

CAPE OFFICER SCAN

FootAnstey

SECTION 106 UNILATERAL UNDERTAKING

relating to

Land to the east of High Bank
Bridge View, Rockbeare, East
Devon

Dated 28th May 2015

Cyril William Emmett (1)

EAST DEVON DISTRICT COUNCIL ECONOMY			
1 JUN 2015			
ACK	CIRC	SEEN	FILE

Draft:
Ref:

THIS DEED is made the

28th

day of

May

2015

BY

1 CYRIL WILLIAM EMMET of Homer Farm, Aylesbeare, Exeter, EX5 2FG (the "Owner")

TO: EAST DEVON DISTRICT COUNCIL of Station Road, Knowle, Sidmouth, Devon, EX10 8HL
(the "Council").

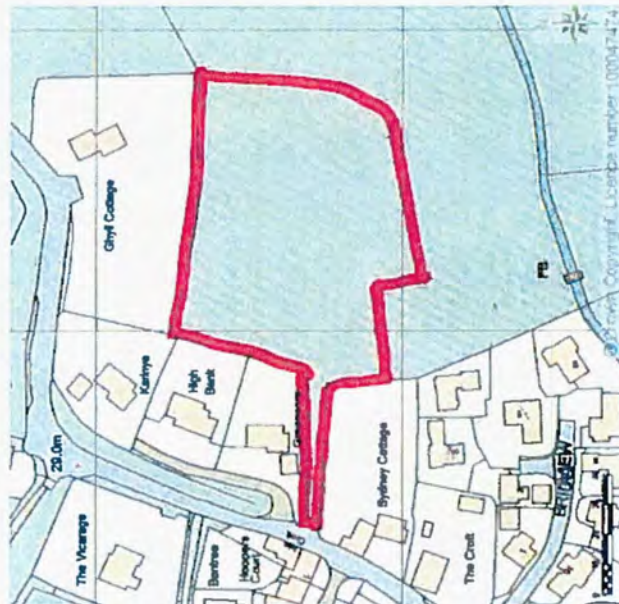
WHEREAS:

2 In this Deed the following definitions shall apply:

The 1990 Act	means the Town and Country Planning Act 1990 as amended
Affordable Housing Contribution	means the sum of three hundred and sixty seven thousand five hundred and seventeen pounds (£367,517) payable subject to Clause 7 of this Deed and if payable is to be used by the Council towards the cost of the provision of Affordable Housing within the administrative area of the Council
The Application	means the outline planning application made to the Council for the Development given reference number 14/1976/OUT
Commencement of Development	means the commencement of the Development by the carrying out of any material operation (as defined in Section 56 of the 1990 Act) but for the purposes of this Deed only shall not include operations consisting of site clearance, demolition works, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial works in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the display of site notices or advertisements and the expressions "Commence", and "Commenced" shall be construed accordingly.
Development	means the construction of up to 9no. Dwellings (Outline application discharging means of access only) as is more fully described in the Application
Decision Letter	means the decision letter issued by the Inspector determining the Appeal
Dwelling	means any dwelling or dwellings to be constructed on the Site pursuant to the Planning Permission
Existing Facilities	means the public open space facilities which already exist within the village of Rockbeare and serve its inhabitants which include but are not limited to

	<p>the following:</p> <ul style="list-style-type: none"> - allotments - football pitch - children's playground - adventure playground - ½ size outdoor basketball court
Habitat Mitigation Contribution	means the sum of £6,741 as a contribution towards mitigating against potential impact on the Exe Estuary and Pebblebed Heath Special Protection Area
Index	means the BCIS All in Tender Price Index
Inspector	means a Planning Inspector appointed by the Secretary of State to determine the Appeal
Interest Rate	means 4% above the Bank of England Base Rate calculated on a day to day basis
Occupation	means occupation of a Dwelling (except for the purposes of construction, fitting out or marketing) on a residential basis and "Occupy" or "Occupied" "Occupancy" shall where the context so requires have the same meaning
On-Site Affordable Housing	means the Affordable Housing as defined at Part B of Schedule 3 to be provided on the Land subject to Clause 6 of this Deed
Open Space Maintenance Contribution	means the sum of £8,501.64 to be used towards the future maintenance of the Existing Facilities
Plan	means the plan annexed to this Deed
Planning Obligations	means the obligations and covenants set out in this Deed
Planning Permission	means any planning permission granted by the Council pursuant to the Application
Rural Exception Site	means small sites used for affordable housing in perpetuity where sites would not normally be used for housing
Site	means the land shown edged red on the Plan and known as land to the east of High Bank Bridge View, Rockbeare, East Devon such land being

SITE LOCATION PLAN
AREA 4 HA
SCALE: 1:2500 on A4
CENTRE COORDINATES: 302108 , 95128



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100047474

- 2.8 This Deed shall not be enforceable against any statutory undertaker or public authority which acquires any part of the Site or any interest in it for the purposes of its statutory undertaking or function.
- 2.9 This Deed shall cease to have effect (insofar as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn (without the consent of the Owner) if it is modified by statutory procedure or expires prior to Commencement of Development.
- 2.10 The contents of this Deed shall be registerable by the Council as a Local Land Charge pursuant to section 106(11) of the 1990 Act.

3 Statutory provisions

- 3.1 This Deed is made pursuant to the following:

- (a) Section 106 of the 1990 Act
- (b) Section 111 of the Local Government Act 1972
- (c) Section 1 Localism Act 2011

and all other enabling powers

- 3.2 The Deed is enforceable by the Council under section 106 of the 1990 Act against the Owner and their successors in title.
- 3.3 This Deed is subject to the Community Infrastructure Levy Regulations 2010 (as amended) ("the CIL Regulations") and in particular regulations 122 and 123 of those Regulations.

4 Obligations

- 4.1 The covenant to perform each of the Planning Obligations contained in this Deed shall be subject to clause 4.2
- 4.2 If the Planning Inspector, in the Decision Letter, concludes that any of the Planning Obligations set out in the Deed are incompatible with any one of the tests for planning obligations set out at Regulation 122 of the CIL Regulations, and accordingly attaches no weight to that obligation in determining the Appeal then the relevant Planning Obligation shall, from the date of the Decision Letter, cease to have effect and the Owner shall be under no obligation to comply with them.

5 Service of Notices

- 5.1 Any notices to be served shall be served in writing to the principal address or registered office (as appropriate) of the relevant party.

6 Liability for future breaches of Deed

- 6.1 No person shall be liable for any breach of the obligations or covenants contained within this Deed which occurs after that person has parted with their entire interest in the Site or the part of it in respect of which the breach occurs but without prejudice to any liability for any subsisting breach arising prior to parting with such interest
- 6.2 Notwithstanding clause 5.1 above the obligations under this Deed shall not be enforceable against any statutory undertaker or public authority which acquires any part of the Site or any interest in it for the purposes of its statutory undertaking or function
- 6.3 This Deed shall not be enforceable against the purchaser(s) or occupiers of any individual dwelling to be built on the Site, nor their successors in title

7 Owner's Covenants

Subject to clause 4.2 the owner covenants as follows:

- 7.1 The Owner covenants with the Council to observe and perform the Obligations in Schedule 1 and Schedule 2 hereto
- 7.2 In the event that the Planning Permission is granted and the Inspector finds and reports in the Decision Letter that the Council can demonstrate 5 year housing land supply within its administrative area and that the Site is to be considered a Rural Exception Site then
- (a) Part A of Schedule 3 of this Deed shall be of no effect; and
 - (b) the Owner covenants to provide the On-Site Affordable Housing in accordance with Part B of Schedule 3.
- 7.3 In the event that the Planning Permission is granted and:
- 7.3.1 the Inspector finds and reports in the Decision Letter that the Council cannot demonstrate 5 year housing land supply within its administrative area; or
 - 7.3.2 the Inspector reaches no conclusion on the Council's 5 year housing supply and/or it is omitted from the Inspectors findings in the Appeal Decision Letter
- the Owner covenants
- (a) to pay the Affordable Housing Contribution in accordance with Part A of Schedule 3 and
 - (b) Part B of Schedule 3 of this Deed shall be of no effect.
- 7.4 For the avoidance of doubt the Owner is under no obligation to provide both the On-Site Affordable Housing and the Affordable Housing Contribution to the Council

8 Miscellaneous

- 8.1 No provisions of this Deed are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to this Deed, except that the application of that Act shall not prevent all or any of the future successors in title or to the statutory functions of any of the parties to this Deed from being able to benefit from or to enforce any of the obligations in this Deed.
- 8.2 Where the Deed approval, consent or expression of satisfaction is required by one party from another party under the terms of this Deed, such Deed, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 8.3 The Council will upon the written request of the Owner at any time after the obligations of the Owner under this Deed have been fulfilled issue written confirmation of the same, and thereafter cancel all related entries in the Register of Local Land Charges.
- 8.4 Insofar as any clause or clauses in 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.
- 8.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not an appeal) after the date of this Deed.

9 Waiver

No waiver (whether express or implied) by any party to this Deed of any breach or default in performing or observing any of the provisions of this Deed 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.

10 VAT

All sums payable under this Deed shall be deemed to be exclusive of Value Added Tax where applicable, and except where otherwise stated, the party liable to make the payment shall also be liable to pay any Value Added Tax due.

11 Jurisdiction

This Deed 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 Deed or for the enforcement of its terms or any of them.

12 Interest

In the event of the Owner failing to make any payment due pursuant to the terms of this Deed the Owner shall pay interest at the Interest Rate from the date payment was due to the date payment was made

13 Indexation

Any sum to be paid pursuant to the obligations contained in the Schedule shall be subject to an additional sum calculated in accordance with the following formula:-

$$C = \frac{\text{£Y} \times B}{A} - \text{£Y}$$

Where:

A is the value of the relevant Index last published before the date hereof and

B is the value of the Index last published before the said contribution has been paid

C is the additional sum to be paid

£Y is the amount of the contribution to be paid

Schedule 1

Habitat Mitigation Contribution

The Owner hereby covenants with the Council as follows:-

1. Prior to the Occupation of first Dwelling to pay the Habitat Mitigation Contribution

Schedule 2

Open Space Maintenance Contribution

The Owner hereby covenants with the Council as follows:-

1. Prior to Occupation of the first Dwelling the Owner shall pay to the Council the Open Space Maintenance Contribution

Schedule 3

Affordable Housing

PART A – AFFORDABLE HOUSING CONTRIBUTION

1. Prior to Occupation of the first Dwelling the Owner shall pay to the Council the Affordable Housing Contribution

PART B – ON-SITE AFFORDABLE HOUSING

The Owner hereby covenants with the Council as follows:-

1 Definitions

For the purposes of this Schedule the following words will have the following meanings:

"Affordable Housing"	means units of subsidised housing within the meaning of National Planning Policy Framework or any Government Policy Statement or Circular that replaces it
"Affordable Housing Units"	means the up to six (6) Dwellings to be provided as Affordable Housing on the Site comprising up to 2 Affordable Shared Ownership Dwellings and up to 4 Affordable Rented Dwellings in accordance with the provisions of this Schedule
"Affordable Housing Scheme"	means the scheme for securing the provision of the Affordable Housing Units on the Site more particularly the location of and mix of unit types and proposed tenure for those units and the proposed timetable for such provision
"Affordable Housing Site"	means the part of the Site upon which the Affordable Housing Units are to be constructed
"Affordable Rented Dwelling"	means a Dwelling available to those whose needs are not adequately served by the commercial housing market at a rent level of up to 80% of local market rent to include the service charge (where applicable) and which complies with the definition of affordable rented housing in Annex 2 of the National Planning Policy Framework such rent level to be agreed in writing with the Council
"Affordable Shared Ownership Dwelling"	means a Dwelling for sale on a shared ownership basis solely by way of a Shared Ownership Lease

"Chargee"	means a mortgagee or chargee or any receiver (including an administrative receiver) appointed by such a mortgagee or chargee of the Housing Provider
"Common Housing Registers"	means a register or list of applicants maintained by "Devon Home Choice" or the regional HomeBuy agent
"Design and Quality Standards"	Means that the Affordable Housing Units shall be constructed; <ul style="list-style-type: none"> (i) strictly in accordance with any plans and elevations deposited and as 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 Community Agency's design and quality standards and the Housing Provider's own design standards applicable at the time of Commencement of Development (iv) tenure blind so as to be indistinguishable from Private Dwellings
"Designated Person"	Means a person or family who is registered on the Common Housing Register or Housing Provider's waiting lists and is in Housing Need
"District"	means the administrative area of the East Devon District Council
"Housing Need"	means the circumstances unless provided to the contrary in this Deed 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
"Housing Provider"	means a registered provider as defined by the Housing and Regeneration Act 2008 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
"Local Connection"	means a connection to the Parish of Rockbeare demonstrated by one or more of the following in priority order: <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

	<p>five (5) years; or</p> <p>(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> <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 Rockbeare 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>
"Neighbouring Parishes"	means the parishes of Whimble, Aylesbeare, Clyst Honiton, Broadclyst, Ottery St Mary
"Nomination Agreement"	means the agreement or an agreement substantially in the form of the one appended to this Agreement in the Annex 1 and which governs the ability of the Council to nominate occupiers for the Affordable Housing Units
"Private Dwelling"	means any Dwelling constructed on the Site which is intended for private sale or rent on the open market
"Shared Ownership Lease"	means a long shared ownership lease (as defined in section 622 of the Housing Act 1985 or successor provision) with a Housing 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
"Staircasing Receipts"	Means any monies received by the approved Housing Provider as a result of the leaseholder of an Affordable Housing Unit exercising a right to increase their share of the equity (and any part of such monies)

2 Affordable Housing Provision

- 2.1 Not to carry out or otherwise permit the Commencement of Development unless and until the Affordable Housing Scheme has been submitted to and approved in writing by the Council such approval not to be unreasonably withheld
- 2.2 To construct and provide the Affordable Housing Units in accordance with the Affordable Housing Scheme approved pursuant to paragraph 2.1 above and in accordance with the Design and Quality Standards
- 2.3 Notwithstanding the requirements of paragraphs 2.1 and 2.2 above to have:
 - (a) transferred the freehold interest or leasehold (of a minimum period of 80 years) interest in the Affordable Housing Site to the Housing Provider; and
 - (b) to have completed all of the Affordable Housing Units

prior to the Occupation of the Third (3rd) Private Dwelling and not to permit Occupation of the Third (3rd) Private Dwelling until such transfer has occurred and all of the Affordable Housing Units have been completed and are available for Occupation
- 2.4 The Affordable Housing Units shall only be used for the purpose of providing Affordable Housing and shall be so used in perpetuity (here meaning for a minimum period of 80 years)
- 2.5 The transfer of the Affordable Housing Site and / or the Affordable Housing Units to the Housing Provider shall be in such form as the Owner shall reasonably require to ensure that the Affordable Housing Site and / or 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 Private Dwellings
- 2.6 The transfer of the Affordable Housing Site and the Affordable Housing Units to the Housing Provider will contain a declaration that the Affordable Housing Site is so transferred subject to and with the benefit of the terms of this Deed
- 2.7 Save for the obligations and covenants contained in this Part B of Schedule 3 of this Deed shall not be enforceable against the Housing Provider
- 2.8 To give at least 10 working days written notice to the Council prior to Occupation of the Third (3rd) Private Dwelling
- 2.9 To give one month's written notice to the Council of the date when the Affordable Housing Units (or any of them) shall be available for Occupation
- 3 Restrictions on Occupation of Affordable Housing Units**
 - 3.1 Not to permit Occupation of any Affordable Housing Units unless and until the Owner and/or the Housing Provider (as appropriate) has entered into the Nomination Agreement with the District Council
 - 3.2 The Owner and/or Housing 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
- 4 Release**
 - 4.1 None of the obligations and restrictions referred to in this Schedule will be enforceable in respect of the Affordable Housing Site or any Affordable Housing Unit against any Chargee in possession of any of the Affordable Housing Units erected on the Affordable Housing Site or against any person or body deriving title from such Chargee PROVIDED ALWAYS that the Chargee has complied with its obligations contained in paragraphs 4.2 below

4.2 The Chargee shall prior to seeking to dispose of the Affordable Housing Site or any Affordable Housing Unit(s) pursuant to any default under the terms of its mortgage or charge shall;

- (a) give prior notice in writing to the Council of its intention to dispose, and
- (b) in the event that the Council responds within four weeks from receipt of the notice served under sub-paragraph (i) above indicating that arrangements for the transfer of the Affordable Housing Site or Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall cooperate with such arrangements and use its reasonable endeavours to secure such transfer, and
- (c) if the Council or any other person cannot within eight weeks of the service of notice under sub-paragraph (ii) above secure such transfer then provided that the Chargee shall have complied with its obligations under this paragraph 4.2 the Chargee shall be entitled to dispose of the Affordable Housing Site or Affordable Housing Unit(s) free of the restriction set out in this Schedule

PROVIDED THAT at all times the rights and obligations in this paragraph 4.2 shall not require the Chargee to act contrary to its duties under the charge or mortgage and the Council must give full consideration to protecting the interests of the Chargee in respect of monies outstanding under the charge or mortgage

4.3 In relation to any Affordable Housing Units the Affordable Housing obligations in this Deed shall not apply:

- (a) to any sale to a tenant of an Affordable Rented Dwelling in exercising their right to acquire or purchase under a statutory power or to the successors in title to any such persons; and
- (b) where the owner of an Affordable Shared Ownership Dwelling 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) and 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
- (c) to any Chargee of the of any such tenant or owner as referred to in above paragraph 4.3 (a) and 4.3 (b)

4.4 In the event of any Affordable Shared Ownership Dwelling being released from the Affordable Housing restrictions herein contained by virtue of the operation of paragraph 4.3.2 above the Owner shall provide the Council with details of Staircasing Receipts and in co-operation with the Council reach agreement to invest 100% of the Staircasing Receipts, if any, 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

5 Provision of Information

5.1 The Housing Provider will on request from the Council allow the Council to inspect or provide to the Council such information as is necessary in order to enable the Council to verify that the Housing Provider has sold or let of the Affordable Housing in accordance with the terms of this Schedule

6 Exemptions

It is expressly **HEREBY AGREED and DECLARED** that the affordable housing provisions at Part B of Schedule 3 this Deed shall not bind or be enforceable against:

- 6.1 Any statutory undertaker or public utility company acquiring any part of the Site or interest therein for its operational purposes;
- 6.2 Any mortgagee or chargee of the Affordable Housing Units (or any Affordable Housing Unit or any part thereof as may be affected) (or any receiver (including any administrator appointed under the Law of Property Act 1925 or administrative receiver) or other person appointed under any security documentation to enable such mortgagee or chargee to realise its security (each a Receiver) or any body or persons deriving title through such mortgagee chargee or Receiver and the said affordable housing provisions shall in the event of such mortgagee or chargee enforcing its security over the Affordable Housing Units (or any Affordable Housing Unit or any part thereof as may be affected) cease to apply to the Affordable Housing Units (or any Affordable Housing Unit or any part thereof as may be affected) and such mortgagee chargee or Receiver shall be entitled to dispose of the Affordable Housing Units (or any Affordable Housing Unit or any part thereof as may be affected) free from such affordable housing provisions which shall determine absolutely;
- 6.3 Any person who having been granted a Shared Ownership Lease of the Affordable Shared Ownership Dwelling exercises the right to and complete final staircasing under the terms of such lease; or
- 6.4 The mortgagee or chargee of any person who has been granted a Shared Ownership Lease of an Affordable Shared Ownership Dwelling; or
- 6.5 The Housing Provider or any tenant in circumstances where any tenant exercises a right to buy or a right to acquire under the Housing Act 1985 or the Housing Act 1996 or 2004 or any similar or substitute right applicable; or
- 6.6 Any purchaser or successor in title to any person specified in clauses 6.1 to 6.5 (inclusive) above

ANNEX 1

Draft Nomination Agreement

NOMINATION AGREEMENT IN RESPECT OF LAND TO THE EAST OF HIGH BANK BRIDGE VIEW, ROCKBEARE, EAST DEVON

THIS NOMINATION AGREEMENT is made the day of 2014

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 6 units which are subject to the Transfer to the Registered Provider dated [XX XX 2014] and which shall be made available as Affordable Housing (as defined in the Section 106 Agreement) and which shall comprise Affordable Rented Dwellings and Affordable Shared Ownership Dwellings 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 Dwellings the register or list of applicants maintained by Devon Home Choice and in the case of Affordable Shared Ownership Dwellings 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 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 Rockbeare 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</p>

	above requirements can be found within the Parish of Rockbeare 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
"Neighbouring Parishes"	means the parishes of Whimble, Aylesbeare, Clyst Honiton, Broadclyst, Ottery St Mary
"Nomination Period"	means the period of eighty (80) years from the date of this Agreement;
"Nomination Right"	means the right referred to in the Section 106 Agreement and conferred in clause 5 of this Nomination Agreement for EDDC to: (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 <i>[insert RP name]</i> and EDDC and "Party" shall be construed accordingly;
"Section 106 Agreement"	means the Agreement dated <i>[insert date]</i> and entered into pursuant to Section 106 Town and Country Planning Act 1990 between (1) East Devon District Council and (2) Cyril William Emmett which makes provision for affordable housing on land to the East of High Bank Bridge View, Rockbeare, East Devon

- 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 Deed has been executed by the RP hereto the day and year first before written

EXECUTED as a DEED by
[insert details of RP]
affixing the common seal of

)
)
)

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

SIGNED AND DELIVERED AS A DEED by
CYRIL WILLIAM EMMETT

in the presence of:

Witness signature: 

Witness name: RP SHERR

Witness occupation: ACCOUNTANT

Witness address: 13 EXETER ROAD
CHAMPNEY
EX15 1DX