**Schedule [ ]**

# Affordable Housing

**Part A - Definitions:**

1. For the purposes of this Schedule the following expressions shall have the following meanings:

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| **“Affordable Dwelling”** | a Dwelling which is part of the Affordable Housing within the Development together with its curtilage and any parking space or garage allocated to it; |
| **“Affordable Housing”** | 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 (and including Social Rented Dwellings and Shared Ownership Dwellings); |
| **“Affordable Housing Allocation Scheme”** | (a) an allocation scheme set up pursuant to Part VI of the Housing Act 1996;  or in the event that the statutory basis for such a scheme is removed:-  (b) such replacement scheme as the City Council may reasonably put in place to secure that Affordable Housing is allocated to persons nominated by the City Council by virtue of being in housing need;  and for the avoidance of doubt, at the date of this Deed the Affordable Housing Allocation Scheme operated in Exeter City is the “Devon Home Choice” choice-based letting scheme; |
| **“Affordable Housing Fractional Contribution”** | a contribution calculated in accordance with paragraph 1 of Part B of this Schedule; |
| **“Affordable Housing Provider”** | a social landlord which is a private registered provider of social housing as defined in Section 80 of the Housing and Regeneration Act 2008 and registered as a non-profit organisation in accordance with Section 115(1a) of that Act, being a member of the Exeter Housing Partnership or (if not a member of the Exeter Housing Partnership) to be approved (or having been approved) by the City Council in accordance with paragraph 1.2 of Part C of this Schedule or the City Council in its capacity as Housing Authority; |
| **“Director for Housing”** | the City Council’s Director for Housing or similar post-holder responsible for carrying out the City Council's housing functions employed by the City Council from time to time and includes his or her representative; |
| **“Ceiling Rent”** | the rent for a Social Rented Dwelling calculated in accordance with the Statutory Housing Body’s target rent regime in force from time to time (or any replacement regime for calculating rents for social rented housing implemented by or on behalf of HM Government from time to time), together with any service charge not exceeding the maximum amount which an occupier of the Social Rented Dwelling would be entitled to claim in respect of service charge under the Local Housing Allowance (or equivalent) regulations in force from time to time; |
| **"Details"** | the matters defined as such in paragraph 4 of Part B of this Schedule; |
| **“Equity Sharing Lease”** | a lease (of not less than 125 years) of an Affordable Dwelling under which a Specified Eligible Person:   1. purchases a lease of a percentage of the equity of the Affordable Dwelling with the right to purchase an increased percentage; and 2. pays a rent to the freehold owner in proportion to the share of the equity retained by that owner; |
| **“Exeter Housing Partnership”** | a partnership set out in writing between the City Council and registered providers of social housing which operate in the Devon area (including any successor partnership or organisation); |
| **"Local Housing Allowance"** | the flat rate rental allowance providing financial assistance towards the housing costs of low income households for different rental market area and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department for Work and Pensions or such similar framework that may replace it; |
| **"Mortgagee in Possession"** | a mortgagee or chargee of the Affordable Housing Provider or of an individual Affordable Dwelling, or any receiver (including an administrative receiver) appointed by that mortgagee or chargee where the mortgagee or chargee or receiver is in possession of one or more of the Affordable Dwellings; |
| **“NPPF”** | the National Planning Policy Framework published on 24 July 2018 and 20 July 2021; |
| **“Open Market Dwellings”** | the Dwellings comprised in the Development other than the Affordable Housing, and Open Market Dwelling means one such Dwelling; |
| **“Open Market Value”** | the price that a willing purchaser would be willing to pay for a Dwelling if this Deed had not been made; |
| **“Shared Ownership Dwelling”** | an Affordable Dwelling within the meaning of affordable housing as defined by Annex 2 of the NPPF disposed of on an Equity Sharing Lease under a shared equity scheme (including shared ownership) approved by the City Council; |
| **“Social Rented Dwelling”** | an Affordable Dwelling within the meaning of social rented housing as defined by Annex 2 of the NPPF to be let (or having been let) by an Affordable Housing Provider on a weekly or monthly periodic assured or secure tenancy or a fixed-term tenancy (including a fixed-term introductory/probationary tenancy) granted to a Specified Eligible Person at a Ceiling Rent; |
| **“Specified Eligible Person”** | any person:-  a) whose eligibility to be allocated a particular Affordable Dwelling has been established through the operation of the Affordable Housing Allocation Scheme; or  b) who is otherwise identified in writing by the City Council as being in need of Affordable Housing; and  in the case of a Shared Ownership Dwelling, who is on the register of applicants maintained by the Zone Agent, whose eligibility to be allocated a Shared Ownership Dwelling has agreed by the Zone Agent and the City Council and in accordance with the Statutory Housing Body's and the City Council's allocation priorities, and whose financial assessment has been undertaken by an independent financial advisor approved by the Zone Agent; |
| **"Standards"** | the Design and Quality Standards dated April 2007 published by the former Housing Corporation (or any replacement standards published from time to time by the Statutory Housing Body and in force at the date of the relevant Reserved Matters Approval) and the City Council’s Residential Design Supplementary Planning Document (SPD) (adopted 28th September 2010) provided that in the event of any conflict or discrepancy between the two, the provisions of the SPD will prevail; |
| **“Statutory Housing Body”** | Homes England; and this definition shall include any statutory successors to that body; |
| **“Wheelchair Accessible Dwellings”** | Dwellings designed and equipped for occupation by households which include a person who requires a wheelchair to gain access to, and move around within, the Dwelling, and which comply in all respects with the Wheelchair Accessible Housing Design Standards (January 2011) published by the City Council (or any amended version thereof in force at the time of the grant of Reserved Matters Approval for the Dwellings in question); |
| **“Zone Agent”** | Help to Buy South being the HomeBuy agent appointed by the government for the area which includes the Site (or any successor to that function appointed by the government). |

**Part B - Provision of Affordable Housing**

1. Thirty-five per cent (35%) of the Dwellings constructed pursuant to the Planning Permission shall be provided as Affordable Housing, which shall not be occupied other than as Affordable Housing and by Specified Eligible Persons in accordance with the provisions of this Schedule, with:
   1. a minimum of seventy per cent (70%) of the Affordable Housing to be Social Rented Dwellings; and
   2. the remainder to be Shared Ownership Dwellings or such other tenure of Affordable Housing as may be agreed in writing with the City Council

PROVIDED THAT if 35% of the Dwellings produces a whole number of Affordable Dwellings and a fraction of an Affordable Dwelling (“**the Fraction**”), the [Owner][Developer] shall pay to the Council a sum of money in respect of the Fraction, calculated in accordance with the City Council’s Affordable Housing Supplementary Planning Document (2014) - Appendix 3 (or any document updating or replacing the same that is in force at the date of payment), which sum is referred to as “**the Affordable Housing Fractional Contribution**” and shall be employed by the City Council in providing Affordable Housing in the City of Exeter.

1. The Affordable Dwellings will be delivered in a mixture of house types that comprises of a mixture of house types informed by context, local housing need and the most up to date housing market assessment (as advised by the City Council).
2. The Affordable Dwellings shall be distributed throughout the Site in clusters of no more than ten Affordable Dwellings, the clusters separated from each other by Open Market Dwellings or public space.
3. As part of the first application for Reserved Matters Approval, the [Owner][Developer] shall submit to the City Council a proposed layout for the Development including the following matters (collectively referred to as "**the Details**"):-
   1. the proposed physical location, layout, size and specification of the Affordable Dwellings within the Development and of any common parts serving those Dwellings;
   2. whether the Affordable Dwellings have parking spaces or garages;
   3. which of the Affordable Dwellings are to be Social Rented Dwellings and which are to be Shared Ownership Dwellings in accordance with paragraph 1 of this Part; and
   4. which of the Affordable Dwellings are to be Wheelchair Accessible Dwellings in accordance with paragraphs 6 to 8 of this Part;
      1. and the [Owner][Developer] shall not Commence the Development until the Details have been approved by the City Council as part of the Reserved Matter Approval in accordance with this paragraph;

PROVIDED THAT if the City Council shall have given to the [Owner][Developer] agreement in writing to the Development being carried out in Phases, this paragraph 4 shall have effect as requiring the Details for the Phases to be submitted as part of the first application for Reserved Matters Approval in respect of that Phase, and shall prevent Commencement of the Development of that Phase until those Details have been approved as part of that Reserved Matters Approval.

1. The Affordable Dwellings shall be designed and constructed in accordance with the Standards and the approved Details and so as to be indistinguishable (in terms of design concept and general appearance) from the Open Market Dwellings and employing so far as is practicable the same external materials as are employed for the Open Market Dwellings.
2. At least five per cent (5%) of the Affordable Dwellings (with fractions of 0.5 or more rounded up and fractions of 0.49 or less rounded down to give a whole number of Dwellings) shall be constructed as Wheelchair Accessible Dwellings.
3. The Affordable Dwellings to be constructed as Wheelchair Accessible Dwellings shall be those sizes and types of dwelling which will most effectively meet the greatest need (as at the time of submission of the Details for approval under paragraph 4 above) of those on the City Council's Housing Register at that time who are in need of Wheelchair Accessible Dwellings (as advised to the [Owner][Developer] by the Director for Housing).
4. The Wheelchair Accessible Dwellings within the Development shall not be let or occupied other than as Social Rented Dwellings.

**Part C - Phasing of the Development and disposal of the Affordable Housing**

1. The [Owner][Developer] shall not Commence the Development until:-
   1. the [Owner][Developer] has notified the City Council in writing of the date of anticipated commencement of construction of Dwellings;
   2. the [Owner][Developer] has notified the Director for Housing of the Affordable Housing Provider(s) for the Development nominated by the [Owner][Developer]; and
   3. the Affordable Housing Provider(s) thus notified or approved has/have confirmed to the City Council in writing that it has/they have agreed terms with the [Owner][Developer] for the acquisition of the Affordable Dwellings, or that it/they anticipate(s) doing so in the near future.

PROVIDED THAT if the City Council shall have given to the [Owner][Developer] its agreement in writing to the Development being carried out in Phases, this paragraph 1 shall have effect as if reference in this paragraph to “Commence the Development” were reference to Commencement of Development of a Phase as so agreed; and reference in this paragraph to “the Affordable Dwellings” were reference to the Affordable Dwellings comprised within such a Phase.

1. No more than fifty per cent (50%) of the Open Market Dwellings shall be sold or Occupied until:
   1. fifty per cent (50%) of the Affordable Dwellings comprised in the Development are completed in accordance with the Details, connected to mains services and available and fit for residential occupation; and
   2. the [Owner][Developer] has transferred those 50% of the Affordable Dwellings to the Affordable Housing Provider(s) in accordance with paragraph 4 below; and
   3. the [Owner][Developer] has paid the Affordable Housing Fractional Contribution to the City Council;

PROVIDED THAT if the City Council shall have given to the [Owner][Developer] its agreement in writing to the Development being carried out in Phases, this paragraph 2 shall have effect as if reference in this paragraph to “the Development” were reference to a Phase of the Development as so agreed and reference in this paragraph to “the Affordable Dwellings” or “Open Market Dwellings” were reference to the Affordable Dwellings or Open Market Dwellings comprised within such a Phase.

1. No more than eighty per cent (80%) of the Open Market Dwellings shall be sold or Occupied until:
   1. all of the Affordable Dwellings comprised in the Development are completed in accordance with the Details, connected to mains services and available and fit for residential occupation; and
   2. the [Owner][Developer] has transferred all of the Affordable Dwellings to the Affordable Housing Provider(s) in accordance with paragraph 4 below;

PROVIDED THAT if the City Council shall have given to the [Owner][Developer] its agreement in writing to the Development being carried out in Phases, this paragraph 3 shall have effect as if reference in this paragraph to “the Development” were reference to a Phase of the Development as so agreed and reference in this paragraph to “the Affordable Dwellings” or “Open Market Dwellings” were reference to the Affordable Dwellings or Open Market Dwellings comprised within such a Phase.

1. The transfer of the Affordable Dwellings to an Affordable Housing Provider(s) pursuant to paragraphs 2 and 3 above shall be on the following terms:
   1. the transfer shall be of the unencumbered freehold of the Affordable Dwellings and their curtilages (or in the case of any Affordable Dwellings which are flats or apartments the grant/transfer of a leasehold interest of at least 125 years) free from encumbrances (save for any encumbrances (not being financial charges) existing prior to the date of this Agreement) with full title guarantee and vacant possession; and
   2. the transfer or lease shall grant all rights and easements (if any) as are required to give pedestrian and vehicular access between the Affordable Dwellings and the public highway and as are required to connect all sewers, drains, pipes, cables and other conducting media serving the Affordable Dwellings.
2. Once eighty per cent (80%) of the Open Market Dwellings have been sold, under contract to be sold or Occupied, the [Owner][Developer] shall not market, or otherwise invite or seek offers for, any of the remaining twenty per cent (20%) of Open Market Dwellings (or the site of any such Dwelling) if at the time of such marketing or invitation or seeking of offers the requirements of sub-paragraphs 3.1 and 3.2 of this Part have not been complied with, unless the [Owner][Developer] notifies prospective purchasers in writing (i) of the requirements of this Part and (ii) that such requirements have not at that time been complied with PROVIDED THAT if the City Council shall have given to the [Owner][Developer] its agreement in writing to the Development being carried out in Phases, this paragraph 5 shall have effect as if reference in this paragraph to “Open Market Dwellings” were reference to Open Market Dwellings comprised within such a Phase.
3. The [Owner][Developer] shall give the following notice in writing to the Director for Housing of the date on which each Affordable Dwelling will be available for first occupation, namely:
   1. four months’ notice in the case of a Shared Ownership Dwelling or a Wheelchair Accessible Dwelling; and
   2. six weeks’ notice in any other case.
4. Where the Development is being carried out in Phases the [Owner][Developer] shall give written notice to the City Council upon the Occupation of:
   1. fifty per cent (50%) of the Open Market Dwellings in a Phase; and
   2. eighty per cent (80%) of the Open Market Dwellings in a Phase.
5. Any Shared Ownership Dwellings within the Development shall not be occupied except pursuant to an Equity Sharing Lease granted by an Affordable Housing Provider, which Equity Sharing Lease shall unless otherwise agreed in writing with the City Council:-
   1. be substantially in the form of the Statutory Housing Body’s model form (if any) as most recently published from time to time, and including all provisions as the Statutory Housing Body specifies as mandatory for such leases;
   2. provide for the lessee to acquire an initial share of the equity in the Affordable Dwelling having a value not exceeding forty per cent (40%) of the Open Market Value of the Affordable Dwelling at that time (the “Initial Share”) with the opportunity (but no obligation) for the purchaser to acquire additional equity shares PROVIDED THAT the share of the equity acquired by an individual purchaser upon the initial grant of an Equity Sharing Lease of a Shared Ownership Dwelling may exceed the Initial Share, but only if the average initial share acquired by all the purchasers of the Shared Ownership Dwellings does not exceed the 40% of the Open Market Value;
   3. provide for an initial rent payable that does not exceed two point seven five per cent (2.75%) of the Open Market Value of the equity retained by the landlord, which rent may be increased no more than annually and by not more than the corresponding increase in the Retail Price Index plus 0.5% with any service charge not exceeding the maximum amount which an occupier of the Affordable Dwelling would be entitled to claim in respect of service charge under the Local Housing Allowance (or equivalent) regulations in force from time to time;
   4. provide for the Shared Ownership Dwellings to be advertised and allocated to a Specified Eligible Person by the Zone Agent.
6. Nothing in this Deed shall prevent a tenant under an Equity Sharing Lease from assigning the whole of his interest acquired in accordance with these provisions in an Affordable Dwelling to a Specified Eligible Person.
7. The Social Rented Dwellings and any Shared Ownership Dwellings for rent shall not be occupied except pursuant to a weekly or monthly periodic tenancy or a fixed-term tenancy (including a fixed term introductory or probationary tenancy) granted by the Affordable Housing Provider to a Specified Eligible Person.
8. Social Rented Dwellings shall only be let at a Ceiling Rent with any service charge not exceeding the maximum amount which an occupier of the Affordable Dwelling would be entitled to claim in respect of service charge under the Local Housing Allowance (or equivalent) regulations in force from time to time.
9. In the event that the [Owner][Developer] fails to settle any account properly and duly rendered in respect of the Affordable Housing Fractional Contribution within 14 days of despatch to the [Owner][Developer], the sum due shall accrue interest at the Law Society’s Interest Rate calculated on a daily basis.

**Part D - Mortgagee in possession**

1. Once the freehold ownership of any Affordable Dwelling has been transferred to the Affordable Housing Provider, the provisions in this Schedule shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a “Receiver”)) of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
   1. such mortgagee or chargee or Receiver shall first give written notice to the City Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwelling(s) to the City Council or to another registered provider (nominated by the City Council) or a specified eligible person nominated by the City Council (in the case of an individual Affordable Dwelling) for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
   2. if contracts have not been exchanged within the three month period, with a completion date no later than one month from exchange of contracts the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the affordable housing provisions in this Deed which shall determine absolutely.

If the provisos in paragraphs 1.1 and 1.2 of this Part D are met in respect of any Affordable Dwelling, the City Council will forthwith certify to that effect, whereupon the Mortgagee in Possession may manage and/or sell the Affordable Dwelling concerned free from the provisions of this Schedule.

**Part E - Exclusions**

1. None of the covenants in this Schedule shall apply to or be binding upon:
   1. the tenant of any Shared Ownership Dwelling who has exercised his right to acquire 100% of the equity in that Dwelling, or his mortgagee; or
   2. the tenant of a Social Rented Dwelling who has acquired ownership of that Dwelling under the right to acquire provisions of the Housing Act 1996 (or any legislation amending or replacing the same); or
   3. his mortgagee or any successors in title to each of the aforementioned and their mortgagees; or
   4. any person who acquires the freehold or leasehold interest on an Affordable Dwelling from a Mortgagee in Possession or its receiver pursuant to paragraph 1 of this Part D above or to the mortgagee or successors in title to that person.

**Part F – City Council’s right to information**

1. The City Council may at any time serve notice on the owner or any occupier for the time being of an Affordable Dwelling requiring that person to provide information as to the ownership and/or occupation of the Affordable Dwelling and to produce any evidence reasonably required to satisfy the City Council that the Affordable Dwelling is occupied by a Specified Eligible Person.
2. Any request for information served under the above paragraph shall be deemed to be made under the provisions of Section 330 of the 1990 Act and the provisions of that section shall apply to any refusal to provide information so required or false statements made in reply thereto.