

**THIS AGREEMENT** is made the 10 day of July 2009

**BETWEEN:-**

- (1) **Torrige District Council** of Riverbank House, Chanters Road, Bideford, EX39 2QG ("the Council");
- (2) **Sarsen Housing Association Limited** (Co. regn. no. IP28077R) whose registered office for service is Sarsen Court, Cannings Hill, Devizes, Wiltshire, SN10 2AZ ("the Housing Association")
- (3) **Paul Arthur King** and **Rachel King** and **Patrick Timothy King** of ~~Rose Cottage, Natcott Lane, Hartland, EX39 6DQ~~ (referred to collectively "the Owner")

COOMBE HOUSE STOKE  
EX39 6DU, PW, RK.

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**WHEREAS:-**

1. The Council is the Local Planning Authority for the purposes of the 1990 Act for the area that includes the Site, by whom the obligations imposed by this Agreement shall be enforceable.
2. The Housing Application has made an application to the Council for Planning Permission for the Development with the intention that they will purchase the Land when Planning Permission is granted.
3. The Owner is the owner of the Land free from encumbrances.
4. The Council in exercise of its powers under the 1990 Act has resolved to grant Planning Permission for the Development subject to completion of this Agreement, which the Council considers is necessary for the satisfactory development of the Site.
5. This Agreement is conditional upon the matters hereinafter referred to.

**NOW THIS DEED WITNESSES** as follows:-

- 1.1 In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

**"the 1990 Act"** means the Town and Country Planning Act 1990 (as amended);

**"Affordable Housing"** means the housing to be provided in accordance with the

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		Schedules attached to this Agreement. Words such as Affordable Dwelling shall be construed in the same way.
<b>“Affordable Housing Scheme”</b>		Means the approved scheme under Schedule 1 of this Agreement.
<b>“Affordable Rented Dwelling”</b>		Means any dwelling specified in the Affordable Housing Scheme as a rented Dwelling and to be provided in accordance with the provisions of Schedule 2.
<b>“Affordable Rent”</b>		a rent which does not exceed the Tenancy Services Authority (TSA) target rent for the area in which the Land is located. (Or any other such measure that the TSA or a body given its duties and responsibilities may provide it its place).
<b>“the Application”</b>		means the application for planning permission for the Development registered by the Council under the 1990 Act registered on the 15 <sup>th</sup> July 2008 and given reference 1/0779/2008/FUL.
<b>“Average Annual Household Income within Torridge District”</b>		shall mean the average annual household income for families in Torridge to be notified by the Proper Officer when requested to do so by the Owner.
<b>“The Council”</b>	<b>“the Housing Association”</b> and <b>“the Owner”</b>	respectively include their successors and assigns;
<b>“Commencement of Development”</b>	<b>of</b>	the date upon which a material operation within the meaning of Section 56 of the Act is carried out, and similar expressions such as “Commence the Development” shall be interpreted the same way;
<b>“the Development”</b>		means the erection of eighteen affordable dwellings for shared ownership and rent;
<b>“Housing Need”</b>		where a person does not have available to him or her and could not afford (personally or jointly with other

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	members of his or her household) to acquire or rent a home suitable for his or her needs and the needs of their household at normal market values prevailing in the district.
<b>“LAP”</b>	means a Local Area of Play with hard and soft landscaping having such facilities within the requirements set out in the adopted Torridge Local Plan, or any other such document which at the time prescribes the facilities usually to be provided within a LAP as are agreed between the Owner and the Proper Officer as part of the Recreation Facilities Scheme and Maintenance Plan
<b>“Local Requirement”</b>	(a) a minimum continuous residence by a prospective owner or occupier of five years in the Parish immediately prior to their first Occupation; or (b) residence by a prospective owner or occupier in the Parish for five years within the ten years preceding their first Occupation; or (c) where one or both parents or guardians of a prospective owner or occupier have resided in the Parish for a minimum period of ten years prior to their first Occupation; or (d) where a prospective owner or occupier has had continuous employment in the Parish for the past five years prior to their first Occupation; or (e) a key worker under a scheme approved by the Council; or
<b>“Maintenance Contribution”</b>	means a contribution equal to the cost of implementing the maintenance specified in the Recreational Facilities Scheme and Maintenance Plan for a period of not less than 20 years, such a figure to be specified by the Proper Officer upon written request.
<b>“Mortgagee”</b>	Any person who is granted a charge over the Land or any part of it.

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<b>“the Obligations”</b>	means the planning obligations contained in the Schedules hereto;
<b>“Occupation”</b>	Occupation means the occupation for the purposes permitted by the Planning Permission but does not include occupation by personnel at the time engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and “Occupy” and “Occupied” shall be construed accordingly.
<b>“Open Market Value”</b>	the value for which the dwelling would have been marketed had it not been subject to the restrictions of this agreement.
<b>“Parish”</b>	the Parish of Hartland.
<b>“the Plan”</b>	means the plan attached hereto;
<b>“Planning Permission”</b>	means the planning permission to be granted by the Council pursuant to the Application and the expression Planning Permission shall include all approvals granted thereunder;
<b>“Proper Officer”</b>	The Council’s Head of Planning or any officer performing the relevant functions thereof.
<b>“Restricted Price”</b>	The price calculated in accordance with clause 3 of the third schedule
<b>“Recreation Facilities Scheme and Maintenance Plan”</b>	Means the scheme for the provision and future maintenance of the LAP and all other hard and soft landscaping not within private gardens on the Site
<b>“the RSL”</b>	Means a Registered Social Landlord or other landlord registered by the Housing and Communities Agency and approved by the Council.
<b>“the Site”</b>	means the land at Teaky Park, Hartland shown edged red

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<b>“Shared Ownership Dwelling”</b>	on the Plan; means any dwelling to be let to purchasers on the basis that the purchaser acquires a percentage share of the equity and pays an annual rent to the retained equity owner not exceeding two percent of its share of the equity under a lease which has been approved by the Housing and Communities Agency or the Proper Officer and let and managed in accordance with the provisions of Schedule 3 of this Agreement.
<b>“Staircasing Payment”</b>	Any monies received by the Owner following the sale or leasing of an Affordable Dwelling as a result of a tenant exercising a right to increase his share of the equity or acquire the freehold, (and any part of such monies).

- 1.2 In this Agreement, except where the context requires otherwise:-
- 1.2.1 The singular includes the plural, the masculine includes the feminine, and vice versa;
  - 1.2.2 References to clauses and schedules are to the clauses in and schedules to this Agreement;
  - 1.2.3 Reference to any party having an interest in land affected by this Agreement shall include any successor in title of that party to that land or to any part of it;
  - 1.2.4 Reference to any party having a statutory function referred to in this Agreement shall include any successor to that statutory function;
  - 1.2.5 Reference to any Act or Statutory Instrument shall include any subsequent amendment or re-enactment of it;
  - 1.2.6 Where an Obligation applies to more than one person, their liabilities shall be joint and several;
2. The Council the Housing Association and the Owner hereby agree that:-
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## SCHEDULE 2

### AFFORDABLE RENTED DWELLINGS

#### The Planning Obligation

1. The Owner covenants to : -
  - 1.1 not to provide nor allow the Occupation of any Affordable Rented Dwelling other than for rent.
  - 1.2 not to charge or levy a rent in respect of any Affordable Rented Dwelling which exceeds an Affordable Rent.
  - 1.3 not do anything in relation to the provision of the Affordable Rented Dwelling which conflicts with the Council's requirement that such dwelling shall always be available as Affordable Housing.
2. Two weeks prior to making the Affordable Rented Dwelling available for Occupation, the Owner shall give the Proper Officer written notice including the following information: -
  - 2.1 the form of tenancy for such lettings
  - 2.2 procedures for renting by first and future tenants and how the Council may nominate tenants from the Council's housing list.
3. The Proper Officer may: -
  - 3.1 agree the proposals submitted under clause 2; or
  - 3.2 seek to agree amendments to the proposals submitted under clause 2.
4. No person shall Occupy the Affordable Rented Dwelling unless that person: -
  - 4.1 was a person in Housing Need and had a Local Requirement at the time of his or her first Occupation of the Affordable Rented Dwelling; or
  - 4.2 is a member of a household of and living with a person who had a Local Requirement at the time of his or her first Occupation of the Affordable Rented Dwelling; and (in either case)
  - 4.3 Occupies the Affordable Rented Dwelling as his or her sole or main residence

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but nothing in this clause shall require any person who satisfied such a requirement when they first occupied the Affordable Rented Dwelling to vacate the Dwelling if they cease to qualify under paragraph 4.2 by virtue of death, hospitalisation or breakdown of a relationship with a person who qualified under paragraph 4.1.

5. If no prospective occupier meeting the Local Requirement wishes to Occupy the Affordable Rented Dwelling within a period of 1 month from the date that the Affordable Rented Dwelling becomes available for Occupation, the Council may permit Occupation by a person in Housing Need with a Local Requirement from any directly adjacent parish to the Parish. If after a period of 2 months from the date the Affordable Rented Dwelling becomes available for Occupation, no prospective occupier in Housing Need meeting the Local Requirement wishes to Occupy the Affordable Rented Dwelling, then an Occupier in Housing Need with a Local Requirement from any parish within the District of Torridge shall be permitted and should there still be no suitable prospective occupier after a further period of two months an occupier from any parish within the Districts of North Cornwall, North Devon, West Devon or Mid Devon may occupy the dwelling. PROVIDED THAT during the said periods the Affordable Rented Dwelling shall have been continually marketed within the Parish or District, as appropriate, at a rent not exceeding the Affordable Rent.
6. The Owner shall not allow the occupation of the Affordable Rented Dwelling by any person unless that person complies with the requirements of clauses 4 and/or 5 to this Schedule as applicable and is occupying that dwelling in accordance with the form of tenancy agreed under clause 3 of this schedule.
7. Where the Owner of the Affordable Rented Dwelling is an RSL the Affordable Rented Dwelling may also be occupied in accordance with any nomination and management agreement in effect between the Council and that RSL.