

CORNWALL COUNCIL PRECEDENT

Cornwall Council Precedent 106 17/09/19

STANDARD CLAUSES FOR AFFORDABLE HOUSING

RP PRODUCTS - AFFORDABLE RENTED, RP SHARED OWNERSHIP, RENT TO BUY

NON RP PRODUCTS - INTERMEDIATE HOMES FOR SALE



THIS AGREEMENT is made 201[]

THE CORNWALL COUNCIL (1)

and

[INSERT NAME OF LANDOWNER] (2)

and

[INSERT NAME OF REGISTERED PROVIDER] (3)

and

[INSERT NAME OF MORTGAGEE/BANK] (4)

[CHARGE OF REGISTERED PROVIDER] (5)

PLANNING OBLIGATION BY

AGREEMENT under

Section 106 of the Town and

Country Planning Act 1990

Relating to land at

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

THIS DEED is made

201[]

BETWEEN

- (1) **THE CORNWALL COUNCIL** of County Hall Treyew Road Truro TR1 3AY (**"the Council"**)
- (2) **[OWNER]** [(Company Registration No:)] of [INSERT ADDRESS] (**"the Owner"**)
- (3) **[REGISTERED PROVIDER]** of [INSERT ADDRESS] (**"the Registered Provider"**)
- (4) **[MORTGAGEE/BANK]** [(Company Registration No:)] of [INSERT ADDRESS] (**"the Bank"**)¹
- (5) **[CHARGE OF THE REGISTERED PROVIDER]**

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 [which is registered at the Land Registry with title absolute under title number CL []² subject to the charge made between [the Owner and the Bank] and dated []³
3. The [Owner] has applied to the Council for planning permission for the Development on the Land and the Council is minded to grant approval of the Development under

¹ Complete – NB to avoid confusion with the Mortgagee of the Affordable Dwellings, the Mortgagee of the Land prior to development will be referred to as "The Bank" irrespective of the party involved

² Insert land registration details and provide up to date office copy entries and file plan to the Council

³ Insert details

reference number []⁴ (“**the Planning Permission**”)⁵ subject to the Owner first entering into this Deed

4. *[By a notice of refusal datedthe Council refused planning permission for the reasons set out therein (“the Refusal”) and the Owner onappealed to the Secretary of State against the Refusal and enters into this obligation to the intent that any objections of the Council to the grant of planning permission are overcome.]*⁶

5. [The Owner proposes to enter into an agreement with the Registered Provider for the delivery and management of the [Affordable Dwellings⁷] as defined in clause 1.1 of this Deed]⁸

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:

1. **DEFINITIONS AND INTERPRETATION**

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

1.1 **Definitions**

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

⁴ Insert Planning reference

⁵ Insert details of planning application

⁶ Delete if no appeal lodged⁶ Para to be used where application is at appeal

⁷ Insert relevant products

⁸ RP Products only

“**the 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 any interest in the relevant 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 [Affordable Rented Dwellings and Rent to Buy Dwellings]⁹
- i) an advertisement on the website of Cornwall Homechoice or such other similar website for advertising affordable homes which are ready for letting as agreed by the Council, and which shall also include a “coming soon” advertisement in the case of Initial Lettings;
 - ii) Notification to relevant applicants on the Cornwall Homechoice register or any other similar register for people looking to rent affordable homes which may replace these
- (b) in the case of [RP Shared Ownership Dwellings or Intermediate Homes for Sale or Rent to Buy Dwellings]¹⁰
- i), an advertisement on the website of Help to Buy South West or any other similar organisation promoting intermediate market housing, and which shall also include a “coming soon” advertisement in the case of Initial Sales;
 - ii) , an advertisement on Rightmove or Zoopla or other leading UK property site as agreed in writing with the Council
 - iii). Notification to relevant applicants on the Help to Buy South West register or any other similar register for people looking to buy affordable homes which may replace this

⁹ Affordable Rented Dwellings and Rent to Buy Dwellings only

¹⁰ RP Shared Ownership Dwellings and Intermediate Homes for Sale and Rent to Buy Dwellings only

(c) In the case of all Affordable Dwellings:

- i). In the case of Initial Sales and Initial Lettings an advertising board on the development site
- ii). Notification to the relevant parish/town councils and Cornwall Council Electoral Division Member in the [Town]¹¹ [Primary and Secondary Area]¹²
- iii). such other advertising and social media channels as shall be agreed in writing by the Council

PROVIDED THAT all advertising shall contain such details of the Qualifying Person criteria as agreed by the Council

"**Affordable Dwellings**" means any one of the [*specify number*]¹³ dwellings (including any associated parking space(s) and residential curtilage) referred to in the Application and/or the approved Affordable Housing Scheme [in accordance with the Affordable Housing Mix] comprising: [*delete as appropriate*]

- (a) Affordable Rented Dwellings; and
- (b) RP Shared Ownership Dwellings; and
- (c) Intermediate Homes for Sale
- (d) Rent to Buy Dwellings

to be constructed on the Land pursuant to the Planning Permission and "Affordable Dwelling" means any one of the said dwellings

¹¹ In the case of Towns

¹² In the case of Parishes

¹³ Insert details

"Affordable Housing"¹⁴ means affordable housing for sale or rent for those whose needs are not met by the market and as defined in the National Planning Policy Framework February 2019 or any subsequent or equivalent policy that may replace it

"Affordable Housing Land" means the [plots / area of land] forming part of the Land [shown edged blue on the Plan]¹⁵ upon which the Affordable Dwellings are to be constructed

"Affordable Housing Scheme" means a scheme for the provision of the Affordable Dwellings forming part of the Development which shall include unless otherwise agreed with the Council: [*delete / add as appropriate*]

- (a) Arrangements for the provision of the Affordable Dwellings;
- (b) Location of the Affordable Dwellings
- (c) Details of the unit size of the Affordable Dwellings;
- (d) Details of the basis of calculation of any service charges, ground rents or management fees to be applied to the Affordable Dwellings;
- (e) Details of the construction and equipping of the Affordable Dwellings;
- (f) Details of the phasing of the Development
- (g) [The name of the Registered Provider;
- (h) Details of the Price of the relevant Affordable Dwellings;
- (i) Arrangements for the transfer of the Affordable Dwellings;
- (j) Details of the design and quality standards to be applied to the Affordable Dwellings;]¹⁶
- (k) Location and tenure of the Category 2: Accessible and Adaptable Dwellings
- (l) Location and tenure of any Category 3: Wheelchair User Dwellings

¹⁴ Rent to Buy

¹⁵ Plan to be provided or delete reference to plan as required

¹⁶ (g) (h) (i) (j) will be applicable to RP products only

- (m) A scheme of Advertising of the Affordable Dwellings for Initial Sales and Initial Lettings

“Affordable Rent” 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 SAVE THAT the rent charged under all lettings may be increased annually by a proportion equivalent to an increase by the Index plus 1%

“Affordable Rented Dwellings” means the [*specify number*] dwellings to be constructed on plots [] on the Affordable Housing Land and let by a Registered Provider of social housing to households who are eligible for social rented housing, constructed to Space Standards, let at an Affordable Rent and “Affordable Rented Dwelling” means any one of the said dwellings

“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 either case located in the County

"the Application" means the application for [outline or full] planning permission to carry out the Development and which was validated by the Council on [*insert date*] and allocated planning reference []

In the case of parishes:

"Area Local Connection" means a connection with the Primary Area or the Secondary Area 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 the date of a Housing Application; or
- (b) being formerly permanently resident therein for a continuous period of at least 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 or casual employment) therein for a continuous period of at least three (3) years immediately prior to the date of a Housing Application; 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 the date of a Housing Application and where there is independent evidence that the family member is in need of or can give support for the foreseeable future or on an ongoing basis

"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 modification¹⁷

"Category 2: Accessible and Adaptable Dwellings" means dwellings which are built to standards which require that

¹⁷ Intermediate Homes for Sale and RP Shared Ownership Dwellings

(1) Reasonable provision must be made for people to:
 a) gain access to; and b) use, the dwelling and its facilities.
 and

(2) The provisions made must be sufficient to:
 a) meet the needs of occupiers with differing needs, including some older or disable people; and
 b) to allow adaptation of the dwelling to meet the changing needs of occupants over time

as specified in the 'Optional Requirement M4(2) Category 2: Accessible and adaptable dwellings' section of the Building Regulations 2010 Approved Document M 2015 edition or such similar standards and regulations that may replace these;

"Category 3: Wheelchair User Dwellings" means dwellings which are built to standards which require that

(1) Reasonable provision must be made for people to:
 a) gain access to; and
 b) use, the dwelling and its facilities.
 and

(2) The provisions made must be sufficient to:
 a) allow simple adaptation of the dwelling to meet the needs of occupants who use wheelchairs;

as specified in the 'Optional Requirement M4(3) Category 3: Wheelchair user dwellings' section of the Building Regulations 2010 Approved Document M 2015 edition or such similar standards and regulations that may replace these;

"Commencement of Development" means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose):

- (a) operations consisting of site clearance;
- (b) demolition work;

- (c) archaeological investigations;
- (d) investigations for the purpose of assessing ground conditions;
- (e) remedial work in respect of any contamination or other adverse ground conditions;
- (f) diversion and laying of services;
- (g) erection of any temporary means of enclosure;
- (h) the temporary display of site notices or advertisements; and

“Commence” “Commencement of Development” and “Commence Development” shall be construed accordingly

“Cornwall Homechoice” means a choice based scheme developed and operated in partnership between Cornwall Council and local Registered Providers¹⁸

"County" means the County of Cornwall

"Development" means ¹⁹

"Dwelling" means any dwelling permitted pursuant to the Planning Permission and the term “Dwellings” shall mean all of them

“Eligibility Criteria” 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

¹⁸ Affordable Rented Dwellings only

¹⁹ [*insert description of the development as per the planning application form*]

"Exempt Person" ²⁰means any person who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force in respect of a particular Affordable Dwelling;
- (b) has exercised any statutory right to buy in respect of a particular Affordable Dwelling;
- [(c) has been granted a Shared Ownership Lease in respect of a particular Affordable Dwelling and the person has subsequently purchased 100% of the equity in the said Affordable Dwelling on final staircasing²¹
- [(d) has been granted a tenancy in respect of a particular Rent to Buy Dwelling and the person has subsequently purchased the said Rent to Buy Dwelling from the Owner at the Open Market Value]²²

"the 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

"Homes England" means the body for the time being having or being responsible for providing financial assistance to bodies including Registered Providers of social housing for the purpose of improving the supply and quality of housing in England now

²⁰ RP products only

²¹ RP Shared Ownership Dwellings only

²² Rent to Buy

conferred on such body under the Housing and Regeneration Act 2008 or any legislation replacing or amending the same²³

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

"Housing Mix" means the number size tenure and mix of Dwellings set out in Annex [] Second Schedule or such other size tenure and mix as agreed in writing with the Council

"Housing Application" means in the case of an Affordable Rented Dwelling a bid through Cornwall Homechoice or [in the case of an Intermediate Home for Sale][or RP Shared Ownership Dwelling] [or Rent to Buy Dwelling] an application for a specific property

'Index' means the percentage rise in the United Kingdom Consumer Price Index when the index figure published in the September before the day of rent review is compared with the published index figure in the preceding September but if the basis for calculation of the Consumer Price Index has changed and any method of calculation between the new and the old figures is officially published that method shall be used for the purposes of comparison under this provision

"Initial Letting" means the first tenancy following completion of the construction of the Affordable Dwelling

²³ RP Shared Ownership Dwellings and Affordable Rented Dwellings and Rent to Buy Dwellings only

“Initial Sale” means the first sale following completion of the construction of the Affordable Dwelling

“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 Homes for Sale” means [the xxx dwellings or %] identified as Intermediate Homes for Sale in the Housing Mix] constructed to Space Standards and to be sold at a discount from the Open Market Value

“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 SAVE THAT the rent charged under all lettings may be increased annually by a proportion equivalent to an increase by the Index plus 1%²⁴

“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 landlord and Owner;
- (b) address of the property;

²⁴ RP Shared Ownership and Intermediate Homes for Sale and Rent to Buy Dwellings

- (c) weekly or monthly rent;
- (d) amount and breakdown of any service charge per week, month or annum;
- (e) details of any additional charges;
- (f) any age or other occupancy restrictions;
- (g) property type;
- (h) property size;
- (i) heating type;
- (j) details of mains services in the property;
- (k) availability of parking space/garage;
- (l) any disabled adaptations;
- (m) provision of any support services;

and which is delivered to the Council, clearly addressed and marked for the urgent attention of the Service Director - Housing.²⁵ [PROVIDED THAT for the avoidance of doubt an advertisement for the Affordable Dwelling placed on Cornwall Homechoice and approved by the Council shall be considered a "Letting Notice" for the purposes of Paragraph 3 and Paragraph 4 of Part [3]²⁶ of the Second Schedule]

"Letting Period" means a minimum period of letting of 5 years from the date of the first letting following completion of the construction of the Affordable Dwelling[s]²⁷

In the case of towns and in the case of parishes where a cascade to the County is triggered

:

"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:

²⁵ Affordable Rented Dwellings and Intermediate Homes for Sale and RP Shared Ownership Dwellings

²⁶ Wording in square brackets applicable to Affordable Rented Dwellings only

²⁷ Rent to Buy

- (a) being permanently resident therein for a continuous period of at least three (3) years immediately prior to the date of a Housing Application 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 or casual employment) therein for a continuous period of at least three (3) years immediately prior to the date of a Housing Application; or
- (c) 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 the date of a Housing Application and where there is independent evidence that the family member is in need of or can give support for the foreseeable future or on an ongoing basis; or
- (d) being permanently resident in the County for ten (10) out of the first sixteen (16) years of life
- (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 it²⁸

²⁸ RP Shared Ownership Dwellings and Affordable Rented Dwellings and Intermediate Homes for Sale and Rent to Buy Dwellings

In the case of Intermediate Homes for Sale and RP Shared Ownership Dwellings in Parishes and Towns:

"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 the date of a Housing Application 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 or casual employment) therein immediately prior to the date of a Housing Application;

"Mortgagee" means either:

- (a) the mortgagee of the Land or any part thereof; or
- (b) the mortgagee of an individual Affordable Dwelling where the mortgagor has defaulted on the particular mortgage
- (c) any mortgagee or chargee of the Registered Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise 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

"Mortgagee's Duty" means the tasks and duties set out in paragraph [6.2] of Part [1] 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;

"Offer" means an offer in writing made by the Owner to the Registered Provider in the form set out and completed in accordance with Annex [] of the Second Schedule²⁹

"Open Market Dwellings" means the Dwellings other than the Affordable Dwellings;

"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 Council³⁰

"Open Market Value" means the price which 100% of the freehold or long leasehold interest (as the case may be) in the relevant 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 in accordance with the Shared Ownership Lease]³¹[and in the case of Intermediate Homes for Sale approved by the Council]³²;

"Phase" means each phase of construction of the Development identified in a phasing plan approved by the Council and pursuant to the Planning Permission;

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

²⁹ RP products only

³⁰ RP Products only

³¹ Delete if not applicable

³² Square brackets applicable to Intermediate Homes for Sale only

"Planning Administration Fee" means the Council's charge to recover the expenses incurred by the Council in monitoring compliance with the obligations contained in this Deed

"the Planning Permission" means [the planning permission pursuant to the Application] or [planning permission granted by the Secretary of State pursuant to the appeal against the refusal of the Application] ³³

"Price" means the sum agreed with the Owner by the Registered Provider without the input of any Subsidy for the provision of the Affordable Dwellings³⁴

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

"Qualifying Person"

NB – Two definitions for Qualifying Person 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)

- (a) has / have a Local Connection with the Town; or
- (b) If no person satisfying the requirement of (a) above has been identified by the Owner in consultation with the Council on the date of Advertising by the Owner

³³ (delete as appropriate: the latter wording in brackets is applicable if there has been an appeal against refusal of planning permission)

³⁴ RP products only

of the relevant Affordable Dwelling a person who has a Local Connection with the Town or the County [or,

(c) in the case of [Intermediate Homes for Sale] [RP Shared Ownership Dwellings] 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 70 days of Advertising the relevant Affordable Dwelling a person who has a Local Connection with the Town or the County or a person who has the Minimum Local Connection]

PROVIDED

(1) that priority will always be given to a person who has a Local Connection with the Town followed by a person who has a Local Connection with the County

[(2) that the Council reserves the right not to allow the letting of an Affordable Rented Dwelling³⁵ to a Qualifying Person with a Local Connection with the Town should the letting result in an under occupancy of the Affordable Rented Dwelling³⁶ by more than one bedroom; and³⁷]

(3) that in the case of a 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 an Affordable Dwelling to a disabled person who EITHER

(i) satisfies the Eligibility Criteria; or (ii) is releasing an Alternative Affordable Home elsewhere; OR

(iii) who has been accepted onto Cornwall Homechoice 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 satisfies the

³⁵ Delete as appropriate

³⁶ Delete as appropriate

³⁷ Applies to Affordable Rented Dwellings only

requirements in EITHER (i) or (ii) OR (iii) AND who on the date of Advertising has a Local Connection with the Town

[SAVE THAT where an Affordable Dwelling is subject to the provisions of The Allocation of Housing (Qualification Criteria for Armed Forces) (England) Regulations 2012 such person(s) that fall within Regulation 3 (3) of those regulations shall not be required to have a Local Connection with the Town or County]³⁸

In the case of parishes:

"**Qualifying Person**" means person(s) who (unless otherwise agreed with the Council):

- (a) has / have an Area Local Connection with 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 on the date of Advertising by the Owner of the relevant Affordable Dwelling a person who has an Area Local Connection with the Primary Area or the Secondary Area; or
- (c) If no person satisfying the requirement of (a) and (b) above has been identified by the Owner in consultation with the Council on the date of Advertising by the Owner of the relevant Affordable Dwelling a person who has an Area Local Connection with the Primary Area or the Secondary Area or has a Local Connection with the County; [or
- (d) in the case of [Intermediate Homes for Sale][RP Shared Ownership Dwellings] 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 relevant Affordable Dwelling a person who has an Area Local Connection with the Primary Area or Secondary Area or a person who has a Local Connection with the County or a person who has the Minimum Local Connection

PROVIDED that priority will always be given to a person who has an Area Local Connection with the Primary Area followed by a person who has an Area Local Connection

³⁸ Applies to Affordable Rented Dwellings only

with the Secondary Area followed by a person who has a Local Connection with the County
[followed by a person who has the Minimum Local Connection]

PROVIDED THAT the Council reserves the right not to allow the letting of an Affordable Rented Dwelling]³⁹ to a Qualifying Person with a Primary Area connection should the letting result in an under occupancy of the Affordable Rented Dwelling⁴⁰ by more than one bedroom; and]⁴¹

PROVIDED FURTHER

(1) that in the case of a 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 an Affordable Dwelling to a disabled person who EITHER

(i) satisfies the Eligibility Criteria; or

(ii) is releasing an Alternative Affordable Home elsewhere; OR

(iii) has been accepted onto Cornwall Homechoice 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 satisfies EITHER (i) or (ii) OR (iii) AND who has an Area Local Connection with the Primary Area followed by any disabled person who satisfies EITHER (i) or (ii) OR (iii) AND who has an Area Local Connection with the Secondary Area

[SAVE THAT⁴² where an Affordable Dwelling is subject to the provisions of The Allocation of Housing (Qualification Criteria for Armed Forces) (England) Regulations

³⁹ Delete as appropriate

⁴⁰ Delete as appropriate

⁴¹ Applies to Affordable Rented Dwellings only

⁴² In line with QP Definition for towns

2012 such person(s) that fall within Regulation 3 (3) of those regulations shall not be required to have an Area Local Connection with either the Primary Area or the Secondary Area or a Local Connection with the County]

“Reasonable Service Charge” means a sum that covers the contributions required from time to time for those services and facilities which are of a nature and to a standard reasonably required in connection with the Affordable Dwelling such as maintaining repairing and keeping secure the relevant Affordable Dwelling and its common parts the cleaning and lighting of common parts and the maintenance of any communal gardens or landscaping areas that directly benefit the Affordable Dwelling⁴³

“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 which shall include the Council as a provider of social housing); and
- b) approved by the Council

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

“Rent to Buy Dwellings” means the xx/ % of dwellings to be constructed on plots xxx on the Affordable Housing Land and which are provided by a Registered Provider, constructed to Housing Standards, and let at Intermediate Rent and in accordance with the Rent to Buy Scheme and a “Rent to Buy Dwelling” means any of the said dwellings

⁴³ Shared Ownership

“Rent to Buy Scheme” means a scheme which allows working households to rent a home at an Intermediate Rent enabling the tenant to save for a deposit and purchase their first home in accordance with the requirements and procedures set out in the Homes England Capital Funding Guide or other such similar guide or document that might replace it

“RP Shared Ownership Dwellings” means the [specify number] dwellings to be constructed on plots [] on the Affordable Housing Land and which are owned and managed by or in partnership with a Registered Provider, constructed to Space Standards and sold subject to a Shared Ownership Lease and a “RP Shared Ownership Dwelling” means any of the said dwellings

“Sale Notice” means a notice which contains details of the Affordable Dwelling(s) to be sold the content of which is to be agreed in writing with the Council and which shall include unless otherwise agreed in writing with the Council:-

- (a) the name and contact details of the developer or owner and any sales agent;
- (b) address of the development or property;
- (c) tenure type;
- (d) in the case of Initial Sales the resale percentage, open market value and proposed sale price
- (d) amount and breakdown of any service charge per week, month or annum;
- (e) details of any additional charges;
- (f) property type;
- (g) property size;
- (h) house type;
- (i) heating type
- (j) garden type;
- (k) availability of parking space/garage;
- (l) any further relevant information;

and which is delivered to the Council, clearly addressed and marked for the urgent attention of the Service Director – Housing or its agent

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

NB There are two definitions of Shared Ownership Lease

In the case of Designated Protected Areas:

"**Shared Ownership Lease**" means

a) a lease substantially in the form approved or published by Homes England incorporating the rural repurchase provisions prescribed by the 2009 Regulations whereby the tenant having paid an initial premium calculated by reference to a maximum of 75% of the Open Market Value of the particular unit pays a rent in respect of the remaining equity held by the Owner plus (if appropriate) a Reasonable Service Charge and whereby the tenant may in successive tranches purchase up to 100% of the equity in the unit; or

b) a lease substantially in the form approved or published by Homes England whereby the tenant having paid a premium calculated by reference to a maximum of 75% of the Open Market Value of the particular unit pays a rent in respect of the remaining equity held by the Owner plus (if appropriate) a Reasonable Service Charge and whereby the tenant may in successive tranches purchase up to a maximum of 80% of the equity in the unit;
PROVIDED THAT such rent per annum shall not be at a level which is in conflict with any applicable Homes England restrictions relating to charges payable by the tenant

In the case of non Designated Protected Areas or where a Homes England waiver has been obtained:

"**Shared Ownership Lease**" means

a) a lease substantially in the form approved or published by Homes England whereby the tenant having paid an initial premium calculated by reference to a maximum of 75% of the Open Market Value of the particular unit pays a rent in respect of the remaining equity held by the Owner plus (if appropriate) a Reasonable Service Charge

and whereby the tenant may in successive tranches purchase up to 100% of the equity in the unit:

PROVIDED THAT such rent per annum shall:

- (a) initially be at a level not exceeding 2.5% of the full Open Market Value of the Registered Provider's retained share of the relevant affordable unit; and
- (b) not be at a level which is in conflict with any applicable Homes England restrictions relating to charges payable by the tenant

"Space Standards" means homes built to the minimum gross internal floor areas and storage (m2) for the relevant property type and size as set out in the Department for Communities and Local Government document 'Technical Housing Standards – Nationally Described Space Standards' first published in May 2015 or any other similar standards that may replace these ⁴⁴

"Subsidy" means capital grant funding provided by the Council and/or Homes England or other such body as may succeed it⁴⁵

"the 2009 Regulations" means the Housing (Shared Ownership Leases) (Exclusion from Leasehold Reform Act 1967) (England) Regulations 2009 as may be amended from time to time

"the Town" means the town of [] within the County

"Valuation Report" means a report setting out the Open Market Value of the relevant Dwelling and carried out by a Valuer ⁴⁶

⁴⁴ All affordable products

⁴⁵ RP products only

⁴⁶ Intermediate Homes for Sale only

“**Valuer**” means a professionally qualified valuer who is a member of the Royal Institution of Chartered Surveyors or equivalent;⁴⁷

1.2 Interpretation

1.2.1 The expressions “the Council” “the Owner”, [“the Registered Provider”] and [“the Bank” and “the Mortgagee”⁴⁸] shall include their successors in title and assigns and any person(s) or body corporate deriving title through or under them

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

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

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

1.2.5 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

1.2.6 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

⁴⁷ Intermediate Homes for Sale only

⁴⁸ Delete as necessary

- 1.2.7 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
- 1.2.8 The clause and paragraph headings herein are for ease of reference only and shall not affect the interpretation of this Deed

2. STATUTORY PROVISIONS

- 2.1 This Deed is made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 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
- 2.2 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
- 2.3 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;

2.4 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

2.5 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.

3. COVENANTS

The Owner [and the Registered Provider] covenant[s] with the Council to fulfil the obligations and restrictions specified in this Deed

4. OWNER'S [AND REGISTERED PROVIDER'S] FURTHER AGREEMENT

The Owner [and the Registered Provider] further agree[s] as follows:

4.1 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

4.2 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

4.3 To pay the Council's Planning Administration Fee of £[] on completion of this Deed

5. 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 [] at the Land Registry by the Owner on completion of this Deed and Office Copies from Land Registry provided to the Council as evidence of registration]

6. 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

7. SETTLEMENT OF DISPUTES

7.1 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

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

7.3 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

8. 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 that it has itself caused whilst mortgagee in possession but shall not be liable itself for any pre- existing breach.

9. 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 [] Cornwall **ALL OF WHICH** said land is shown for identification purposes only edged with a red line on the Plan

THE SECOND SCHEDULE

("the Obligations and Restrictions")

PART 1 – GENERAL PROVISIONS

1 GENERAL

1.1 NOTICE OF COMMENCEMENT

No Development shall Commence until the Owner has served notice on the Council clearly addressed and marked for the attention of the Head of the Planning and Sustainable Development Service for the Council confirming the date for the Commencement of Development

1.2 CATEGORY 2: ACCESSIBLE AND ADAPTABLE DWELLINGS

A minimum of 25% of the Dwellings shall be constructed to Category 2: Accessible and Adaptable Dwellings in accordance with the Housing Mix⁴⁹

2 DETAILS OF THE AFFORDABLE HOUSING SCHEME

2.1 ***(In the case of full applications)*** No Development shall Commence until the Affordable Housing Scheme has been submitted to and has been approved in writing by the Council (such approval not to be unreasonably withheld or delayed by the Council)

OR (in the case of outline permissions) The Affordable Housing Scheme shall be submitted to the Council not later than the submission of the last of the applications for reserved matters approval and there shall be no Commencement of Development until such written approval to the Affordable Housing Scheme by the Council is given (such approval not to be unreasonably withheld or delayed by the Council)

⁴⁹ Please take instructions on the number of Affordable Dwellings which are Category 2 and update the Affordable Housing Mix accordingly

2.2 Subject to the other provisions of this Deed to provide on the Affordable Housing Land and to do so in perpetuity the Affordable Dwellings in accordance with:

[2.2.[x] the Housing Mix; and]

2.2.[x] the Affordable Housing Scheme which has been approved by the Council pursuant to paragraph 2.1 of the Second Schedule

3 PHASING AND TIMING FOR PROVISION OF THE AFFORDABLE HOUSING⁵⁰

3.1 Not to permit or otherwise allow the commencement of the construction of any of the Dwellings above ground floor slab level until the Owner has ⁵¹

a) served upon the Registered Provider and the Council the Offer to transfer the [number] [xx] number of Affordable Dwellings] [Affordable Rented Dwellings] [RP Shared Ownership Dwellings] [Rent to Buy Dwellings] and the relevant Affordable Housing Land to the Registered Provider; and

b) entered into a binding contract for the construction of the [number of] [Affordable Rented Dwellings] [and] [RP Shared Ownership Dwellings] [Rent to Buy Dwellings] and the purchase of such Affordable Dwellings and the relevant Affordable Housing Land by the Registered Provider at the Price and in accordance with the Affordable Housing Scheme approved pursuant to paragraph 2.1 of Part 1 of the Second Schedule⁵²

⁵⁰ Please note these provisions will be site specific and subject to negotiations and depend on the products, the following are examples of triggers we would expect to see in the Heads of Terms.

⁵¹ This will be bespoke to any particular scheme depending on products

⁵² RP products only

(In the case of large developments where there is to be a phased approach to development)

3.2 No Occupation of the xxth or subsequent Open Market Dwellings in each Phase shall take place until :

3.2.1 [specify number and/or percentage] of the [Affordable Rented] [RP Shared Ownership] [Rent to Buy] Dwellings in the relevant Phase] have been transferred to the Registered Provider pursuant to the contract referred to in paragraph 3.1 of Part 1 of the Second Schedule and in accordance with the approved Affordable Housing Scheme; [and]

[3.2.2 [specify number and/or percentage] of the Intermediate Homes for Sale are available for Occupation and a Sale Notice has been served on the Council and Advertising has commenced]

3.3 Not to commence or otherwise permit construction of any of the Dwellings above ground floor slab level on any subsequent Phase until:

3.3.1 all the [Affordable Rented] [RP Shared Ownership] [Rent to Buy] Dwellings in the preceding Phase have been transferred to the Registered Provider pursuant to the contract referred to in paragraph 3.1 of Part 1 of the Second Schedule and in accordance with the approved Affordable Housing Scheme] [and]

[3.3.2 all the Intermediate Homes for Sale in the preceding Phase are available for Occupation and a Sale Notice⁴¹ has been served on the Council and Advertising has commenced;]

(OR in the case of smaller developments)

[3.2 No Occupation of the xxxx th or subsequent Open Market Dwellings shall take place until:

3.2.1 [all the Affordable Rented] [RP Shared Ownership] [Rent to Buy] Dwellings]:

have been transferred to the Registered Provider pursuant to the contract referred to in paragraph 3.1 of Part 1 of the Second Schedule and in accordance with the approved Affordable Housing Scheme] [and]

[3.2.2 all the Intermediate Homes for Sale are available for Occupation and a Sale Notice]⁴¹ has been served on the Council and Advertising has commenced]]

4 TRANSFER OF AFFORDABLE HOUSING⁵³

4.1 The Owner shall transfer the [number] [Affordable Rented Dwellings] [RP Shared Ownership Dwellings] [Rent to Buy Dwellings] [xx] number of Affordable Dwellings] and the relevant Affordable Housing Land at the Price with full title guarantee to the Registered Provider free from any encumbrances WITH the benefit of full and free rights of access both pedestrian and vehicular over any relevant access road to be built to a standard capable of adoption by the Council in its capacity as highway authority from the boundary of each of the relevant Affordable Dwellings to any relevant adopted highway (and vice versa) and full and free unrestricted rights for all services and conducting media and drains or sewers to be laid and constructed to each relevant Affordable Dwelling to a standard capable of adoption by the respective service providers and upon such further terms as may be agreed with the Registered Provider

4.2 If any time after three (3) months of the Registered Provider's and the Council's receipt of the Offer the Owner has despite using its best endeavours been unable to enter into a contract for the transfer of the relevant Affordable Dwellings to the Registered Provider upon the terms specified then the Owner shall offer the homes to a further Registered Provider at the Price in accordance with the approved Affordable Housing Scheme

5 OCCUPATION OF THE AFFORDABLE DWELLINGS

⁵³ RP products only

5.1 The Owner shall not permit or otherwise allow any of the Affordable Dwellings to be Occupied otherwise than:

5.1.1 as the sole private residence of the Occupier and

5.1.2 by a Qualifying Person who at the time of the commencement of his Occupation of the Affordable Dwelling with or without his Household EITHER has been accepted onto Cornwall Homechoice OR is either releasing an Alternative Affordable Home elsewhere or satisfies the Eligibility Criteria 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

5.1.3 by a purchaser of an [RP Shared Ownership Dwelling in accordance with paragraph 3 of Part [2] of this Second Schedule] [Intermediate Home for Sale in accordance with paragraphs 11 of Part [4]] of this Second Schedule]

6 EXEMPTIONS

6.1 Paragraph [2.2 and 5] of Part 1 and [the whole of Part 2 and Part 3 and Part 4 and Part 5] of the Second Schedule of this Deed shall not be binding on:

6.1.1 any Exempt Person or any mortgagee or chargee of the Exempt Person or any person deriving title from the Exempt Person or any successor in title thereto and their respective mortgagees and chargees⁵⁴; or

6.1.2 any Mortgagee or any purchaser including their successors in title from such bodies provided that in all cases the Mortgagee shall have complied with the Mortgagee's Duty EXCEPT FOR AND FOR THE AVOIDANCE OF DOUBT any disposal under 6.2.1 where the Affordable Dwelling is safeguarded as an

⁵⁴ RP products only

Affordable Dwelling

- 6.2 The Mortgagee shall prior to seeking to dispose of the Affordable Dwellings or Affordable Housing Land 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:
- 6.2.1 in the event that the Council responds within 6 weeks from receipt of the notice indicating that arrangements for the transfer of the Affordable Dwellings can be made in such a way as to safeguard them as Affordable Dwellings then the Mortgagee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer;
 - 6.2.2 if the Council does not serve its response to the notice served under 6.2.1 within 6 weeks then the Mortgagee shall be entitled to dispose free of the restrictions set out in paragraph [2.2 and 5] of Part 1 and [the whole of Part 2 and Part 3 and Part 4 and Part 5] of the Second Schedule which provisions shall determine absolutely
 - 6.2.3 if the Council or any other person cannot within 4 weeks of the date of service of its response under paragraph 6.2.1 above secure a binding contract for sale then provided that the Mortgagee shall have complied with its obligations under paragraph 6.2 the Mortgagee shall be entitled to dispose free of the restrictions set out in paragraph [2.2 and 5] of Part 1, and [the whole of Part 2 and Part 3 and Part 4 and Part 5] of the Second Schedule which provisions shall determine absolutely
 - 6.2.4 if the Council cannot within 6 weeks of the date of service of its response under paragraph 6.2.1 above secure a completed transfer then provided that the Mortgagee shall have complied with its obligations under paragraph 6.2 the Mortgagee shall be entitled to dispose free from the restrictions set out in paragraph [2.2 and 5] of Part 1, and [the whole of Part 2 and Part 3 and Part 4 and Part 5] 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 Dwellings for any sum less than the monies outstanding pursuant to the said mortgage or charge inclusive of interest, costs and charges.

In the event that an Exempt Person wishes to dispose of an Affordable Dwelling and the Registered Provider exercises any rights of pre-emption in the Shared Ownership Lease then the Registered Provider shall continue to be bound by the terms of this agreement⁵⁵

6.3 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

PART 2 – RP SHARED OWNERSHIP DWELLINGS

1. Not to permit or otherwise allow any of the RP Shared Ownership Dwellings to be sold other than:
 - 1.1 in accordance with the terms of the Shared Ownership Lease; and
 - 1.2 to a Qualifying Person who is either releasing an Alternative Affordable Home elsewhere or satisfies the Eligibility Criteria
2. Not to permit or otherwise allow any of the RP Shared Ownership Dwellings to be sold on the Initial Sale or any subsequent sale prior to:
 - 2.1 the submission to and subsequent approval by the Council of a scheme of Advertising for the RP Shared Ownership Dwellings;
 - 2.2 advertising the relevant RP Shared Ownership Dwelling in accordance with the scheme of Advertising approved in accordance with 2.1 above

⁵⁵ RP Shared Ownership Dwellings only

3. On any sale other than the Initial Sale of the RP Shared Ownership Dwelling in the event that the Registered Provider or the owner of an RP Shared Ownership Dwelling is unable to sell an RP Shared Ownership Dwelling in accordance with paragraph 1.2 within a period of 90 days of Advertising the RP Shared Ownership Dwelling may be sold to any willing purchaser in accordance with 1.1 above and such person shall remain bound by the terms of this deed
4. Not to exchange or complete contracts for the sale of any interest in the relevant RP Shared Ownership 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 Service Director – Housing
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 above) all necessary documentation as stipulated in Annex [] as evidence that the prospective purchaser satisfies the obligations contained in this Deed
6. Not to permit or otherwise allow any RP Shared Ownership Dwelling to be let otherwise than:
 - (a) with the written consent of the Council and the Registered Provider; and
 - (b) to a Qualifying Person who is either releasing an Alternative Affordable Home elsewhere or satisfies the Eligibility Criteria; and
 - (c) at an Intermediate Rent (unless otherwise agreed in writing with the Council)

- (d) on the basis of an Assured Tenancy for a fixed term of not less than six (6) months unless otherwise agreed in writing with the Council
 - (e) in accordance with the terms of the Shared Ownership Lease;
7. Unless otherwise agreed in writing with the Council not to permit or otherwise allow any RP Shared Ownership Dwelling to be let prior to:
- a) the submission to and approval by the Council of a scheme of Advertising; and,
 - b) Advertising of the RP Shared Ownership Dwelling in accordance with the approved scheme; and,
 - c) service upon the Council of a Letting Notice
8. Not to permit or otherwise allow the RP Shared Ownership Dwelling to be let 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 the written verification from the Owner then approval will be deemed to have been given PROVIDED THAT such written verification is served upon the Council and clearly addressed and marked for the attention of the Service Director - Housing
9. 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 8 above) all necessary documentation as stipulated in Annex [] as evidence that the prospective tenant satisfies the obligations contained in this Deed

PART 3 – AFFORDABLE RENTED DWELLINGS

- 1 Not to permit or otherwise allow any of the Affordable Rented Dwellings to be let other than:
 - 1.1 to a Qualifying Person who has been accepted onto Cornwall Homechoice; and
 - 1.2 at a sum not exceeding the Affordable Rent; and
 - 1.3 to persons selected in accordance with the principles of the Cornwall Homechoice policy as amended from time to time or any other policy and agreement that may replace these whether or not the Owner or Registered Provider is a member of the Cornwall Homechoice scheme
- 2 To serve upon the Council a Letting Notice each time an Affordable Rented Dwelling becomes available for letting
- 3 Not to permit or otherwise allow any of the Affordable Rented Dwellings to be offered for letting on initial or any subsequent letting prior to the submission to and subsequent approval by the Council of the scheme of Advertising ;
- 4 Not to permit or otherwise allow any of the Affordable Rented Dwellings to be offered for letting on initial or any subsequent letting prior to the carrying out of the scheme of Advertising approved in accordance with paragraph 3 above
- 5 Not to grant a tenancy of the relevant Affordable Rented 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 would satisfy 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 Service Director – Housing

- 6 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 5 above) all necessary documentation as stipulated in Annex [] as evidence that the prospective tenant satisfies the obligations contained in this Deed

PART 4 INTERMEDIATE HOMES FOR SALE

- 1 The Owner shall not permit or otherwise allow any of the Intermediate Homes for Sale on any transfer following completion of construction of the Intermediate Homes for Sale to be sold:

1.1 other than to a Qualifying Person who is either releasing an Alternative Affordable Home elsewhere or satisfies the Eligibility Criteria; and

1.2 [at a price greater than a sum equal to [x]⁵⁶ % of the Open Market Value of the relevant Affordable Dwelling]

[at a price greater than a sum equal to the percentage of the Open Market Value of the relevant Affordable Dwellings as set out in the table below:-]

(NB completed table is for illustration purposes only)

Plot no (s)	Dwelling type	Percentage of Open Market Value
2, 3, 4	2 bed houses	60%
6	3 bed house	62%

⁵⁶ Delete as appropriate or figures to be inserted

2. The Owner shall in the case of Initial Sales serve a Sale Notice upon the Council each time one or more of the Intermediate Homes for Sale are released for sale but in any event not less than two (2) months before the expected completion date of the relevant Intermediate Home for Sale
3. Not to permit or otherwise allow any of the Intermediate Homes for Sale to be offered for sale on any Initial Sales prior to the carrying out of the Scheme of Advertising approved by the Council as part of the Affordable Housing Scheme
4. The Owner shall in the case of subsequent sales serve a Sale Notice on the Council each time the Owner intends to sell the Intermediate Home for Sale.
5. The Owner shall not permit or otherwise allow any of the Intermediate Homes for Sale to be offered for sale on any subsequent sale prior to the submission to and subsequent approval by the Council of a scheme of Advertising
6. The Owner shall on receipt of a written approval of the Council for a scheme of Advertising in accordance with paragraph 5 above carry out the Advertising of the Intermediate Home(s) for Sale in accordance with the agreed scheme
7. The Owner shall in the case of all sales of any Intermediate Home for Sale serve upon the Council clearly addressed and marked for the urgent attention of the Service Director – Housing a Valuation Report dated no earlier than three (3) months before the date of Advertising of the relevant Intermediate Home(s) for Sale such Valuation Report to be served on the Council before or together with the Sale Notice.

- 8 The Owner shall not permit or otherwise allow any Intermediate Home for Sale to be sold to anyone other than to a person nominated in accordance with the following:
 - 8.1 The Council shall have 28 days from the service of the Sale Notice in which to nominate a first nominee ("the First Nominee"), and a second nominee ("the Second Nominee") for the purchase of each Intermediate Home for Sale;
 - 8.2 If the First Nominee is unable to make a reservation of the Intermediate Home for Sale (in the case of Initial sales) or exchange contracts for the purchase of the Intermediate Home for Sale (in the case of subsequent sales) within 35 days of the nominations or any other longer period as the Owner may permit the Owner shall offer the Intermediate Home for Sale to the Second Nominee;
 - 8.3 If the Second Nominee is unable to make a reservation of the Intermediate Home for Sale (in the case of Initial sales) or exchange contracts for the purchase of the Intermediate Home for Sale (in the case of subsequent sales) within 70 days of the nominations or such other period as the Council shall agree in writing with the Owner the Owner may sell the Intermediate Home for Sale in accordance with Paragraph 10.2
- 9 The Owner must notify and provide evidence to the Service Director – Housing of the Council as soon as reasonably practicable of the failure to make a reservation or exchange contracts as applicable within the 35 days referred to in paragraph 8.2 above before making an offer of a reservation or exchanging contracts as applicable with the Second Nominee
- 10 In the event that:
 - 10.1 the Council fails to nominate in accordance with paragraph 8.1; or
 - 10.2 the making of a reservation or an exchange of contracts as applicable with any of the Council's nominees within 70 days of the nominations (or such longer

period as the Owner may allow in accordance with paragraphs 3 and 4) fails to be achieved

the Intermediate Home for Sale may be sold to such other Qualifying Person who is either releasing an Alternative Affordable Home elsewhere or satisfies the Eligibility Criteria as may be approved by the Council

PROVIDED THAT the Owner does not exchange contracts for the sale of the relevant Intermediate Home for Sale 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 (such written verification to be served upon the Council clearly addressed and marked for the urgent attention of the Service Director - Housing) then approval will be deemed to have been given and

PROVIDED FURTHER THAT 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 above) all necessary documentation as stipulated in the Annex [] as evidence that the prospective purchaser satisfies the obligations contained in this Deed

- 11 On any sale other than the Initial Sale following completion of the construction of the Intermediate Home for Sale in the event that the Owner is unable to sell an Intermediate Home for Sale in accordance with this part [] within a period of 90 days of Advertising by the Owner the Intermediate Home for Sale may be sold at the discounted price calculated in accordance with paragraph [1.2] of Part [4] to any willing purchaser but at the time of any subsequent sale the provisions of this Deed shall again apply and such persons shall remain bound by the terms of this Deed

- 12 Not to permit or otherwise allow any Intermediate Home for Sale to be let other than:-

- 12.1 with the written consent of the Council; and
 - 12.2 to a Qualifying Person who is either releasing an Alternative Affordable Home elsewhere or satisfies the Eligibility Criteria; and
 - 12.3 at a rent which does not exceed the Intermediate Rent; and
 - 12.4 on the basis of an Assured Tenancy for a fixed term of not less than six (6) months unless otherwise agreed with the Council
- 13 Unless otherwise agreed in writing with the Council not to permit or otherwise allow any Intermediate Home for Sale to be let prior to:
- a) the submission to and approval by the Council of a scheme of Advertising; and,
 - b) Advertising of the Intermediate Home for Sale in accordance with the approved scheme; and,
- a) service upon the Council of a Letting Notice
- 14 Not to grant an Assured Tenancy of the relevant Intermediate Home for Sale 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 would satisfy 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 Service Director - Housing
- 15 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 14 above) all

necessary documentation as stipulated in the Annex [] as evidence that the prospective tenant satisfies the obligations contained in this Deed

PART 5 – RENT TO BUY DWELLINGS

1. Not to permit or otherwise allow any of the Rent to Buy Dwellings to be let within the Letting Period:

1.1 other than to a Qualifying Person who is EITHER releasing an Alternative Affordable Home elsewhere or satisfies the Eligibility Criteria OR is registered on Cornwall Homechoice ; and

1.2 at a sum not exceeding the Intermediate Rent and

1.3 prior to the submission to and subsequent approval by the Council of a scheme of Advertising for the Rent to Buy Dwellings; and

1.4 prior to advertising the relevant Rent to Buy Dwelling in accordance with the scheme of Advertising approved in accordance with 2.1 above

2. Within the Letting Period not to grant a tenancy of the relevant Rent to Buy Dwelling until the Registered Provider 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 would satisfy 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 Registered Provider 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 Service Director – Housing

3 The Registered Provider 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 2

above) all necessary documentation as stipulated in Annex 2 as evidence that the prospective tenant satisfies the obligations contained in this Deed

4 Within the Letting Period the Registered Provider may only sell the relevant Rent to Buy Dwelling whether on the open market or as an RP Shared Ownership Dwelling to the existing tenant

5. After the Letting Period where the relevant Rent to Buy Dwelling is made available for further letting as an Affordable Rented Dwelling the relevant property will be let in accordance with Part [3] of the Second Schedule to this Deed

6. Where the relevant Rent to Buy Dwelling is made available as an RP Shared Ownership Dwelling either after the Letting Period or upon sale to an existing tenant within the Letting Period the relevant property will be sold in accordance with Part [2] of the Second Schedule to this Deed

8. Where the Registered Provider is required to recover Subsidy granted by Homes England following any sale or letting of the Rent to Buy Dwellings on the open market the Registered Provider covenants with the Council to apply the Subsidy granted by Homes England to the provision of Affordable Housing in the County⁵⁷

9. The Registered Provider shall serve written notice upon the Council when it has sold a Rent to Buy Dwelling to an existing tenant within the Letting Period

10. Where the Registered Provider has not exchanged contracts for the sale of a Rent to Buy Dwelling to an existing tenant prior to one month before the expected date of the end of the Letting Period it must serve written notice upon the Council confirming the proposed use or disposal of the relevant Rent to Buy Dwelling after the end of the Letting Period PROVIDED THAT such written notice is served upon the Council clearly addressed and marked for the attention of the Service Director – Housing

⁵⁷ Paragraph 8 applies to policy 9 sites only.

ANNEX []**(“the Housing Mix ”)**

[NB - Completed table is for illustration purposes only] Remove this note once table completed

Tenure	Number	Property mix including minimum Gross Internal Area (GIA) and number	Plots	Category 2: Accessible & Adaptable Dwellings plots	Category 3: Wheelchair User Dwellings plots
Affordable Rented Dwellings	21	<i>2 x 4 bed, 7 person houses, minimum 115m2 GIA</i>	44, 48		
		<i>4 x 3 bed, 5 person houses, minimum 93 m2</i>	2, 3, 22, 23	2, 22	
		<i>7 x 2 bed, 4 person houses, minimum 79 m2</i>	1,4,5, 12,13, 24, 25	12	
		<i>8 x 1 bedroom, 2 person flats,</i>	16,17,18, 19,30,31, 32, 33		

		<i>minimum 50 m2</i>			
RP Shared Ownership Dwellings					
Rent to Buy Dwellings					
Intermediate Homes for Sales	9	<i>1 x 4 bed, 7 person houses, minimum 115m2 GIA</i>	40		
		<i>3 x 3 bed, 5 person houses, minimum 93 m2</i>	6,10, 52,	52	
		<i>3 x 2 bed, 4 person houses, minimum 79 m2</i>	58, 59, 60		
		<i>2 x 1 bedroom, 2 person flats, minimum 50 m2</i>	63, 64		
Open Market Dwellings					
Total	30				

ANNEX []**("the Offer")**

Date:

Name of Owner:

Name of development:

Name of Registered Provider:

1) The Owner offers the Registered Provider [*title absolute*] of the [*Affordable Rented Dwellings*] [*RP Shared Ownership Dwellings*] [*Rent to Buy Dwellings*] shown edged red on the attached plan ("The Affordable Dwellings") for the consideration of £[]

2) The Registered Provider confirms its agreement to enter into a contract for the transfer of The Affordable Dwellings within [90] days of service of this notice of Offer

3) Where the Affordable Dwellings are transferred to the Registered Provider, the Registered Provider shall at all times let or sell The Affordable Dwellings in accordance with the provisions of the Section 106 Agreement dated and relating to this development

4) Unless otherwise agreed with the Council the terms for the transfer of The Affordable Dwellings to the Registered Provider shall be compliant with the requirements of the Homes England's Procurement Strategy and Affordable Housing Capital Funding Guide (or equivalent successor documents) which outline the criteria, procedures and audit arrangements for all affordable housing schemes including the use of Grant, and of its recovery in the event of future resale.

5) Where the Registered Provider agrees to take transfer of The Affordable Dwellings in accordance with the terms of this Notice it shall sign and return this notice of Offer together with formal written notification within 30 days of service of this notice of Offer.

Signed (Registered Provider):

Dated:

ANNEX []

(Evidence of Qualifying Persons)

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:

Eligibility Criteria

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 hereunto)
affixed in the presence of:)

Authorised Officer

[Print Name]

EXECUTED as a **DEED** (name of company) acting by [a director and its secretary] [two directors]

Signature of Director: _____

Signature of [Secretary][Director]: _____

SIGNED as a **DEED** by **[OWNER]**)
In the presence of:)

Witness name

Address

Occupation

SIGNED as a **DEED** by)
[BANK'S/MORTGAGEE'S SIGNATORY])
as attorney for and on behalf of)
[BANK/MORTGAGEE])

Authorised Officer

