

DATED

201X

THE CORNWALL COUNCIL

(1)

and

[]

(2)

and

[]

(3)

and

[]

(4)

DEED OF REVOCATION

AND

PLANNING OBLIGATION BY AGREEMENT

made under Section 106 and 106A of the Town and Country Planning Act 1990

Relating to land at

[]

Legal Service
The Cornwall Council
County Hall
Truro
Cornwall
TR1 3AY
Ref:

BETWEEN

- (1) **THE CORNWALL COUNCIL** of County Hall Treyew Road Truro TR1 3AY (**“the Council”**)
- (2) [] of (**“the Owner”**)
- (3) [] (Company Registration No:) of (**“the Bank”**)

WHEREAS

- 1. The Council is the Local Planning Authority for the purposes of this Deed for the area within which the land described in the First Schedule (**“the Land”**) is situated and by whom the obligations contained in this Deed are enforceable
- 2. The Owner is interested as [freehold] owner in the Land title absolute under title number CL subject to the charge made between the Owner and the Bank dated []
- 3. The Council granted approval of the Development under reference number [] (**“the Planning Permission”**) and the Affordable Dwelling on the Land is one of the [] dwellings constructed on the Site.
- 4. [By virtue of the Local Government and Public Involvement in Health Act 2007 and the Cornwall (Structural Change) Order 2008 as amended by the Local Government (Structural Change) Order 2008 as amended by the Local Government (Structural Change) (Miscellaneous Amendments and Other Provisions) Order 2009 the functions of the former [] Council were vested in the Council on 1st April 2009.]¹
- 5. A Section 106 Agreement dated [] and made between [] [as varied by supplemental agreement dated and made between]² ([together]**“the Original Agreement”**) was entered into in respect of the Site.
- 6. In relation to the Land only the Council has agreed to revoke the Original Agreement and enter into a new agreement in the terms contained in this deed

¹ Delete as necessary, only required if section 106 agreement entered into prior to 1 April 2009 with a former district council

² Delete or insert details of other deeds of modification as appropriate

Now this Deed is made in pursuance of Section 106 and 106A of the 1990 Act and contains planning obligations and is a planning obligation for the purposes of that Section and **WITNESSES** as follows:

1. REVOCATION

- 1.1 It is hereby agreed and declared that the provisions of the Original Agreement shall from the date of this deed cease and determine absolutely in relation to the Land so that the Original Agreement no longer has any effect in relation to the Land.
- 1.2 Nothing in this Deed shall effect the operation of the Original Agreement in respect of the Site except in relation to the Land
- 1.3 The Original Agreement shall continue in full force and effect in respect of the Site (but excepting the Land)

Now this Deed is made in pursuance of Section 106 of the 1990 Act and contains planning obligations and is a planning obligation for the purposes of that Section and **WITNESSES** as follows:

2 DEFINITIONS AND INTERPRETATION

It is agreed and declared as follows for the purposes of this Deed the following expressions shall have the following meanings:

2.1 Definitions

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

“1999 Act” means The Contracts (Rights of Third Parties) Act 1999 as may be amended from time to time

“Advertising” means the advertising for sale or letting of the Affordable Dwelling in accordance with a scheme to be approved by the Council (such approval not to be unreasonably withheld or delayed) which scheme shall include unless otherwise agreed with the Council:

- (a) in the case of the sale of the Affordable Dwelling an advertisement on the website of Help to Buy South West or any other similar organisation promoting intermediate market housing

- (b) such other local advertising and social media channels as shall be agreed in writing by the Council

"Affordable Dwelling" means the dwelling (including any associated parking space(s) and residential curtilage) on the Land known as []³ for Qualifying Persons who are either releasing an Alternative Affordable Home elsewhere or are in Housing Need which was constructed on the Land pursuant to the Planning Permission

"Alternative Affordable Home" means either:

- (a) a social rented dwelling an affordable rented dwelling or an intermediate dwelling provided by a Registered Provider; or
- (b) an intermediate rented dwelling or an intermediate home ownership dwelling provided by a private developer

And in each case located in the County

"Application" means the application for [*outline / full*] planning permission to carry out the Development and which was submitted to the Council on [*insert date of the application*] and allocated planning reference []⁴

In the case of parishes:

"Area Local Connection" means a connection with the Primary Area or Secondary Area or the County as appropriate and demonstrated by that person or a member of their Household to the reasonable satisfaction of the Council:

- (a) being permanently resident therein for a continuous period of at least three (3) years immediately prior to Advertising; or
- (b) being formerly permanently resident therein for a continuous period of five (5) years; or
- (c) 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 three (3) years immediately prior to Advertising; or
- (d) 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 Advertising

³ Insert property details

⁴ Amend as necessary

"**Assured Tenancy**" means an assured tenancy or an assured shorthold tenancy under the Housing Act 1988 as amended by the Housing Act 1996 or such other similar form of periodic tenancy permitted under any statutory modification

"**County**" means the County of Cornwall

"**Development**" means the [on the Site] and described in the Application

"**Expert**" means a person having appropriate qualifications and local knowledge and experience in the matters in dispute as agreed by the Relevant Parties or failing agreement such person as is nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of the Relevant Parties

"**Help to Buy South West**" means the Government appointed local help to buy agency which provides a one stop shop for households seeking all forms of low cost home ownership

"**Household**" means anyone who may reasonably be expected to reside with the Qualifying Person(s)

"**Housing Need**" means being homeless or threatened with homelessness or living in accommodation which in the opinion of the Council is Insecure or unsuitable and being unable to purchase or rent reasonably suitable accommodation in the open market for property in the locality where the Affordable Dwelling is situated taking into account the person's income and capital and other financial circumstances. Accommodation may be unsuitable on the grounds of cost, overcrowding unfitness or lack of basic amenities or because of a person's infirmity physical disability mental disability or specific social or care needs;

"**Insecure**" means accommodation which the Qualifying Person does not have a legal right to occupy in the long term

"**Interest**" means 4% above the Base-lending rate of the National Westminster Bank Plc from time to time or such other bank as the Council may notify the Owner

“Intermediate Rent” means a rent which does not exceed 80% of the local Open Market Rent (inclusive of any service charges) for the relevant property type and in any event should not exceed the published Local Housing Allowance for the relevant property type and in the relevant rental market area allowing for any modifications to a level of allowance as published from time to time by the Government

“Land” means the Land referred to in the First Schedule and Recitals 1 and 2 hereof

"Letting Notice" means a notice the content of which is to be agreed with the Council which contains details of the property to be let and which shall include unless otherwise agreed with the Council:

- (a) the name and address of the Owner;
- (b) address of the property;
- (c) weekly or monthly rent (not to exceed 80% of the Open Market Rent);
- (d) property type;
- (e) property size;

and which is delivered to the Council, clearly addressed and marked for the urgent attention of the Head of Housing Services

In the case of towns:

"Local Connection" means a connection with the Town or County as appropriate and demonstrated by that person or a member of their Household to the reasonable satisfaction of the Council:

- (a) being permanently resident therein for a continuous period of at least 12 months immediately prior to Advertising and that residence is of their own choice; or
- (b) being formerly permanently resident therein for a continuous period of five (5) years; or
- (c) having his or her place of permanent work (normally regarded as 16 hours or more a week and not including seasonal employment) therein immediately prior to Advertising; or
- (d) 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 Advertising; or

- (e) being in such other special circumstances which the Council considers requires the applicant to reside therein as appropriate and which is consistent with the Council's Cornwall Homechoice policy as amended from time to time

“Local Housing Allowance” means the flat rate rental allowance providing financial assistance towards the housing costs of low income households for different rental market areas and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department of Works and Pensions or such similar framework that may replace it

In the case of Parishes:

"Minimum Local Connection" means a connection with the County and demonstrated by that person or a member of their Household to the reasonable satisfaction of the Council:

- (a) being permanently resident therein for a continuous period of at least 12 months immediately prior to Advertising and that residence is of their own choice; or
- (b) having his or her place of permanent work (normally regarded as 16 hours or more a week and not including seasonal employment) therein immediately prior to Advertising; or
- (c) being in such other special circumstances which the Council considers requires the applicant to reside therein as appropriate and which is consistent with the Council's Cornwall Homechoice policy as amended from time to time

"Mortgagee" means the mortgagee of the Affordable Dwelling where the mortgagor has defaulted on the particular mortgage

"Mortgagee's Duty" means the tasks and duties set out in paragraph 5.2 of the Second Schedule of this Deed

"Occupation" means occupation for the purposes of residential use permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to

security operations and the terms "**Occupied**" "**Occupy**" and "**Occupier**" shall be interpreted accordingly;

"Open Market Rent" means a rent valued using the definition of the International Valuations Standard Committee as adopted by the Royal Institution of Chartered Surveyors and approved by the Council

"Open Market Value" means the price which 100% of the [freehold] or [long leasehold] interest in the Affordable Dwelling would fetch if sold on the open market by a willing vendor and disregarding the obligations and restrictions contained in this Deed and approved by the Council;

"Plan" means the plan referred to in the First Schedule and annexed hereto

"Planning Permission" means [the planning permission pursuant to the Application] [planning permission granted by the Secretary of State pursuant to the appeal against the refusal of the Application] (*delete as appropriate: the latter wording in brackets is applicable if there has been an appeal against refusal of planning permission*)

"Primary Area" means the parish(es) of [] within the County

"Qualifying Person"

NB – Two definitions for Qualifying Persons exist. The first applies to towns. The second definition applies to parishes.

In the case of towns

"Qualifying Person" means person(s) who (unless otherwise agreed with the Council) has / have on the date of Advertising by the Owner of the Affordable Dwelling a Local Connection with the Town or the County save that a person with a Local Connection with the Town shall take precedence

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

PROVIDED FURTHER THAT in the case where the Affordable Dwelling which has been constructed or adapted to meet the needs of disabled persons the Council reserves the right to allow the sale or letting of the Affordable Dwelling to a disabled person who is either in Housing Need or releasing an Alternative Affordable Home elsewhere and who on the date of Advertising has a Local Connection with the County PROVIDED that the Affordable Dwelling has first been offered to any disabled person who is either in Housing Need or releasing an Alternative Affordable Home elsewhere and who on the date of Advertising has a Local Connection with the Town

In the case of parishes:

"Qualifying Person" means person(s) who (unless otherwise agreed with the Council) has / have an Area Local Connection with:

- (a) the Primary Area; or
- (b) if no person satisfying the requirement of (a) above has been identified by the Owner in consultation with the Council within a period of 28 days of Advertising the Affordable Dwelling a person who has an Area Local Connection with the Primary Area or Secondary Area; or
- (c) if no person satisfying the requirements of (a) or (b) has been identified by the Owner in consultation with the Council within a period of 56 days of Advertising the Affordable Dwelling a person who has an Area Local Connection with the Primary Area or Secondary Area or the County; or,
- (d) if no person satisfying the requirements of (a) to (c) has been identified by the Owner in consultation with the Council within a period of 70 days of Advertising the Affordable Dwelling a person who has an Area Local Connection with the Primary Area or Secondary Area or the County or a person who has the Minimum Local Connection

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

PROVIDED FURTHER THAT in the case where the Affordable Dwelling has been constructed or adapted to meet the needs of disabled persons the Council reserves the

right to allow the sale or letting of the Affordable Dwelling to a disabled person who is either in Housing Need or releasing an Alternative Affordable Home elsewhere and who on the date of Advertising has a Minimum Local Connection PROVIDED that the Affordable Dwelling has first been offered to any disabled person who is either in Housing Need or releasing an Alternative Affordable Home elsewhere and who has an Area Local Connection with the Primary Area followed by any disabled person who is either in Housing Need or releasing an Alternative Affordable Home elsewhere and who has an Area Local Connection with the Secondary Area followed by any disabled person who is either in Housing Need or releasing an Alternative Affordable Home elsewhere and who has an Area Local Connection with the County

“Registered Provider” means a body which is

- a) registered as a provider of social housing under part 2 of the Housing and Regeneration Act 2008 or such other class of body as may be constituted under any legislation replacing that provision; and
- b) approved by the Council

“Relevant Parties” means the parties to this Deed or their successors in title or assigns and in the case of the Council includes any statutory successors as local planning authority

“Sale Notice” means a notice which contains details of the Affordable Dwelling to be sold in the form set out and completed in accordance with the Third Schedule and which is delivered to the Council and clearly addressed to and marked for the urgent attention of the Head of Housing Services

“Secondary Area” means [*specify the parishes with a boundary adjoining the Primary Area*] within the County;

“Site” means land at [] and more particularly described in the Original Agreement

“Town” means the town of [] within the County

“Valuer” means a professionally qualified valuer who is a member of the Royal Institution of Chartered Surveyors or equivalent;

2.2 Interpretation

2.2.1 The expressions “the Council” “the Owner” and “the Bank” shall include their successors in title and assigns and any person(s) or body corporate deriving title through or under them

2.2.2 Words importing the masculine gender only shall include all other genders and vice versa

2.2.3 Words importing the singular shall include the plural and vice versa

2.2.4 Words importing persons shall include companies and corporations and vice versa

2.2.5 Where any party consists of two or more persons companies or corporations the Deed expressed to be made by that party and the conditions and provisions contained in this Deed shall be deemed to have been made jointly and severally by the persons named as that party

2.2.6 Save where a contrary intention is expressed a reference herein to a clause or Schedule shall be deemed to be a reference to a clause or Schedule of this Deed and reference to a sub-clause paragraph or Part shall be deemed to be a reference to a sub clause or paragraph or Part of the clause or Schedule in which such reference appears

2.2.7 All references to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it

2.2.8 The clause and paragraph headings herein are for ease of reference only and shall not affect the interpretation of this Deed

3. STATUTORY PROVISIONS

3.1 This Deed is made pursuant to Section 106 and Section 106A of the 1990 Act and all other enabling powers and enactments which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained with the intent to bind the Owner’s interest in the Land and to the intent that the obligations on the part of the Owner herein contained falling within the provisions of Section 106 of the 1990 Act shall be planning obligations for the purposes of Section 106 of the 1990 Act and are

enforceable by the Council as local planning authority in accordance therewith but subject as hereinafter provided.

- 3.2 No person shall be liable for breach of a covenant contained in this Deed after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenants prior to parting with such interest.
- 3.3 This Deed shall take effect from the date hereof PROVIDED THAT if the Planning Permission is revoked or expires by the effluxion of time then this Deed shall cease to have effect provided always that at the time of the said revocation no development has begun within the meaning of Section 56 of the 1990 Act.
- 3.4 The provisions of the 1999 Act shall not apply to this Deed and no third party shall have any rights to enforce the terms of this Deed.
- 3.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid, illegal or unenforceable, then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

4. COVENANTS

The Owner covenants with the Council to fulfil the obligations and restrictions specified in this Deed

5. OWNER'S FURTHER AGREEMENT

The Owner further agrees as follows:

- 5.1 To supply to the Council (within 21 days of the Council's written request to do so) such information as the Council within its reasonable discretion considers that it requires in order to determine whether the terms and conditions of this Deed are being observed
- 5.2 To pay the Council's reasonable legal fees and any costs incurred in the negotiation preparation and execution of this Deed on completion of this Deed

6. REGISTRATION

The parties hereby consent to the registration of:

- (a) This Deed as a Local Land Charge by the Council
- (b) This Deed on the Charges Register of Title Number CL[] at the Land Registry by the Owner on completion of this Deed Office Copies from Land Registry provided to the Council as evidence of registration

7. NOTICES

Any notice consent or approval required to be given under this Deed to any party to this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class post to the address of the party aforesaid or such other address for service as shall have been previously notified by the party to the other parties

8. SETTLEMENT OF DISPUTES

8.1 Any dispute arising out of the provisions of this Deed shall be referred to the Expert for the determination of that dispute PROVIDED THAT the provisions of this clause shall be without prejudice to the right of any party to seek the resolution of any matter relating to the Deed by the courts and / or in accordance with Section 106(6) of the 1990 Act

8.2 The Expert shall be appointed jointly by the Relevant Parties who are in dispute

8.3 The decision of the Expert shall be final and binding upon the Relevant Parties and subject to the following provisions:-

- (a) the charges and expenses of the Expert shall be borne equally between the Relevant Parties who are in dispute unless the Expert shall otherwise direct;
- (b) the Expert shall give the Relevant Parties who are in dispute an opportunity to make representations and counter representations to him before making his decision;
- (c) the Expert shall make his decision within the range of any representations made by the Relevant Parties who are in dispute themselves;
- (d) where there is a dispute as to the amount of any contribution the Owner shall pay its estimate of such contribution to the Council at the time specified in this Deed and shall pay any difference between that figure and the amount determined by the Expert within 28 days of the Expert's decision together with Interest thereon

calculated (in accordance with this Deed) from the date the payment was required until the date it is made

9. CONSENT OF THE BANK

The Bank acknowledges and declares that this Deed has been entered into by the Owner with its consent to the intent that the planning obligations shall be binding on the Land and that the security of the mortgage/charge over the Land shall take effect subject to this Deed PROVIDED THAT the Bank shall only be liable for any breach whilst mortgagee in possession and shall not be liable itself for any pre-existing breach.

10. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

THE FIRST SCHEDULE

("the Land")

ALL THAT piece or parcel of land known as [] **ALL WHICH** said land is shown for identification purposes only edged with a red line on the Plan

THE SECOND SCHEDULE

(“the Obligations and Restrictions”)

1 GENERAL

- 1.1 Subject to the other provisions of this Deed to provide on the Land and to do so in perpetuity the Affordable Dwelling in accordance with the Planning Permission

2 OCCUPATION OF THE AFFORDABLE DWELLING

- 2.1 The Owner shall not permit or otherwise allow the Affordable Dwelling to be Occupied otherwise than:

2.1.1 as the sole private residence of the Occupier ; and

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

2.1.3 by a purchaser of the Affordable Dwelling in accordance with paragraph 3.5

3 SALE OF THE AFFORDABLE DWELLING

- 3.1 The Owner shall not permit or otherwise allow the Affordable Dwelling on any sale to be sold:

3.1.1 other than to a Qualifying Person who is either releasing an Alternative Affordable Home elsewhere or is in Housing Need;

3.1.2 at a price greater than a sum equal to [] % of the Open Market Value of the Affordable Dwelling

- 3.2 Each time the Owner intends to sell the Affordable Dwelling the Owner shall:
- 3.2.1 serve upon the Council clearly addressed and marked for the urgent attention of the Head of Housing Services a certificate from a Valuer dated no earlier than three (3) months before the date of Advertising of the Affordable Dwelling setting out the Open Market Value of the dwelling such certificate to be served on the Council before or together with the Sale Notice and
 - 3.2.2 serve a Sale Notice upon the Council clearly addressed and marked for the urgent attention of the Head of Housing Services and
 - 3.2.3 prior to or at the same time as the service of the Sale Notice submit a scheme for the Advertising of the Affordable Dwelling for subsequent approval by the Council (such approval not to be unreasonably withheld or delayed) and
 - 3.2.4 on receipt of a written approval of the Council for a scheme of Advertising carry out forthwith the Advertising of the Affordable Dwelling in accordance with the agreed scheme
- 3.3 The Owner shall not exchange contracts for the sale of the Affordable Dwelling until the Owner has submitted written verification to the Council or its agent that the prospective purchaser satisfies the obligations contained in this Deed and the Council or its agent has given its approval that the prospective purchaser satisfies the obligations contained in this Deed (such approval not to be unreasonably withheld) and if no response is given by the Council or its agent within 14 days of receipt of written verification from the Owner then approval will be deemed to have been given PROVIDED THAT such written verification is served upon the Council clearly addressed and marked for the urgent attention of the Head of Housing Services
- 3.4 The Owner shall if so required by the Council or its agent provide to the Council or its agent (together with the written verification detailed in paragraph 3.3 above) all necessary documentation as stipulated in the Fourth Schedule as evidence that the prospective purchaser satisfies the obligations contained in this Deed
- 3.5 On any sale of the Affordable Dwelling in the event that the Owner is unable to sell the Affordable Dwelling to a Qualifying Person who is either releasing an Alternative Affordable Home elsewhere or who is in Housing Need within a period of 90 days of Advertising by the Owner the Affordable Dwelling may be sold at the discounted price calculated in accordance with 3.1.2 of the Second Schedule to any willing purchaser

but at the time of any subsequent sale the provisions of this Deed shall again apply and such person shall remain bound by the terms of this Deed

4 LETTING OF THE AFFORDABLE DWELLING

4.1 The Owner shall serve a Letting Notice upon the Council clearly addressed and marked for the urgent attention of the Head of Housing Services each time the Owner intends to let the Affordable Dwelling

4.2 Unless otherwise agreed in writing with the Council each time the Owner intends to let the Affordable Dwelling the Owner shall advertise the Affordable Dwelling in accordance with a scheme of Advertising agreed with the Council

4.3 Not to permit or otherwise allow the Affordable Dwelling to be let other than:-

4.3.1 with the written consent of the Council

4.3.2 to a Qualifying Person who is either releasing an Alternative Affordable Home elsewhere or is in Housing Need; and

4.3.3 at a rent which does not exceed the Intermediate Rent; and

4.3.4 unfurnished on the basis of an Assured Tenancy for a fixed term of not less than six (6) months unless otherwise agreed with the Council

4.4 The Owner shall not grant a tenancy of the Affordable Dwelling until the Owner has submitted written verification to the Council or its agent that the prospective tenant satisfies the obligations contained in this Deed and the Council or its agent has given its approval that the prospective tenant satisfies the obligations contained in this Deed (such approval not to be unreasonably withheld) and if no response is given by the Council or its agent within 14 days of receipt of written verification from the Owner then approval will be deemed to have been given PROVIDED THAT such written verification is served upon the Council clearly addressed and marked for the urgent attention of the Head of Housing Services

4.5 The Owner shall if so required by the Council or its agent provide to the Council or its agent (together with the written verification detailed in paragraph 4.4 above) all necessary documentation as stipulated in the Fourth Schedule as evidence that the prospective tenant satisfies the obligations contained in this Deed

5 MORTGAGEE IN POSSESSION

- 5.1 Paragraphs 1, 2, 3 and 4 of the Second Schedule shall not be binding on:
- 5.1.1 any Mortgagee provided that the Mortgagee shall have first complied with the Mortgagee's Duty; or
 - 5.1.2 any purchaser from the Mortgagee subject to the Mortgagee having complied with the Mortgagee's Duty EXCEPT FOR and FOR THE AVOIDANCE OF DOUBT any disposal under 5.2.1 where the Affordable Dwelling is safeguarded as an Affordable Dwelling
- 5.2 The Mortgagee shall prior to seeking to dispose of the Affordable Dwelling pursuant to any default under the terms of its mortgage or charge give not less than 6 weeks' prior notice to the Council of its intention to dispose and:
- 5.2.1 in the event that the Council responds within 6 weeks from receipt of the notice indicating that arrangements for the transfer of the Affordable Dwelling can be made in such a way as to safeguard the relevant unit as Affordable Housing then the Mortgagee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer;
 - 5.2.2 if the Council does not serve its response to the notice served under paragraph 5.2.1 above within 6 weeks then the Mortgagee shall be entitled to dispose free of the restrictions set out in paragraphs 1, 2, 3 and 4 of the Second Schedule which provisions shall determine absolutely
 - 5.2.3 if the Council or any other person cannot within 4 weeks of the date of service of its response under paragraph 5.2.1 above secure a binding contract for sale then provided that the Mortgagee shall have complied with its obligations under paragraph 5.2 the Mortgagee shall be entitled to dispose free of the restrictions set out in paragraphs 1, 2, 3 and 4 of the Second Schedule which provisions shall determine absolutely
 - 5.2.4 if the Council cannot within 6 weeks of the date of service of its response under paragraph 5.2.1 above secure a completed transfer then provided that the Mortgagee shall have complied with its obligations under paragraph 5.2 the Mortgagee shall be entitled to dispose free of the restrictions set out in paragraphs 1, 2, 3 and 4 of the Second Schedule which provisions shall

determine absolutely

PROVIDED THAT for the avoidance of doubt such Mortgagee shall not be under any obligation to dispose of the Affordable Dwelling for any sum less than the monies outstanding pursuant to the said mortgage inclusive of interest costs and charges.

5.3 Any Mortgagee shall only be liable for any breach of the obligations in this Deed that it has itself caused whilst mortgagee in possession but shall not be liable itself for any pre-existing breach

THIRD SCHEDULE

("Sale Notice")

1 Full address of property for sale (including postcode)

2 Name and contact details of owner (s)

Name of owner: _____

Name of joint owner (if applicable) _____

Contact number (s): _____

Email address: _____

Contact address if different from 1 above: _____

3 Property/sale details

Property type: _____

(eg 3 bedroom house)

Sale price: _____

(the sale price calculated in accordance with paragraph 3.2.1 of the Second Schedule of the s106 agreement)

Percentage of open market value _____

(the percentage stipulated in paragraph 3.1.2 of the Second Schedule of the s106 agreement and used to calculate the sale price)

Open market value of the property _____

(you must in accordance with paragraph 3.2.1 of the Second Schedule of the s106 agreement submit with this notice a certificate from a RICS or equivalent Valuer setting out the open market value of the dwelling)

THE FOURTH SCHEDULE

(Evidence of eligibility of Qualifying Persons)

Pursuant to paragraph 3.3, 3.4, 4.4 and 4.5 of the Second Schedule the Owner shall verify to the Council or its agent that the prospective purchaser or tenant meets the terms of this Deed by obtaining appropriate documentation from section A and B and C below or such other evidence or confirmation as the Council or its agent shall deem necessary or sufficient and if required by the Council or its agent provide copies of such evidence to the Council or its agent

SECTION A:

Proof of identity (of prospective purchaser or tenant and where applicable close family member)

A current and valid passport

UK residence permit

A valid UK driving licence

National Insurance number card

Marriage certificate

Medical card

Letters about asylum from the Home Office

SECTION B:

Local connection

Residency – sufficient evidence to cover the relevant local connection period for prospective purchaser/tenant/close family member as appropriate

Utility bills (gas electric phone etc)

Council tax bills

Bank/Building Society account/credit card statements

State benefit books or receipts showing rent paid

Payslips showing home address

Written certification from either a Solicitor / Social Worker / Probation Officer / Inland Revenue Officer / Police Officer / Teacher or Doctor

Employment – sufficient evidence to cover the relevant local connection period

Payslips showing employer’s address

Employer’s letter confirming length and terms of employment (including hours worked if applicable}

SECTION C:

Housing Need

Tenancy or licence agreement

Rent book showing name and address of applicant

Where applicable letter from friend or family member confirming residence at their address

P60 annual statement of earnings for the most recent complete tax year

Payslips covering last 3 months

For self employed persons a set of accounts no older than 12 months

Bank/Building Society account or other statements showing savings/capital

Evidence of any other income including state benefits

EXECUTED as a DEED by THE CORNWALL COUNCIL whose Common Seal was hereinto affixed in the presence of:)
)
)

Authorised Officer

[Print Name]

SIGNED as a **DEED** by)

In the presence of:)

Witness name

Address

Occupation

SIGNED as a **DEED** by)

as attorney for and on behalf of)

[])

Authorised Officer