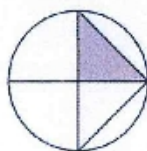
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Authorised Officer



Authorised Officer





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RECEIVED
19 DEC 2013

PROJECT:
Affordable Housing,
Northgate
Hartland

CLIENT:
Westcountry Housing
Group

DRAWING TITLE:

Location Plan

DATE: November 2013

CRATING: RB

SCALE 1:1250 @ A4

DRAWING
NUMBER
12015 / L1A

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