

DATED 9th February 2015

CHRISTOPHER PAUL BRAGG
AND
IVOR NORMAN BRAGG
AND
ASHCOM DEVELOPMENTS LIMITED
AND
EAST DEVON DISTRICT COUNCIL

AGREEMENT

Made under Section 106 of the Town & Country Planning Act 1990 (as amended) relating to:-

Land West Of Woodbury Road Clyst St George Exeter

Graham Gover Solicitor LARTPI
10 Southernhay West
Exeter
EX1 1JG
Ref: ASH0011

This AGREEMENT is made on the 9th day of February two thousand and fifteen by:-

- (1) Christopher Paul Bragg of Addlepool Farm, Clyst St. George, Exeter EX3 0NR ("the Owner")
- (2) Ivor Norman Bragg of Borsdane, Clyst St George, Exeter, EX3 0NN ("the Owner")
- (3) Ashcom Developments Limited of Rockholme, West Hill Road, Ottery St Mary, EX11 1TU ("the Developer") and
- (4) East Devon District Council of Knowle Sidmouth Devon EX10 8HL ("the Council")

1. RECITALS

- 1.1. The Council is the local planning authority for the purposes of the Act in respect of the area within which the Land is situated and by whom the obligations contained in this Agreement are enforceable
- 1.2. The Owner is the owner of the freehold of the Land free from encumbrances and title to the land is proved by the epitome of title provided by way of a letter dated 23rd January 2015
- 1.3. The Developer has an option to purchase the Land by virtue of an agreement entered into with the Owner dated 30 January 2014
- 1.4. The Developer submitted the Planning Application for the Development as set out in the plans specifications and particulars deposited with the Council, which was refused by the Council by way of a written decision notice dated 30 October 2014,
- 1.5. The Developer has submitted the Appeal and this Agreement is entered into in order to remove the objections to the Planning Application should the Inspector be minded to grant the Planning Permission for the Development
- 1.6. This Agreement is made under section 106 of the Act and section 111 of the Local Government Act 1972 and all other enabling powers and is a Planning Obligation for the purposes of the Act the terms of which are contained in this Agreement

2. Definitions

2.1. In this Deed:

the Act	means the Town and Country Planning Act 1990 or any statute amending or modifying repealing or re-enacting the same for the time being in force
Affordable Housing	means housing within the meaning of affordable housing as defined by Annex 2 of the NPPF to meet the needs of eligible households whose needs are not met by the market
Affordable Housing Units	means those units that are not open market units and which are to be provided as Affordable Housing

	comprising the three Affordable Rented Units and one Shared Ownership Unit as identified edged yellow on the Plan
Affordable Rented Units	means rented Affordable Housing made available at a rent level of up to 80% of market rent or such other tenure and consideration that may be agreed with the Council
Appeal	Means the appeal made the Developer against the decision of the Council to refuse the Planning Application to be determined by the Secretary of State or an Inspector appointed by him and assigned reference APP/U1105/W/14/3001140 by the Planning Inspectorate
Commencement	means commencement of the Development by the carrying out of a material operation as defined in Section 56(4) of the Act and Commenced shall be construed accordingly
Common Housing Registers	means in the case of Affordable Rented Units the register or list of applicants maintained by "Devon Home Choice" and in the case of Shared Ownership Unit the regional HomeBuy agent
the Cricket Netting	means a fence, netting or other form of screen for and comprised of such materials so as to achieve the purpose of preventing so far as is reasonably possible damage to any of the Dwellings likely to be struck by cricket balls emanating from the adjacent cricket ground, built in the approximate position shown on the Plan and measuring 60 metres long and 6 metres high along all of its length
Design and Quality Standards	Means that the Affordable Housing Units shall be constructed; <ul style="list-style-type: none"> (i) strictly in accordance with the plans and elevations deposited and approved as part of the Planning Permission (ii) to Code for Sustainable Homes Level 3 or if higher the appropriate level at the time of Commencement of Development (iii) in accordance with the Homes and

	<p>Community Agency's design and quality standards and the Housing Provider's own design standards applicable at the time of Commencement of Development</p> <p>(iv) Tenure blind so as to be indistinguishable from Private Dwellings</p>
Designated Person	Means a person or family who is registered on the Common Housing Register or Registered Provider's waiting lists and is in Housing Need
Development	means the development of the Land in accordance with the Planning Application
District	means the administrative area of the East Devon District Council
Dwelling	Means a building or part of a building designed for residential occupation by a single household and "Dwellings" shall be construed accordingly
Final Certificate	means the certificate issued by the Head of Service following the Final Maintenance Inspection of the On Site Open Space confirming that the On Site Open Space has been maintained in accordance with the On Site Open Space Specification and that the plants and trees are in good health
Final Maintenance Inspection	means the inspection or inspections of the On Site Open Space conducted by the Head of Service to ensure that the On Site Open Space has been maintained in accordance with the On Site Open Space Scheme and that the plants and trees are in good health and to determine whether it is appropriate to issue either a Remedial Notice or the Final Certificate in the Head of Services' absolute discretion
Footpath Link	Means the footpath links to be constructed as part of the development in accordance with the Planning Permission and as shown coloured brown on the Plan
Head of Service	means the Head of Service for Environment or such

	person in whom the Head of Service for Environment's functions are from time to time vested
Habitat Mitigation Contribution	Means the sum of £8750 (Index Linked) to be paid by the Owner to the Council as a contribution towards measures to mitigate the impacts of the Development on the Pebblebed Heaths and Exe Estuary Special Protection Areas
Housing Need	Means the circumstances unless provided to the contrary in this Agreement where a household is currently occupying accommodation that is sub standard or unsuitable for its requirements and which has an income that is too low either to buy or rent accommodation appropriate to their circumstances on the open market
Index	Means the Retail Price Index
Index Linked	Means an increase to the sum to be paid which is calculated by applying to that sum the percentage increase (if any) in the Index between the date of this Agreement and the date of payment
Interest Rate	Means 4% above the Law Society's Interest Rate calculated on a day to day basis
Land	means the freehold land situate at and known as Land West Of Woodbury Road Clyst St George and shown edged red on the Plan
Local Connection	<p>means a connection to the Parish of Clyst St George demonstrated by one or more of the following in priority order:</p> <ul style="list-style-type: none"> (1) being permanently resident therein for a continuous period of at least three (3) years out of the five (5) years immediately prior to being offered the Affordable Housing Unit; or (2) being formerly permanently resident therein for a continuous period of five (5) years; or (3) having his or her place of permanent work (normally regarded as 16 hours or more a week and not including seasonal employment) therein for a continuous period of at least twelve (12) months immediately prior to being offered the Affordable Housing Unit; or

	<p>(4) having a connection through a close family member (normally mother, father, brother, sister, son or daughter) where the family member is currently resident therein and has been so for a continuous period of at least five (5) years immediately prior to being offered the Affordable Housing Unit and where there is independent evidence that the family member is in need of support or can give support</p> <p>and in the event that no-one satisfying the above requirements can be found within the Parish of Clyst St George then the process shall be repeated considering persons from the following areas in the following priority order;</p> <p>(1) the Neighbouring Parishes,</p> <p>(2) persons from the District</p>
Maintenance Period	means the period between the issue of the Practical Completion Certificate and the date the On Site Open Space is transferred to the Management Company such period being not less than twelve (12) months (or an alternative time period at the Head of Services' discretion)
Management Company	means the private limited company to be established by the Owner (and registered at Companies House) the purpose of which will be (amongst other things) to manage and maintain the On Site Open Space and established in accordance with the provisions in the Third Schedule hereto
Monitoring Fee	Means the sum of £958.50 to be paid to the Council as a contribution towards the Council's costs of monitoring the implementation and delivery of this Agreement
Neighbouring Parishes	Means the parishes of Clyst St Mary and Woodbury
Nomination Agreement	means the agreement or an agreement substantially in the form of the one appended to this Agreement in the Second Schedule and which governs the ability of the Council to nominate occupiers for the Affordable Housing Units
Occupation	Means first occupation of any Dwelling but does not include temporary occupation for the purposes of

	construction fitting out or marketing and "First Occupy" shall be construed accordingly
On Site Open Space	Means the area shown shaded green (and labelled 'Amenity land') on the Plan to be used and maintained as ancillary public open space in perpetuity
On Site Open Space Scheme	Means the scheme to be submitted pursuant to paragraph 4 of the First Schedule dealing with the following elements in respect of the On Site Open Space, namely; <ul style="list-style-type: none"> - the programme and timing for the provision of all elements - a detailed plan and specification for the laying out and planting a detailed plan for the ongoing maintenance
Open Market Dwelling	Means any Dwelling constructed on the Land which is intended for private sale or rent on the open market
the Plan	Means the plan annexed to this Agreement under reference 12.42 SP44 showing the extent of the Site, the Affordable Housing Units, the Footpath Links and the On Site Open Space
Planning Application	means the application for outline planning permission for the Development assigned reference number 14/0167/MFUL and registered as 'Construction of 25 dwellings, amenity land, noise barrier, garages, new footpath with access off Woodbury Road'
Planning Permission	Means the planning permission granted by the Inspector for the Development following the Appeal
Practical Completion Certificate	means the certificate or certificates issued by the Head of Service Services once he is satisfied that the On Site Open Space has been completed

Registered Provider	means a housing association or similar organisation or a social landlord in each such case registered with the Housing Corporation under Section 1 of the Housing Act 1996 or such other body or organisation whose main object is the provision of Affordable Housing as agreed by the Council
Remedial Notice	means the notice or notices issued by Head of Service either prior to or during the Maintenance Period (if appropriate) requiring the Owner to carry out any works that he considers (at his absolute discretion) to be necessary for the On Site Open Space to be provided in accordance with the approved details including (without limitation) re-planting of unhealthy dead diseased or dying plants and trees and a timescale within which those works are to be completed
Rentcharge	means the perpetual yearly variable estate rentcharge imposed on each Dwelling to cover the annual costs of complying with the obligations under the On Site Open Space Scheme such rentcharge to include the administrative and management costs of the Management Company once established in consideration of the Management Company covenanting to perform its obligations under the On Site Open Space Scheme PROVIDED ALWAYS that the rentcharge on each individual Dwelling shall be an equal proportion of the total number of Dwellings in the completed Development
Shared Ownership Lease	means a long shared ownership lease (as defined in section 622 of the Housing Act 1985 or successor provision) with a Registered Provider substantially in accordance with the Homes and Communities Agency (or successor body) Model as at the date of any such lease where the purchaser purchases an initial share of the equity between 25 – 80% and pays rent on the remaining unsold equity and where additional share of the equity can be purchased provided that no more than 80% of the equity can be purchased
Shared Ownership Unit	means a Dwelling for sale on a shared ownership basis solely by way of a Shared Ownership Lease

Staircasing Receipts	Means any monies received by the Registered Provider of a Shared Ownership Unit as a result of the leaseholder exercising a right to increase their share of the equity (and any part of such monies)
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3. INTERPRETATION

- 3.1. Nothing in this Agreement shall be or shall be construed to be a fetter or restriction on the proper exercise at any time by the Council of any of its statutory powers functions or discretions in relation the Land or otherwise
- 3.2. Words imposing an obligation on a party to do any act whatsoever include an obligation to procure that act and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of that restriction
- 3.3. Words imparting the singular meaning shall unless the context otherwise requires include the plural and vice versa and where there is more than one covenantor all obligations of such covenantors shall be joint and several
- 3.4. The masculine feminine and neuter genders include each of the other genders and words denoting persons shall include corporations and vice versa
- 3.5. A reference to any Clause or Schedule (or any part of them) is unless the context otherwise requires a reference to a Clause or Schedule (or any part of them) contained in this Agreement
- 3.6. A reference to an Act of Parliament or Statutory Instrument refers to the Act or Statutory Instrument as it applies at the date of this Agreement SAVE THAT in the event any such Act or Statutory Instrument is consolidated amended or re-enacted then any reference to such Act or Statutory Instrument refers to that Act or Statutory Instrument as consolidated amended or re-enacted from time to time
- 3.7. References to any party in this Agreement shall include the successors in title and assigns of that party and in the case of the Council includes any successor local planning authority exercising planning powers under the Act
- 3.8. The provisions of the Schedule shall be deemed imported into the operative parts of this Agreement
- 3.9. The expressions "the Council" and "the Owner" and "the Developer" shall include their respective successors in title.

4. GENERAL

- 4.1. This Agreement is a planning obligation binding the Land made in pursuance of section 106 of the Act and enforceable by the Council under that section against the Owner and their successors in title
- 4.2. If the Appeal is refused or if the Planning Permission expires before the Development is Commenced or is at any time revoked modified or otherwise withdrawn then this Agreement shall immediately cease to have further effect

- 4.3. Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the planning permission granted for this Planning Application) granted (whether or not on appeal) after the date of this Agreement.
- 4.4. No party hereto shall be liable for any breach of any of the obligations in the Schedules to this Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 4.5. This agreement shall not bind or be enforceable against individual purchasers of completed Dwellings nor their mortgagees nor service providers of gas water electricity drainage and telecommunications
- 4.6. This Agreement is a local land charge and shall be registered as such by the Council
- 4.7. Where the Agreement, approval, consent or expression of satisfaction is required by one party from another party under the terms of this Agreement, such Agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed and shall be given in writing (and shall be of no effect unless given in writing).
- 4.8. Any notice or other written communication to be served upon or given by one party to any other under the terms of this Agreement shall be deemed to have been validly served or given if transmitted by facsimile (and confirmed by transmission confirmation slip) delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing
- 4.9. In the event of any dispute in respect of any matter contained in this Agreement then the same shall be determined by arbitration conducted in accordance with the Arbitration Act 1996 the arbitrator to be nominated on the application of either of the parties in dispute by the President for the time being of the Chartered Institute of Arbitrators such person being experienced in the relevant field with not less than 10 years' standing
- 4.10. Insofar as any clause or clauses in this Agreement 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 Agreement
- 4.11. No waiver (whether express or implied) by any party to this Agreement of any breach or default in performing or observing any of the provisions of this Agreement by any other party shall constitute a continuing a continuing waiver, and no such waiver shall prevent the party granting it (or implied to have done so) from enforcing any of the relevant provisions or from acting upon any subsequent breach or default.
- 4.12. This Agreement is governed by and interpreted in accordance with the law of England and Wales; and the County Court in whose district the Site is situated shall have full jurisdiction to hear and determine proceedings arising from or relating to this Agreement or for the enforcement of its terms or any of them

5. CONDITIONAL TERMS

- 5.1. This Deed shall take effect on the date hereof
- 5.2. The obligations contained in Clause 6 below and in Schedule 1 to this Agreement shall take effect only upon the Commencement of the Development save for any obligation expressed to need to be

complied with prior to the Commencement of Development which shall be effective upon the grant of the Planning Permission.

6. PARTIES OBLIGATIONS

- 6.1. The Owner covenants with the Council to observe the restrictions and obligations specified in Parts One, Three, Four and Five of Schedule 1 to this Agreement
- 6.2. The Council covenants with the Owner to observe the obligations specified in Part Two of Schedule 1 to this Agreement.
- 6.3. The Developer shall on the date hereof pay to the Council their reasonable costs incurred in negotiating and entering into this Agreement.
- 6.4. The Owner shall prior to the Commencement of the Development pay to the Council the Monitoring Fee

7. DEVELOPER COVENANT

- 7.1. The Developer hereby acknowledges and agrees that it will be bound by the planning obligations entered into by the Owner and herein contained in the event it exercises the option referred to in Clause 1.3 and takes possession of the Land as owner

8. OWNER WARRANT

- 8.1. The Owner warrants that the position as stated at Recital 1.2 is correct and that no other persons other than the Owner and the Developer has a legal interest in respect of the Land

SCHEDULE 1

PART ONE - HABITATS MITIGATION CONTRIBUTION

1. The Owner covenants with the Council:

- 1.1. Not to cause or permit Commencement of Development until the Habitats Mitigation Contribution has first been paid to the Council
- 1.2. In the event of the Owner failing to make any payment due pursuant to the terms of this Agreement on the date specified the sum due shall accrue interest at the Interest Rate calculated on a day to day basis from the date payment was due to the date payment is made.
- 1.3. Prior to the Commencement of Development to erect and complete the Cricket Netting, and subject to paragraph 1.4 maintain the same in good and working condition without limit of time thereafter.
- 1.4. If the use of the adjacent cricket ground should cease permanently and after notice in writing to this effect has been received from the Council to remove the Cricket Netting and all its constituent parts from the Land.

PART TWO

2. The Council covenants with the Owner:

- 2.1. The Habitats Mitigation Contribution shall not be used other than in accordance with the provisions of this Agreement as set out in the Interpretation part of this Deed

PART THREE – AFFORDABLE HOUSING

3. The Owner covenants with the Council:

- 3.1. The four Affordable Housing Units which are to be occupied as Affordable Housing are shall be those identified on the Plan and in accordance with the following table:

Plot number	Number of bedrooms	Tenure type
1	2	Shared ownership
2	2	affordable rented
3	2	affordable rented
4	3	affordable rented

- 3.2. No more than Fifty per cent (50%) of the Open Market Dwellings shall be sold or occupied until:
 - 3.2.1. all the Affordable Housing Units are completed in accordance with the Plan and available and fit for occupation; and
 - 3.2.2. the Owners have transferred the Affordable Housing Units to the Registered Provider
- 3.3. The transfer of the Affordable Housing Units to the Registered Provider shall be in such form as the Owners shall reasonably require to ensure that the Affordable Housing Units are subject to the same

rights and easements and covenants (both restrictive and positive) as are to be granted and reserved in sales of the Open Market Dwellings

- 3.4. To ensure that the Affordable Housing Units together with their respective curtilages will abut a publicly adopted highway or roads and footways the subject of a bonded road making agreement under section 38 of the Highways Act 1980 (or enjoy ready and free access thereto via an intervening private drive) and have ready and free access to all usual domestic services needed for residential occupation of such Affordable Housing Units without the Registered Provider having to make any payment either to the Owner or any third party for any right of way or right to use such services or connect to them
- 3.5. The transfer of the Affordable Housing Units to the Registered Provider will contain a declaration that the Affordable Housing Units are so transferred subject to and with the benefit of the terms of this Agreement
- 3.6. The Affordable Housing Units shall not be used for any purpose other than for the provision of Affordable Housing in accordance with this Agreement
- 3.7. Not to permit Occupation of any Affordable Housing Units unless and until the Owners and/or the Registered Provider (as appropriate) has entered into the Nomination Agreement with the District Council
- 3.8. The Owners and/or Registered Provider as appropriate shall not at any time permit the Affordable Housing Units to be occupied other than as Affordable Housing by a Designated Person (and their dependents) who has a Local Connection
- 3.9. In the event that any Affordable Housing Unit (or Units as the case may be) is owned or leased by a Registered Provider and there is a default under any legal charge or mortgage of the same then any chargee or mortgagee (the Mortgagee) shall be entitled to exercise its power of sale free from the restrictions of this paragraph provided that the chargee shall first have followed the procedure set out in paragraphs 3.10.1 to 3.10.4:-
 - 3.9.1. Any Mortgagee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than two (2) months prior notice to the Council of its intention to dispose and:
 - 3.9.2. In the event that the Council responds within six (6) weeks from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Mortgagee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer
 - 3.9.3. If the Council does not serve its response to the notice served under paragraph 3.10.1 within the six (6) weeks then the Mortgagee shall be entitled to dispose free of the restrictions set out in this Schedule which shall from the time of completion of the disposal cease to apply
 - 3.9.4. If the Council or any other person cannot within three (3) months of the date of service of its response under paragraph 3.10.2 secure such transfer then provided that the Mortgagee shall have complied with its obligations under paragraph 3.10.2 the Mortgagee shall be

entitled to dispose free of the restrictions set out in this Part 3 of Schedule 1 which shall from the time of completion of the disposal cease to apply

PROVIDED THAT at all times the rights and obligations in this paragraph 3.10 shall not require the Mortgagee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Mortgagee in respect of moneys outstanding under the charge or mortgage

3.10. In relation to any Affordable Housing Units the Affordable Housing obligations in this Deed shall not apply to;

3.10.1. any sale to a tenant in exercising their right to acquire or purchase under a statutory power or to the successors in title to any such persons

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

3.11. In the event of any Shared Ownership Unit being released from the Affordable Housing restrictions herein contained by virtue of the operation of paragraph 3.11.2 above the Owner shall provide the Council with details of Staircasing Receipts from the Shared Ownership Unit and in co-operation with the District Council reach agreement to invest 100% of the Staircasing Receipts, if any, arising from the Shared Ownership Unit in the provision of new build Affordable Housing or to invest in measures to enhance the provision of Affordable Housing within the administrative area of the Council including facilitating the acquisition of market housing or the conversion or refurbishment of existing housing to bring such housing back into beneficial use to enable it to be occupied provided that the use of the Staircasing Receipts is limited to the provision within District

PART FOUR ON-SITE OPEN SPACE

4. The Owner hereby covenants with the District Council as follows:-

4.1. Prior to Commencement of the Development the Owner shall submit the On Site Open Space Scheme to the Council for its approval and the Owner shall not Commence the Development until the On Site Space Scheme has been approved by the Council

4.2. To provide the On Site Open Space in accordance with the programme and detail approved by the Council pursuant to paragraph 4.1 above and at all times in accordance with the approved On Site Open Space Scheme

4.3. Within seven (7) days of completion of the On Site Open Space pursuant to paragraph 4.2 above the Owner shall notify the Head of Service in writing of details of their designated contact for queries regarding the On Site Open Space and requesting an inspection following which the Head of Service shall issue either the Practical Completion Certificate or a Remedial Notice which shall be complied

with within 28 days following which the Owner shall request a further inspection by the Head of Service following which the Head of Service shall issue a Practical Completion Certificate or a Remedial Notice and such process is to be repeated until the Practical Completion Certificate is issued

- 4.4. Following the issue of the Practical Completion Certificate the Owner shall maintain the On Site Open Space in accordance with the On Site Open Space Scheme to the satisfaction of the Council for the Maintenance Period (or such shorter period as may be agreed to by the Head of Service) and during that time to comply with any Remedial Notice reasonably served by the Council
- 4.5. If the Owner does not comply with the requirements of any Remedial Notice to the Council's satisfaction as required by this Part of this Schedule the Council may after giving the Owner 14 days' written notice of the works it intends to carry out and the Owner failing to carry out the works within that period enter upon the Site and themselves carry out those works and the cost of these works shall be paid by the Owner to the Council
- 4.6. One month prior to the expiry of the Maintenance Period (or such shorter period as agreed to pursuant to paragraph 4.5 above) the Head of Service will carry out the Final Maintenance Inspection following which the Head of Service shall either issue the Final Certificate for the Open Space or a Remedial Notice which shall be complied with within 28 days following which the Owner shall request a further inspection by the Head of Service following which the Head of Service shall issue the Final Certificate or a Remedial Notice and such process is to be repeated until the Final Certificate is issued
- 4.7. Following the issue of the Final Certificate for the On Site Open Space and in any event prior to Occupation of the last Dwelling to transfer the On Site Open Space to the Management Company in accordance with the Third Schedule hereto and thereafter the On Site Open Space shall be maintained in perpetuity in accordance with the maintenance regime set out in the On Site Open Space Scheme
- 4.8. Not to permit Occupation of the last Dwelling unless and until the On Site Open Space has been transferred to the Management Company in accordance with paragraph 4.7 above

PART FIVE – FOOTPATH LINKS

- 5 The Owner hereby covenants with the District Council as follows;
 - 5.1 To construct the Footpath Links prior to the Occupation of the last Dwelling and not to permit Occupation of the last Dwelling until the Footpath Links have been constructed.
 - 5.2 Following construction the Footpath Links shall be kept open and maintained so as to be available for use by the public in perpetuity

SCHEDULE 2

NOMINATION AGREEMENT

NOMINATION AGREEMENT IN RESPECT OF LAND

THIS NOMINATION AGREEMENT is made the day of 2015

BETWEEN:

- (1) EAST DEVON DISTRICT COUNCIL of Knowle, Sidmouth, EX10 8HL ("EDDC"); and
- (2) *[Insert RP details]* an industrial and provident society (IPS Number XXXXX) whose registered office is at *[Insert address]* ("the Registered Provider")

IT IS AGREED THAT:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and expressions shall (unless the context (otherwise requires) have the following meaning:

"Affordable Housing Units"	means the 4 units which are subject to the Transfer to the Registered Provider dated [XX XX 2015] and which shall be made available as Affordable Housing (as defined in the Section 106 Agreement) and which shall comprise Affordable Rented Units and Shared Ownership Units as defined and delivered pursuant to the Section 106 Agreement and Affordable Housing Unit shall be construed accordingly;
"Common Housing Register"	means in the case of Affordable Rented Units the register or list of applicants maintained by Devon Home Choice and in the case of Shared Ownership Units the register or list of applicants maintained by the Regional HomeBuy Agent;
"Designated Person"	means a person who is in Housing Need within the District and who is registered on the Common Housing Register
"District"	means the administrative area of EDDC
"EDDC"	means East Devon District Council
"Eligible Person"	means a person who is a Designated Person who has a Local Connection
"Expert"	means an expert independent arbitrator to be appointed in accordance with clause 10.1 of this Agreement;
"First Occupation"	means first Occupation (as defined in the Section 106 Agreement);
"Housing Need"	where a household is currently occupying accommodation that is sub standard or unsuitable for its requirements and which has an income that is too low either to buy or rent accommodation appropriate to their

	circumstances on the open market
"Local Connection"	<p>means a connection to the Parish of Clyst St George demonstrated by one or more of the following in the following priority order;</p> <ol style="list-style-type: none"> (1) being permanently resident therein for a continuous period of at least three (3) years out of the five (5) years immediately prior to being offered the Affordable Housing Unit; or (2) being formerly permanently resident therein for a continuous period of five (5) years; or (3) having his or her place of permanent work (normally regarded as 16 hours or more a week and not including seasonal employment) therein for a continuous period of at least twelve (12) months immediately prior to being offered the Affordable Housing Unit; or (4) having a connection through a close family member (normally mother, father, brother, sister, son or daughter) where the family member is currently resident therein and has been so for a continuous period of at least five (5) years immediately prior to being offered the Affordable Housing Unit and where there is independent evidence that the family member is in need of support or can give support <p>and in the event that no-one satisfying the above requirements can be found within the Parish of Clyst St George then the process shall be repeated considering persons from the Neighbouring Parishes and in the event that no-one satisfying the above requirements can be found from the Neighbouring Parishes then the process shall be repeated considering persons from the District of East Devon</p>
"Neighbouring Parishes"	means the parishes of Clyst St Mary and Woodbury
"Nomination Period"	means the period of eighty (80) years from the date of this Agreement;
"Nomination Right"	<p>means the right referred to in the Section 106 Agreement and conferred in clause 4 of this Nomination Agreement for EDDC to:</p> <ol style="list-style-type: none"> (a) nominate Eligible Persons to occupy the Affordable Housing Units during the Nomination Period; or (b) allow a Registered Provider to allocate Eligible Persons to occupy the Affordable Housing Units in accordance with Devon Home Choice or Regional Homebuy Agent during the

	Nomination Period;
"Parties"	means [insert RP name] and EDDC and "Party" shall be construed accordingly;
"Section 106 Agreement"	means the Agreement dated [insert date] and entered into pursuant to Section 106 Town and Country Planning Act 1990 between (1) East Devon District Council (2) Paul Bragg (3) Ivor Norman Bragg and (4) Ashcom Developments Limited which makes provision for affordable housing on land West Of Woodbury Road Clyst St George Exeter;

- 1.2 Words denoting the singular only shall include the plural and vice versa
- 1.3 Words denoting one gender shall include all genders and words denoting persons shall include firms and corporations and vice versa
- 1.4 References to any statute or statutory provision includes a reference to:
 - (a) that statute or statutory provision as from time to time amended extended re-enacted or consolidated; and
 - (b) all statutory instruments or orders made pursuant to it.
- 1.5 References to any party in this Agreement shall include that party's successors in title and assigns
- 1.6 References to a body exercising statutory powers and/or functions in this Agreement shall unless otherwise specified include any successor in function
- 1.7 Every covenant in this Agreement not to do a particular thing shall be deemed to include (a covenant not to cause authorise or permit that thing to be done by another person
- 1.8 Where there is conflict between any of the provisions of this Nomination Agreement and the provisions of the Section 106 Agreement the provisions of the Section 106 Agreement shall be taken to prevail for all purposes.
- 1.9 Nothing in this Nomination Agreement shall be taken to override the Devon Home Choice or Homebuy Scheme and if any conflict arises between this Nomination Agreement and the Devon Home Choice or Homebuy Scheme then the Devon Home Choice or Homebuy Scheme shall prevail
- 1.10 The headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement

2 NOTICES

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

3 PROVISION OF AFFORDABLE HOUSING

- 3.1 The Registered Provider agrees to make the Affordable Housing Units available for sale to or rent by (as appropriate) Eligible Persons for the duration of the Nomination Period.
- 3.2 In accordance with EDDC's obligations under Parts II Housing Act 1985 and Parts VI and VII Housing Act 1996 EDDC and the Registered Provider have agreed to enter into a programme for the nomination of Eligible Persons to purchase or rent the

Affordable Housing Units.

4 NOMINATION RIGHTS

- 4.1 The Registered Provider grants to EDDC the Nomination Rights in respect of the Affordable Housing Units throughout the Nomination Period and the Registered Provider covenants that it shall not allow the occupation of the Affordable Housing Units other than in accordance with this Agreement.
- 4.2 The Nomination Rights may be exercised by EDDC where an Affordable Housing Unit becomes available for occupation by reason of availability for First Occupation or arising upon any subsequent resale, re-let or assignment after the expiry of the First Occupation or any subsequent occupation of that Affordable Housing Unit.
- 4.3 EDDC may appoint the Registered Provider to act on its behalf in relation to this Agreement on such terms as to be agreed in writing from time to time

5 NOMINATION PROCEDURE

Notice of availability

- 5.1 Where an Affordable Housing Unit is available for First Occupation the Registered Provider shall provide notice in writing to EDDC no later than two weeks after the date on which the Affordable Housing Unit becomes available for First Occupation that it is available.
- 5.2 Where an Affordable Housing Unit becomes or is to become available for any reason after the expiry of the First Occupation or any subsequent occupation the Registered Provider shall provide notice in writing of the availability of that Affordable Housing Unit to EDDC no less than four weeks prior to that Affordable Housing Unit becoming available.

Nomination of Eligible Persons

- 5.3 Where EDDC receives notice of the availability of an Affordable Housing Unit in accordance with clause 5.1 above it may within four weeks nominate to the Registered Provider in priority order up to three prospective Eligible Persons to occupy the Affordable Housing Unit.
- 5.4 Where EDDC receives notice of the availability of an Affordable Housing Unit in accordance with clause 5.2 above it may within four weeks nominate to the Registered Provider in priority order up to three prospective Eligible Persons to occupy the Affordable Housing Unit.

Offer of accommodation to Eligible Persons

- 5.5 The Registered Provider shall within ten working days of receipt of the names of the three Eligible Persons pursuant to clauses 5.3 or 5.4 above have the reasonable right of interview and (on reasonable grounds) rejection of any prospective Eligible Person so nominated by EDDC.
- 5.6 Where the Registered Provider:
 - (a) does not reject all of the prospective Eligible Persons nominated by EDDC;
 - or
 - (b) where it does reject a Eligible Person and it is later determined that the rejection was unreasonable,it shall make an offer to purchase or offer to lease (as appropriate) to the highest priority Eligible Person
- 5.7 Where EDDC has nominated a Eligible Person(s) the Registered Provider shall as soon as practicable notify EDDC if:
 - (a) the Registered Provider rejects any Eligible Person(s) nominated by EDDC;
 - or

- (b) if any Eligible Person nominated in respect of a particular Affordable Housing Unit fails to accept or refuses an offer of a lease or an offer to purchase which is made by the Registered Provider.
- 5.8 Where the Registered Provider rejects a Eligible Person and provides notice to EDDC of that rejection in accordance with clause 5.7(a) above that notice shall include the Registered Provider's reasons for that rejection.
- 5.9 On receipt of a notice of rejection EDDC shall consider the reasons for rejection and if it determines that a rejection was not reasonable it shall set out its reasons for so doing in writing and immediately notify the Registered Provider of those reasons.
- 5.10 In the event of a dispute between the Registered Provider and EDDC relating to whether a rejection is reasonable or not the matter may be referred by either party for resolution under the terms of clause 10.

Further nominations

- 5.11 This clause applies where either:
 - (a) all Eligible Persons nominated to an Affordable Housing Unit by EDDC are rejected by the Registered Provider and such reasons are considered reasonable by EDDC;
 - or
 - (b) an Eligible Person refuses to accept an offer to lease or offer to sale made by the Registered Provider within four weeks of the date of that offer.
- 5.12 Where clause 5.11 applies, the Registered Provider shall notify EDDC and invite further nominations within ten working days.
- 5.13 Within ten working days of receipt of a notification received in accordance with clause 5.12 EDDC may nominate to the Registered Provider a further three prospective Eligible Persons in priority order for the purposes of occupying that Affordable Housing Unit. Clauses 5.5 to 5.10 shall apply in respect of those nominations as if they were made under clause 5.3 or 5.4.

Local Connections

- 5.14 If within four weeks of the expiration of a notice served upon EDDC pursuant to clause 5.1, 5.2 or 5.12 above EDDC have failed to nominate a Eligible Person the Registered Provider may let the Affordable Housing Unit free from the Nomination Rights to any Eligible Persons in accordance with Devon Home Choice without prejudice to the Nomination Rights which shall arise upon the expiry of that person's occupation of the Affordable Housing Unit.

Fit for occupation

- 5.15 Where the Registered Provider gives notice to EDDC under clauses 5.3, 5.4 or 5.12 the Registered Provider shall certify to EDDC that the Affordable Housing Unit to which the notice relates is fit for occupation.

6 VARIATION AND WAIVER

- 6.1 The nomination procedure described in clause 5 above may be varied in respect of any single Affordable Housing Unit provided always that such variation is agreed in writing by the Parties and that no such variation shall constitute a waiver of the Nomination Rights as described in this Agreement.

7 INFORMATION

- 7.1 The Registered Provider shall provide EDDC with information concerning the

occupation of the Affordable Housing Units on each anniversary of the date of this Agreement throughout the Nomination Period such information to include evidence concerning voids, sales, re-sales, lets and re-lets.

- 7.2 EDDC may request such further information from the Registered Provider concerning the occupation of the Affordable Housing Unit as it may reasonably require and such information shall be provided by the Registered Provider within twenty-eight days of receipt of a request.

8 ENFORCEABILITY OF COVENANTS

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

9 COSTS

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

10 DISPUTES

- 10.1 In the event of a dispute or question arising between the Registered Provider and EDDC in relation to any of the provisions of this Agreement it is agreed that:
- (a) in the absence of agreement the dispute or question shall be referred to an Expert to be agreed by EDDC and the Registered Provider;
 - (b) in the absence of agreement between the Registered Provider and EDDC the Expert shall be determined upon the application of either EDDC or the Registered Provider by the President of the Royal Institution of Chartered Surveyors;
 - (c) any such reference is to be treated as a submission to arbitration within the means of the Arbitration Act 1996; and
 - (d) in the event of a reference to arbitration arising out of the unreasonable withholding of any approval required or sought under this Agreement the timescale for carrying out any required steps under this Agreement may be extended either by written agreement between the parties to the procedure or failing such agreement in accordance with such extended timescale as the Expert may deem fit.
- 10.2 In the event of such election made in clause 10.1 then any resulting finding decision or determination of the Expert shall be binding on the Registered Provider and EDDC.

11 EXCLUSIONS

- 11.1 Nothing in this Agreement shall bind
- 11.1.2 a mortgagee in possession or chargee (or to a receiver appointed thereby) of an Affordable Housing Provider to whom the freehold or long leasehold of the Affordable Housing Dwellings has been transferred,
 - 11.1.2 any sale to a tenant in exercising their right to acquire or purchase under a statutory power or to the successors in title to any such persons
 - 11.1.3 In relation to any Shared Ownership Dwelling (as defined in the S106 Agreement) where the owner of the said unit has been granted a waiver to the requirements of the Designated Protected Area Order (SI 2009/2098) (or such other regulations restricting the ability to achieve 100% staircasing) the owner subsequently acquires such percentage that will take their ownership to 100% of the said unit or to the successors in title to any such persons

IN WITNESS whereof this Agreement has been executed by the parties hereto the day and year first before written

THE COMMON SEAL of EAST DEVON)
DISTRICT COUNCIL was affixed to this)
Agreement in the presence of)

.....

Authorised Signatory

EXECUTED as a DEED by)
affixing the common seal of)
)
)
in the presence of:)

Authorised Signatory

.....

Authorised Signatory / Secretary

.....

SCHEDULE 3

Management Company Provisions

The Owner covenants;

1. Not to use or Occupy or cause or suffer or permit the use or Occupation of any of Dwellings until such time as the Owner has at its own expense;
 - 1.1 set up and registered the Management Company as a private limited company incorporated and registered in England at Companies House
 - 1.2 ensured that the Management Company has at least two named persons as Directors and one Company Secretary that are eligible to be appointed and (if required) removed and replaced by the Members of the Management Company;
 - 1.3 procured that the Management Company appoints a named manager ("the MC Manager") responsible for liaising with the Council and owners and occupiers of the Dwellings
 - 1.4 procured through the Management Company documentation (as set out in paragraph 2.2 below) that the Management Company will hold at least one (1) public meeting per year
 - 1.5 procured that the Management Company is responsible for the upkeep and on-going maintenance of the On Site Open Space in accordance with the On Site Open Space Scheme and the Obligations under this Agreement

Management Company Documents

2. Not to use or Occupy or cause or suffer or permit the use or Occupation of any of Dwellings until such time as the Owner has provided the Council with the following information and documents relating to the Management Company;
 - 2.1 a copy of the company Certificate of Incorporation and Articles of Memorandum;
 - 2.2 a copy of its Rules (including the holding of at least one (1) public meeting per year and the giving of a minimum of seven (7) days written notice of each meeting to the Council and all Company Members and any other interested parties and to provide suitable facilities for the meetings of the Management Company) and Regulations and operational manuals
 - 2.3 any other relevant documentation relating to the On Site Open Space
 - 2.4 details of the names and addresses of all Directors, Members and the Company Secretary
 - 2.5 full and sufficient details of the financial resources available to the Management Company including evidence that there are adequate resources in place to undertake the maintenance of On Site Open Space in perpetuity in accordance with the On Site Open Space Scheme

Operation of the Management Company

3. The Owner shall ensure that
 - 3.1 upon the transfer of any Dwellings that all freehold and registerable leasehold owners of the Dwellings are Members of the Management Company and eligible to vote at any Annual General and Special Company Meetings;
 - 3.2 the Housing Provider is a Member of the Management Company;
 - 3.3 the MC Manager will ensure that their contact details including his name address and telephone number are regularly updated and distributed to the owners and occupiers of all of the Dwellings on the Site

- 3.4 the Rentcharge is secured on the first transfer or disposal of any Dwelling and that covenants are contained on the transfer to procure that on any subsequent transfer or disposal the Rentcharge is secured in favour of the Management Company

IN WITNESS whereof the parties have executed this document as a Deed the day and year first before written

EXECUTED AS A DEED

by affixing the Common Seal of
EAST DEVON DISTRICT COUNCIL
in the presence of :-

Authorised Signatory



SIGNED AND DELIVERED AS A DEED by
CHRISTOPHER PAUL BRAGG

in the presence of:

Witness name	<u>Jahri Anthony B.era</u>	Witness Address	<u>55 Altamara Tapsham</u>
Witness Signature	<u>Stadoc</u>	Witness Occupation	<u>Retired</u>

SIGNED AND DELIVERED AS A DEED by
IVOR NORMAN BRAGG

in the presence of:

Witness name	<u>ROBERT GIVINER</u>	Witness Address	<u>33 GKNICK HILL</u>
Witness Signature	<u>[Redacted]</u>	Witness Occupation	<u>EXETER EX4 2AD</u>

SIGNED AS A DEED by)
ASHCOM DEVELOPMENTS LIMITED)
acting by)

[Redacted Signature]

Director

Director/Secretary

