

Dated

*Ind Joe*

2006

MARGARET ELIZABETH PATRIDGE and WILLIAM GEORGE COWLE (1)

and

REDROW HOMES (WEST COUNTRY) LIMITED (2)

and

DEVON COUNTY COUNCIL (3)

and

TORRIDGE DISTRICT COUNCIL (4)

Planning Obligation relating to  
Land off Exeter Road, Winkleigh, Devon

**Ashfords**

THIS AGREEMENT is made the 2nd day of June Two Thousand and Six  
BETWEEN

- 1 MARGARET ELIZABETH PATRIDGE of Parramoor, Eggesford Road, Winkleigh, Devon EX19 8LD and WILLIAM GEORGE COWLE of Week House Farm, Winkleigh, Devon EX19 8DL (the "Owner");
- 2 REDROW HOMES (WEST COUNTRY) LIMITED a company registered in England and Wales under Company Number 04984069 and whose Registered Office is at Redrow House, St Davids Park, Ewloe, Flintshire CH5 3RX (the "Developer");
- 3 DEVON COUNTY COUNCIL of County Hall, Topsham Road, Exeter Devon, EX2 4QD (the "County Council"); and
- 4 TORRIDGE DISTRICT COUNCIL of Riverbank House, Bideford, Devon (the "Council")

1. Definitions

In this agreement the following terms have the meanings set out below:-

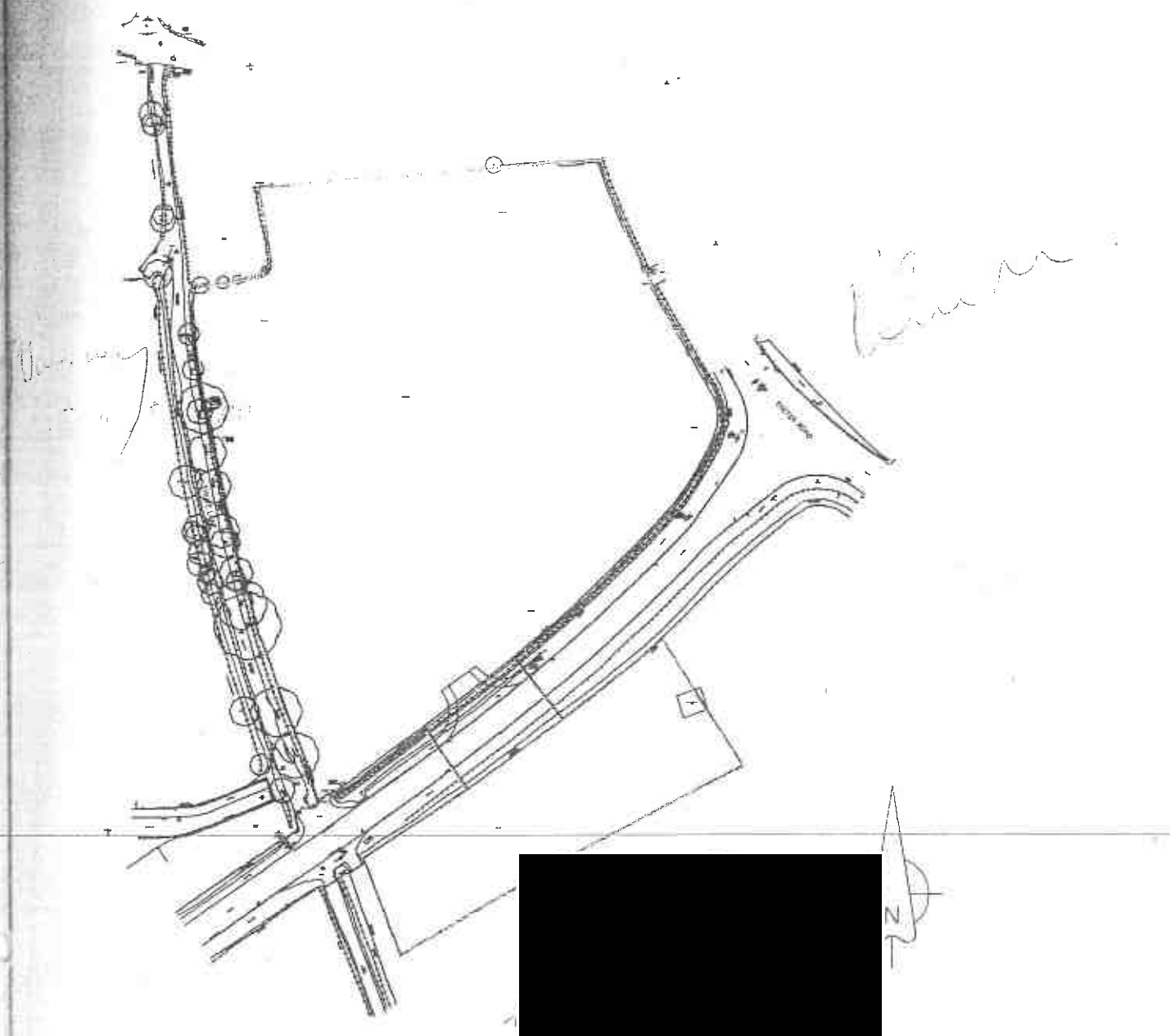
Act	the Town and Country Planning Act 1990.
Affordable House	each individual dwelling comprising the Affordable Housing.
Affordable Housing	<p>the fifteen Affordable Houses comprising 30% of the total number of dwellings rounded to the nearest whole number to be built pursuant to the Application and Planning Permission for persons who cannot afford to buy or rent houses generally available on the open market and being:-</p> <p>(a) a dwelling for rent at a rent which does not exceed the Affordable Rent;</p> <p>(b) a dwelling for sale for a price not exceeding the Restricted Price; or</p> <p>(c) a dwelling to be let to a purchaser as a Shared Ownership House where the price paid for the equity acquired by the purchaser (either in a single purchase or a series of purchases) does not exceed the Restricted Price.</p>

Affordable Housing Contribution	for each Affordable House means the Unrestricted Value less a sum equivalent to the amount which might have been paid by the RSL purchasing subject to the restrictions contained in this Agreement such commuted sum being determined by the Proper Officer or in the absence of agreement between the Council and the Owner by the District Valuer at the Council's expense.
Affordable Housing Policy	as contained in Policy HSC2 of the Torridge District Local Plan 1997-2011 the Supplementary Planning Guidance (Consultation Draft February 2003) and elsewhere to require affordable housing within residential developments where there is evidence of a community need for such housing and to control its future occupancy.
Affordable Housing Scheme	means: 1. in relation to the Detailed Planning Permission the scheme shown on Plan 1491/03Rev G; or 2. in relation to the Outline Planning Permission the scheme to be submitted by the Owner to the Council for approval prior to Commencement of the Development setting out details of the Affordable Housing to be provided and including plans showing location and layout and details of which of the dwellings shall be Affordable Housing and which Affordable Housing shall comprise the type, size and tenure detailed in Schedule 5 hereto
Affordable Rent	a rent which does not exceed twenty five per cent of the weekly average household income within Torridge District.
Application	Either the Outline Planning Application or the Detailed Planning Application (as the context admits)
Average annual household income	shall mean the average annual household income for families in Torridge to be notified in writing by the Proper Officer when requested to do so by the Owner and/or (as appropriate) the Developer.
Buffer Zone	the hedge to grow to at least 1 metre in height to be provided as a clear physical boundary between

	(1) the Public Open Space including the Play Area; and (2) the Affordable Housing and Unrestricted Dwellings, as agreed in writing with the Council (such agreement not to be unreasonably withheld or delayed)
Commencement Date	the date on which the Owner begins negotiations for the sale of the Affordable Housing.
Commencement of Development	shall have the same meaning as begin the development (not initiate the development) in Section 56 of the Act PROVIDED THAT for the avoidance of doubt the following shall not amount to Commencement of Development: (a) works of site clearance (except demolition of existing buildings on the Land (if any)) (b) ground investigation site survey work (c) construction of boundary fencing or hoardings (d) archaeological investigations (e) works of decontamination or remediation
Planting Season	shall mean the first planting season following completion of the sale of the last of the Unrestricted Dwellings and Affordable Houses
Contribution	Both or either of the Education Contribution and the Open Space Contribution
Detailed Planning Application	means the application for full planning permission made by the Developer to the Council and registered on 22 July 2005 for permission to carry out the Development and registered under reference 1/1183/2005/61/FUL
Detailed Planning Permission	means a planning permission granted pursuant to the Detailed Planning Application
Development	the residential development of the Land.
Education Contribution	the sum of £1,852 multiplied by the number of (a) Unrestricted Dwellings; and (b) Affordable Houses of two or more bedrooms to be paid by the Owner to Devon County Council which sum comprises a contribution of: • £694.50 per dwelling towards the provision of

	<p>secondary education at Chulmleigh Community College; and</p> <ul style="list-style-type: none"> <li>• £1157.50 per dwelling towards provision of primary education at Winkleigh Primary School</li> </ul> <p>or other education establishments in the area</p> <p>Provided Always that such contribution is not and shall not become payable in respect of any Affordable House comprising only 1 bedroom</p>
Housing Need	<p>a person who does not have available to him or her and could not afford (personally or jointly with other 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.</p>
Land	<p>the land off Exeter Road, Winkleigh, Devon shown for identification purposes only <b>edged red</b> on the Plan.</p>
Local Requirement	<p>(a) a minimum continuous residence by a prospective owner or occupier of five years in the Parish immediately prior to the Offer Date; or</p> <p>(b) residence by a prospective owner or occupier in the Parish for five years within the ten years preceding the Offer Date; or</p> <p>(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 the Offer Date; or</p> <p>(d) where a prospective owner or occupier has had continuous employment in the Parish for the past five years prior to the Offer Date; or</p> <p>(e) a key worker under a scheme approved by the Council; or</p> <p>(f) a person to whom a Mortgagee sells an Affordable House under Clause 18.2.2 shall be deemed to have a Local Requirement.</p>
Mortgagee	<p>Any person who is granted a charge over the Land or any part of it.</p>

INDICATES APPLICATION AREA



KLEIGH CROSS, SHUTE LANE, EXETER ROAD, WINKLEIGH.


SECTION 106 AGREEMENT PLAN IN RESPECT OF  
PLANNING APPLICATION 1/0641/2005/OUT

SCALE 1:1250

*[Handwritten signature]*

Offer Date	the date on which the Owner or the Developer (as the case may be) first makes an offer to sell one or more of the Affordable Houses to an RSL or RSLs (as the case may be) or the date on which the Owner or Developer (as the case may be) offers to sell or grant a tenancy of an Affordable House to a tenant or purchaser, as the context requires.
Open Space Contribution	the sum of £34,677.28 as a commuted sum for maintenance of the Play Area.
Open Space Land	means: 1. in relation to the Detailed Planning Permission the open space and play area land shown on plan 1491/03 RevG; or 2. in relation to the Outline Planning Permission the area of at least 400 square metres for the provision of the Public Open Space including the Play Area as agreed with the Council (such agreement not to be unreasonably withheld or delayed)
Open Space Works	the works required by Schedule 3 to meet the specification for works and Play Equipment for the Public Open Space and Play Area to be agreed in writing with the Council (such agreement not to be unreasonably withheld or delayed)
Outline Planning Application	means the application for outline planning permission made by the Developer to the Council on 24 March 2005 for permission to carry out the Development and registered under reference 1/0641/2005/61/OUT
Outline Planning Permission	means a planning permission granted pursuant to the Outline Planning Application
Owner	shall include its successors in title and all persons deriving title under it and in particular in relation to an Affordable House shall mean each successive person who is the Owner of that dwelling including a tenant of a Shared Ownership House.
Owner's Notice	Shall have the meaning ascribed to it in clause 5.11 hereof

Parish	the Parish of Winkleigh and for the purposes of clause 8.5 below any immediately adjoining parish including an immediately adjoining parish in another District.
Plan	the plan annexed to this Agreement.
Planning Permission	the planning permission for the Development in the form of Schedule 6 or as the case may be Schedule 7 to this Agreement.
Play Area	The area for play to be provided and equipped with the Play Equipment as part of the Open Space Works within the Public Open Space.
Play Equipment	the play equipment to be specified by the Proper Officer for installation on the Play Area comprising a minimum of 4 items of play equipment to be approved in writing by the Proper Officer (such approval not to be unreasonably withheld or delayed)
Proper Officer	the Council's Strategic Director (Improvement) or in his/her absence such person who is properly designated to undertake his/her duties
Public Open Space	the area of 400 square metres of public open space including the Play Area to be provided by the Owner
Released Dwellings	<p>1. After the Owner has satisfied the obligations in Clauses 5.1, 5.2, 12.1, 12.2, 13.1, 13.2, 14.1, 14.2, 16.1 and 16.2 <del>14.26.2</del>, up to fifteen Unrestricted Dwellings contained on a list provided to the Council being those Unrestricted Dwellings that the Owner intends to occupy prior to the satisfaction of the obligations set out in Clauses 5.7, 5.8, 13.3 and 13.4</p> <p>2. After the Owner has also satisfied the obligations in Clauses 5.7, 5.8, 13.3 and 13.4 up to 30 Unrestricted Dwellings contained on a list provided to the Council being those Unrestricted Dwellings that the Owner intends to occupy prior to the satisfaction of the obligations set out in Clause 5.9, 5.10, 12.3, 12.4, 14.3 and 14.4</p> <p>3. After the Owner has also satisfied the requirements referred to in Clause 5.9, 5.10, 12.3, 12.4, 14.3 and 14.4 all the Unrestricted Dwellings.</p>

  
 E.S.  
 MGP  
 W.G.B.  
 J.S.  
 W.M.



	<p>4. After the Owner has also satisfied the obligations specified in clause 12.3 and 12.4 any Affordable house in respect of which the Owner has paid the Affordable Housing Contribution under clause 9; and</p> <p>5. Any Affordable House sold by the mortgagee of an RSL's interest in that Affordable House or by a receiver appointed by such a mortgagee under clause 18.3.1.</p>
Remaining Affordable Houses	shall have the meaning ascribed to it in clause 5.11 hereof
Rented Houses	Affordable Houses comprising houses to be let at an Affordable Rent
Restricted Price	the price calculated in accordance with Schedule 1 below.
RSL	a Housing Association or similar organisation registered with the Housing Corporation (or successor Body) and approved by the Council (such approval not to be unreasonably withheld or delayed) and Signpost Housing Association is approved for the purpose of this Agreement
RSL Price	The price at which the Owner shall transfer the Affordable Housing to the RSL calculated in accordance with Schedule 2 below.
Shared Ownership Houses	Affordable Houses comprising houses let to purchasers on the basis that the purchaser acquires a percentage share of the equity and pays a rent to the retained equity owner in proportion to its share of the equity under a lease which has been approved by the Housing Corporation or the Proper Officer (such approval not to be unreasonably withheld or delayed)
Signpost Housing Association	Signpost Housing Association Limited a company registered in England and Wales under Company Registration Number 28960 whose Registered Office is at Signpost House, Sunrise Business Park, Blandford Forum, Dorset DT11 8SA
Staircasing Payment	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).

Stand Alone Construction Cost	the cost which an RSL would incur to build the Affordable Houses if it let a separate contract to an independent contractor to be ascertained by seeking tenders from three suitable building contractors active in the area.
Surface Water Drainage System	the system for the disposal of surface water to be provided pursuant to the Planning Permission
Surface Water Drainage System Maintenance Scheme	the scheme to be submitted by the Owner or the Developer and approved by the Council prior to the Commencement of the Development for the maintenance in perpetuity of the Surface Water Drainage System
Unrestricted Dwelling	those dwellings to be constructed on the Land other than the Affordable Houses (save to the extent provided in clause 9.1 hereof).
Unrestricted Value	the value that any Affordable House would have if it was not subject to this Agreement or any other restriction on the price at which it could be sold or the person who could occupy it.
Weekly Average Household Income	the weekly average household income within Torridge District as notified in writing from time to time by the Proper Officer.
Village Car Park Land	means: 1. in relation to the Detailed Planning Permission the village car park land shown on Plan 1491/03Rev G; or 2. in relation to the Outline Planning Permission the site of the Village Car Park to be agreed in writing with the Council (such approval not to be unreasonably withheld or delayed)
Village Car Park Works	the works required for the provision by the Owner of the Village Car Park to be agreed in writing with the Council (such approval not to be unreasonably withheld or delayed)
Village Car Park	the car park to be provided by the Owner consisting of 15 car parking spaces and situated on the Village Car Park Land or as otherwise agreed in writing with the Council.

## 2. Background

- 2.1. The Owner is the registered proprietor of the land in fee simple absolute possession free from incumbrances.
- 2.2. The Developer proposes to carry out the Development and has made the Application to the Council pursuant to the Act.
- 2.3. The Developer has entered into a Sale and Purchase Agreement dated 22 March 2005 to purchase the Land from the Owner subject to various provisions.
- 2.4. The Developer consents to the Owner entering into this Agreement and acknowledges that it will be bound to perform the obligations set out in the Agreement relating to the Land and every part thereof when it becomes Owner of the Land or any part thereof.
- 2.5. The Council wishes to ensure the provision of Affordable Housing to meet long term housing need and has adopted the Affordable Housing Policy.
- 2.6. The Council has established evidence of Affordable Housing need pursuant to the Affordable Housing Policy and is prepared to grant planning permission subject to the Owner entering into this planning obligation in respect of the provision of the Affordable Housing, the Education Contribution, the Local Area for Play Contribution and the Local Area for Play.
- 2.7. The Owner has agreed to make the Education Contribution and Local Area for Play Contribution and to provide the Affordable Housing, the Local Area for Play and the Village Car Park.
- 2.8. The Owner wishes to enter into this planning obligation to bind the Land.
- 2.9. The Land is situated in the Parish.

### IT IS HEREBY AGREED AND DECLARED that:

This Agreement is a planning obligation binding the Land made in pursuance of Section 106 of the Act enforceable by the Council and under Section 111 Local Government Act 1972 and Section 1 of the Local Government Act 2000.

This Agreement is conditional on the grant of and implementation of planning permission for the Development Provided Always that:

- 4.1. the obligations on the part of the Owner and/or the Developer (as the case may be) shall only come into effect on Commencement of Development
- 4.2. This Agreement shall be of no further force or effect following the revocation expiry or termination of the Planning Permission without its being implemented

The Owner hereby covenants with the Council:-

5. **Provision of Affordable Housing**

- 5.1. Prior to the Commencement of the Development pursuant to the Outline Planning Permission (but for the avoidance of doubt not the Detailed Planning Permission) the Owner shall submit to the Council for approval the Affordable Housing Scheme.
- 5.2. The Owner shall not Commence the Development pursuant to the Outline Planning Permission (but for the avoidance of doubt not the Detailed Planning Permission) until it has submitted the Affordable Housing Scheme to the Council and the scheme has been approved by the Council BUT the scheme shall be deemed to have been approved if the Council has not made a written objection within 15 working days..
- 5.3. The Owner shall use best endeavours to enter into a contract for the sale of the Affordable Housing to the nominated RSL at the RSL Price upon the price for the Affordable Housing being agreed or determined in accordance with Schedule 2 below and upon the RSL having indicated in writing to the Owner its willingness to purchase the Affordable Housing at such price within two months of such indication the Owner shall (save in the event of default on the part of the RSL) contract to sell with full title guarantee on the Standard Conditions of Sale 4<sup>th</sup> Edition to the RSL the Affordable Housing free from encumbrances or other obligations except for (i) that contained or referred to in the title documents relating to the Land so far as these affect the Affordable Housing and (ii) such encumbrances and obligations as the Owner has also imposed on the Unrestricted Dwellings for the proper control and management of the Development and with the benefit of full unrestricted rights of access over a road to be built to a standard capable of adoption by the Highway Authority from the Affordable Housing to an adopted highway (and vice versa) and full unrestricted rights for all services in conducting media and drains or sewers to be laid or built to a standard capable of adoption by the respective public utility companies
- 5.4. The Owner shall provide the dwellings as Affordable Houses for rent and shared ownership as set out in the Affordable Housing Scheme
- 5.5. A contract for sale to an RSL may provide either for the sale of completed houses or for the sale of land and the construction of houses under a contemporaneous building contract between the Owner and the RSL
- 5.6. If an RSL is unable to purchase Affordable Houses within the period of 26 weeks or such longer period as shall be agreed with or directed by the Council, permission for such an extension of time not to be unreasonably

withheld or delayed, through lack of funding and the construction of the Affordable Dwellings has not commenced then it may require the Owner to dispose of plots of land to the RSL for the consideration of £1 instead of the same number of Affordable Houses so long as the Owner also makes a payment for construction of the houses to the RSL such payment to be equivalent to the amount (if any) by which the Stand Alone Construction Cost exceeds the RSL Price or as otherwise agreed between the Owner and the RSL.

- 5.7. Prior to the occupation of the 16th Unrestricted Dwelling the Owner shall make available ready for occupation to the satisfaction of the RSL eight Affordable Houses unless prior to that date the site for the Affordable Houses has been transferred to the RSL and the payment made under clause 5.6.
- 5.8. The Owner shall not occupy or permit the occupation of the 16<sup>th</sup> Unrestricted Dwelling until it has satisfied its obligations under Clause 5.7 above.
- 5.9. Prior to the occupation of the 30th Unrestricted Dwelling the Owner shall make available ready for occupation to the satisfaction of the RSL all the Affordable Houses unless prior to that date the site for the Affordable Houses has been transferred to the RSL and the payment made under clause 5.6.
- 5.10. The Owner shall not occupy or permit the occupation of the 30th Unrestricted Dwelling until it has satisfied its obligations under Clause 5.9 above.
- 5.11. If within 10 months of the Commencement of the Development of the Affordable Houses the Owner has not exchanged contracts to sell some or all of the Affordable Houses to one or more RSLs ("the Remaining Affordable Houses") the Owner may give written notice to the Council that it intends to provide the Remaining Affordable Houses for Rent by a private landlord or for sale ("Owner's Notice") and on the giving of an Owner's Notice Clauses 6 and/or (as appropriate) 7 shall apply.

**6. Affordable Housing for Rent provided by a Private Landlord**

- 6.1. If the Owner gives an Owner's Notice under Clause 5.11 above the Owner
  - 6.1.1. shall provide those Remaining Affordable Houses comprising Rented Dwellings and which are of such size, tenure and type as identified for letting in Schedule 5 (unless otherwise agreed with the Council) under the Affordable Housing Scheme for letting at a rent not exceeding an Affordable Rent
  - 6.1.2. may contract to sell with (and thereafter sell to) a person not being an RSL those Remaining Affordable Houses (or any of them) comprising Rented Dwellings as specified in the Owner's Notice for letting at a rent not exceeding an Affordable Rent;

- 6.2. Any Owner's Notice served under Clause 5.11 shall (if the any of the Remaining Affordable Houses comprise Rented Dwellings) include the Owner's proposals for:-
- 6.2.1 the form of tenancy for such lettings; and
- 6.2.2 procedures for renting by first and future tenants and how the Council may nominate tenants from the Council's lists on future lettings.
- 6.3 The Proper Officer may approve the proposals submitted under Clause 6.2 or may seek to agree amendments to them and if agreement cannot be reached either party may refer the matter under the dispute procedure.
- 6.4 The provisions of Clause 8 (as appropriate) shall apply to Affordable Dwellings provided under this clause.

## **7. Affordable Houses for Sale**

- 7.1. If the Owner gives an Owner's Notice under Clause 5.11 above that it intends to provide the Remaining Affordable Houses for sale or long leasehold the Owner shall provide the Affordable Houses of such size tenure and type as identified for sale in Schedule 5 (unless otherwise agreed with the Council) under the Affordable Housing Scheme (other than any which it elects to provide for rent) for sale or long leasehold at a price not exceeding the Restricted Price or may alternatively let those Affordable Houses (or any of them) as Shared Ownership Houses or let them at an Affordable Rent
- 7.2. The Owner shall:-
- 7.2.1. make the Affordable Houses prescribed by this clause 7 available for sale prior to the occupation of the 30th Unrestricted Dwelling;
- 7.2.2. not sell any Affordable House except at the Restricted Price;
- 7.2.3. not do anything in relation to the provision of Affordable Houses for sale which conflicts with the Council's requirement that such dwellings shall always be available as Affordable Houses
- 7.3. On each and every sale of a Remaining Affordable House prescribed by this clause 7 the procedure for sale shall be as follows:-
- 7.3.1. the Owner shall contact the Proper Officer who shall advise the Restricted Price (such price shall only be valid for six months after which period the price will have to be re-advised);
- 7.3.2. the Owner shall not sell the house except to a person in Housing Need who satisfies the Local Requirement PROVIDED THAT in the event of there being more prospective purchasers than homes available allocation be made on the basis of length of residence in the Parish or on the period of employment in the Parish;

7.3.3. The Owner shall notify the Council on each occasion it offers each Affordable House for sale and the Owner shall give priority to any person the Council may within 4 weeks of such notice nominate to acquire that interest if the Council believes that that person (together with any other member of his or her household living with him or her ) is able to secure finance to purchase that Affordable House.

BUT if such nominee has not exchanged contracts with the Owner for the acquisition of that interest within two months of the date of the Notice the Owner shall be free to dispose of that interest to any person in Housing Need who satisfies the Local Requirement it selects during the period of six months after service of the Notice .

7.4. If the Owner elects to let any Affordable House as a Shared Ownership House:-

7.4.1. the price paid for the share of the equity purchased by the tenant shall not exceed the Restricted Price;

7.4.2. the rent on the share of the equity retained by the Owner shall not exceed the sum generated by multiplying the Affordable Rent by the percentage of the equity retained by the Owner.

7.5. The provisions of Clause 8 shall apply to Affordable Houses provided under this clause.

## **8. Management of the Affordable Housing**

8.1. No person who is not an RSL shall sell or buy an Affordable House (or in the case of a Shared Ownership House any share in an Affordable House) other than for a price which does not exceed the Restricted Price.

8.2. Except as provided in Clause 7.1 above, no Person who is not an RSL, the Council or a Mortgagee may own an Affordable House (or in the case of a Shared Ownership House any share in an Affordable House) unless that person was a person in Housing Need and had a Local Requirement at the time of his or her purchase of the dwelling.

8.3. No person shall let an Affordable House for a rent which exceeds an Affordable Rent.

8.4. No person shall occupy an Affordable House unless that person:-

8.4.1. was a person in Housing Need and had a Local Requirement at the time of his or her first occupation of the Affordable House or

8.4.2. is a member of the household of and living with a person who had a Local Requirement at the time of his or her first occupation of the Affordable House and (in either case); and

8.4.3. occupies an Affordable House as his or her sole or main residence.

but nothing in this clause shall require any person who satisfied such a requirement when they first occupied an Affordable House to vacate the dwelling if they cease to qualify under clause 8.4.2 by virtue of the death, hospitalisation or breakdown of a relationship with the person who qualified under clause 8.4.1.

- 8.5. If no prospective owner or occupier meeting the Local Requirement wishes to occupy the Affordable House within a period of three months from the date that the Affordable House becomes available for sale or letting then (subject to the application of the Local Requirement to the new parish) the Council may permit an applicant from any parish within the District of Torridge to own or occupy the Affordable House and should there still be no suitable prospective owners after a further period of three months a prospective owner or occupier from any parish within the Districts of North Cornwall, North Devon, West Devon and Mid Devon.
- 8.6. Where the Owner of an Affordable House is an RSL the Affordable House may also be occupied in accordance with any nomination and management agreement in effect between the Council and that RSL.

## **9. Payment of Affordable Housing Contribution**

- 9.1. If the Council so elects by written notice served within 28 days of the Owner serving an Owner's Notice under Clause 5.11 the Owner shall pay the Affordable Housing Contribution (based on the actual number of Remaining Affordable Houses notified in the Owner's Notice) to the Council such payment to be made on the later of
- 9.1.1. the 28<sup>th</sup> day after the service of the notice by the Council; or
- 9.1.2. the first occupation of the 30<sup>th</sup> Unrestricted Dwelling.
- 9.2. Immediately upon payment of any Affordable Housing Contribution in accordance with the provisions of this clause 9 the Remaining Affordable Houses for which such contribution is paid shall be deemed for the purpose of this Deed to be an Unrestricted Dwelling

## **10. Use of Staircasing Payments**

In respect of any Shared Ownership Houses not owned by an RSL:-

- 10.1. Any Staircasing Payment received by the Owner shall be paid to the Council who shall apply such money for the provision of Affordable Housing in the area.
- 10.2. The Owner shall provide the Council with details of all Staircasing payments it receives and the purpose to which they have been applied.



**11. Released Dwellings and dwellings purchased by RSLs**

- 11.1. No person who is the purchaser or lessee of a Released Dwelling shall be liable for any breach of this Agreement and accordingly shall have no cause to enquire whether the Owner or any other person is in breach.
- 11.2. No person who is an RSL or the purchaser or lessee of an Affordable House in compliance with the requirements of Clause 7 of this Agreement shall be liable for any breach of this Agreement other than any breach of the requirements of Clauses 7 8 and 10 in relation to that Affordable House and accordingly shall have no cause to enquire whether the Owner or any other person is in breach of any other requirement.

**12. Public Open Space**

- 12.1. Prior to the Commencement of the Development the Owner shall submit to the Proper Officer details of its proposals for the Open Space Works.
- 12.2. The Owner must not occupy or allow the occupation of any Unrestricted Dwelling until it has performed its obligations under Clause 12.1.
- 12.3. The Owner shall provide the Play Area to the reasonable satisfaction of the Proper Officer prior to the occupation of the 30<sup>th</sup> Unrestricted Dwelling.
- 12.4. The Owner shall not occupy or allow the occupation of the 30<sup>th</sup> Unrestricted Dwelling until it has satisfied its obligations under clause 12.3.
- 12.5. The Owner shall carry out and complete the Open Space Works to the reasonable satisfaction of the Proper Officer prior to the end of the first planting season following the first occupation of the 36<sup>th</sup> dwelling constructed on the Land.
- 12.6. The Owner shall pay the Open Space Contribution to the Council within 7 days of the date that the Public Open Space Land is transferred to the Council.
- 12.7. The Owner shall maintain the Public Open Space to the reasonable satisfaction of the Proper Officer from the date of commencement of the Open Space Works until the later of:-
- 12.7.1. the Proper Officer certifying that the works have been satisfactorily completed (such certification not to be unreasonably withheld or delayed).;
- 12.7.2. the date of payment of the Open Space Contribution to the Council
- 12.7.3. the transfer of the Public Open Space to the Council
- 12.8. The Council shall accept a transfer of the Public Open Space for the sum of £1.00 immediately following certification of the Open Space Works by the Proper Officer





Legend	
Item	Description
<span style="display:inline-block; width:15px; height:15px; background-color:green; border:1px solid black;"></span>	PUBLIC OPEN SPACE & PLAY AREA
<span style="display:inline-block; width:15px; height:15px; background-color:blue; border:1px solid black;"></span>	15 SPACE VILLAGE CAR PARK
<span style="display:inline-block; width:15px; height:15px; background-color:orange; border:1px solid black;"></span>	AFFORDABLE HOUSING UNITS
<span style="display:inline-block; width:15px; height:1px; background-color:red; border:1px solid black;"></span>	INDICATES REDROW LEGAL BOUNDARY

Development	<b>WINKLEIGH</b>		
Location	SHUTE LANE/EXETER ROAD		
Marketing Name	WINKLEIGH CROSS		
Drawing Title	S106 AGREEMENT PLAN		
Drawing Number	<b>3866.31.10.001</b>		
Revision	Scale @ A2	1:500	
Drawn By	AMC	Date Started	02.09.05
Checked by		Date	

  
**REDROW**  
 HOMES  
 Redrow Homes (West Country) Limited  
Marlborough House, Pyms Hill, Exeter EX2 5AL  
 Tel: 01392 354550 Fax: 01392 364551 Web: www.redrow.co.uk

Legal Disclaimer TBC  
 This layout has been designed after due consideration of our Context & Constraints



12.9. The Owner shall carry out such additional works as the Proper Officer may reasonably require to rectify any defects in the Open Space Works which arise within 12 months of the payment of the Open Space Contribution.

12.10. If the Owner fails to perform its obligations under this Clause 12 the Council may after giving 28 days notice to the Owner carry out any outstanding works and may recover the costs it incurs, including administrative costs from the Owner and each and every person who is an Owner other than any RSL BUT for the avoidance of doubt this clause shall not apply to the registered proprietors of Released Dwellings.

### 13. Education Contribution

13.1. Prior to the first occupation of the first Unrestricted Dwelling the Owner must pay fifty per cent (50%) of the Education Contribution to the County Council.

13.2. The Owner must not to permit any Unrestricted Dwelling to be occupied until fifty per cent (50%) of the Education Contribution has been paid to the County Council.

13.3. Prior to the first occupation of the sixteenth Unrestricted Dwelling the Owner must pay the Education Contribution to the County Council.

13.4. The Owner must not to permit the sixteenth Unrestricted Dwelling to be occupied until the Education Contribution has been paid to the County Council.

13.5. For the Avoidance of doubt the Education Contribution is not payable in relation to those Affordable Houses comprising 1 bedroom units.

13.6. The Owner must pay the County Council's legal fees of one hundred and twenty-five pounds (£125) for legal work carried out by its officers in relation to the Education Contribution provisions of this Deed.

### 14. Village Car Park

14.1. Prior to the Commencement of the Development, the Owner shall submit to the Proper Officer details of its proposals for the Village Car Park Works.

14.2. The Owner shall not allow any Unrestricted Dwelling to be occupied until it has submitted detailed proposals for the Village Car Park Works to the Council.

14.3. The Owner shall carry out and complete the Village Car Park Works to the reasonable satisfaction of the Proper Officer and make the Village Car Park available for use by the public prior to its occupation of the 30<sup>th</sup> Unrestricted Dwelling.

14.4. The Owner must not occupy or allow the occupation of the 30<sup>th</sup> Unrestricted Dwelling until it has performed its obligations under Clause 14.3.

- 14.5. The Owner shall within 12 months of the completion of the Village Car Park Works offer in writing to transfer its freehold interest in the Village Car Park Land to the Council for the consideration of £1 and such transfer shall be completed within three months of that offer.
- 14.6. The Council shall if so requested by the Owner assume the responsibility for the management and day to day maintenance of the Village Car Park either on its own behalf or by a nominee of the Council from such date after the completion of its construction but prior to the transfer of the freehold as the Owner may request.
- 14.7. If the Owner fails to perform its obligations under this Clause 14 of the Council may after giving 28 days' notice to the Owner carry out any outstanding works and may recover the costs it incurs, including any administrative costs, from the Owner and each and every person who is an Owner other than any RSL.
- 14.8. Subject to Clause 14.6 the Owner must itself maintain the Village Car Park until the same is transferred to the Council.
- 14.9. The Owner shall carry out such additional works as the Proper Officer may reasonably require to rectify any defects in the Village Car Park Works which arise within 12 months of the transfer of the Village Car Park Land to the Council.

15. **Index Linking**

- 15.1. In the event that any of the Contributions payable under this Agreement is not paid on the date of this Agreement then at the date it is paid it shall be adjusted in accordance with the following formula:-

$$C = \frac{\text{£Y} \times B}{A}$$

Where:

A is the value of the general Index of Retail Prices (the "RPI") compiled and published by the relevant Government Department last published before the date of this Agreement;

B is the value of the RPI last published before the relevant Contribution has been paid;

C is the Contribution to be paid; and

£Y is the contribution quoted in this Agreement.

16. **Surface Water Drainage System Maintenance Scheme**

- 16.1. Prior to the Commencement of the Development) the Owner or the Developer must:

- 16.1.1, submit to the Council in writing; and
- 16.1.2, obtain the Council's written approval for the Surface Water Drainage System Maintenance Scheme.
- 16.2. The Owner must not Commence or allow the Commencement of the Development until the Surface Water Drainage System Maintenance Scheme has been:
  - 16.2.1, submitted in writing to the Council; and
  - 16.2.2, approved in writing by the Council.
- 16.3. Any additional information requested by the Council must be provided by the Owner or the Developer within ten working days of receipt of the Council's written request or such period as may be agreed between the Owner or the Developer and the Council
- 16.4. The Council's written approval for the Surface Water Drainage System Maintenance Scheme is not to be unreasonably withheld or delayed
- 16.5. The Owner shall maintain the Surface Water Drainage system to the reasonable satisfaction of the Council until such time (if ever) it is vested in the Water Authority under the provisions of the Water Industry Act 1991.
- 16.6. If the Owner fails to perform its obligations under this Clause 16 the Council may after giving 28 days' notice to the Owner carry out any outstanding works and may recover the costs it incurs, including any administrative costs, from the Owner and each and every person who is an Owner other than any RSL.

---

17. **General Matters**

- 17.1. Nothing in this Agreement is or amounts to or shall be construed as a planning permission within the meaning of Section 336 of the Act.
- 17.2. Nothing herein contained or implied shall prejudice or affect in any way the exercise by the Council of its rights powers duties and obligations in the exercise of its functions as a local planning authority or as a local authority generally.
- 17.3. The County Court in whose district the Land is situated shall have full jurisdiction to hear and determine any proceedings arising from or relating to this Agreement or for the enforcement of its terms or any of them.
- 17.4. If the Planning Permission should expire (without being renewed or extended) before the Development is commenced or shall at any time be revoked or modified by means of an opposed order under Section 97 of the 1990 Act this Agreement shall forthwith determine and cease to have effect.
- 17.5. 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 or any other permission granted pursuant to the Application) granted (whether or not on appeal) after the date of this Agreement.

- 17.6. This Agreement is a Local Land Charge and shall be registered as such.
- 17.7. No person shall be liable for breach of any covenant contained in this Agreement occurring after he shall have parted with all interest in the Land or the part thereof to which the breach relates without prejudice to liability for any breach of covenant occurring prior to parting with such interest and for this purpose an easement or the benefit of a restrictive covenant shall not be deemed to be an interest in the Land or any part of it.
- 17.8. For the purposes of the Contracts (Rights of Third Parties) Act 1999 it is agreed that nothing in this Agreement shall confer on any third party any right to enforce or any benefit of any term of this Agreement.
- 17.9. The Council intends to grant the Planning Permission.

#### **18. Mortgagee Provisions**

- 18.1. For the avoidance of doubt and notwithstanding the terms of any legal charge over the Land or any rule of law incidental thereto, the Mortgagee shall be bound by the terms of this Agreement upon exercising any power to take possession lease sell or otherwise deal with the premises or any part thereof.
- 18.2. In relation to any interest in an Affordable House which is owned by any person other than an RSL.
- 18.2.1. Where an Affordable House is offered for sale by a Mortgagee in possession or where a mortgagee has appointed a receiver under the mortgage it shall be offered for sale only on the basis that the sale price shall not exceed the Restricted Price and it shall be sold on the basis that it shall first be offered by the Mortgagee in possession to persons or groups nominated by the Proper Officer
- 18.2.2. If within 6 months of a Mortgagee first notifying the Council that it intends to exercise a power of sale referred to above the Council has not introduced a purchaser ready and able to exchange contracts to purchase the Affordable House for the Restricted Price the Mortgagee or the receiver may sell the house for the Restricted Price to any person who requires it as their sole or main residence but for the avoidance of doubt the provisions of this Agreement, and particularly clause 8 shall continue to apply to the Affordable House after such a sale.
- 18.3. In relation to any interest in any Affordable House which is owned by an RSL

18.3.1. The provisions of this Agreement shall not be binding upon the Mortgagee of an Affordable Dwelling or upon a receiver appointed by such a Mortgagee.

18.3.2. Any Affordable House sold by the Mortgagee of an RSL's interest in that Affordable House or by a receiver appointed by such a Mortgagee shall be a Released Dwelling.

18.3.3. A Mortgagee or receiver to whom Clause 18.3.2 applies may notify the Council of any such intended disposal and the Council shall within 10 working days of such notification provide the Mortgagee or receiver with a certificate confirming that that Affordable House is a Released Dwelling.

## 19. Settlement Of Disputes

19.1. Any dispute arising out of the provisions of this Agreement shall be referred to a person having appropriate qualifications and experience in such matters (the "Expert") for the determination of that dispute PROVIDED THAT the provisions of Clause 19 shall be without prejudice to the right of any Party to seek the resolution of any matter relating to the Agreement to the Courts and/or in accordance with Section 106 (6) of the 1990 Act and the referral of any matter to the Expert shall not prejudice prevent or delay the recourse of any Party to the Courts or to the provisions of Section 106 (6) of the 1990 Act for the resolution of any matter arising from the Agreement.

19.2. The Expert shall be appointed jointly by the relevant parties to the dispute ("the Relevant Parties") or in default of agreement by a person nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of any of the Parties.

19.3. The decision of the Expert shall be final and binding upon the Relevant Parties and the following provisions shall apply: -

19.3.1. the charges and expenses of the Expert shall be borne equally between the Relevant Parties unless the Expert shall otherwise direct;

19.3.2. The Expert shall give the Relevant Parties an opportunity to make representations and counter representations to him before making his decision;

19.3.3. The Expert shall be entitled to obtain opinions from others if he so wishes;

19.3.4. The Expert shall make his decision within the range of any representations made by the Relevant Parties themselves;

19.3.5. The Expert shall comply with any time limit or other directions agreed by the Relevant Parties on or before his appointment.

19.4. Where there is a dispute as to the amount of any Contribution the Owner shall pay its estimate of such Contribution to the Council at the time specified in this Agreement and shall pay any difference between that figure and the amount determined by the Expert within 28 days of the Expert's decision together with interest thereon calculated from the date the payment was required until the date it is made at the Royal Bank of Scotland Base Rate.

## **20. Council's Covenants**

The Council covenants with the Owner and as a separate covenant with the Developer and their respective successors in title:

- 20.1. To expend all sums and contributions paid by the Owner to the Council in accordance with this Deed in the manner and solely for the purpose for which the sums and contributions are respectively made
- 20.2. To ensure that all costs and expenses which it incurs or expends in relation to any of its obligations pursuant to this Deed are reasonable accurate verifiable and evidenced by receipted accounts which shall be produced to the Owner on demand
- 20.3. Upon the written request of the Owner at any time after any obligation under this Deed has been fulfilled to issue a letter of release in respect of that obligation and thereafter cancel the related entry in the Register of Local Land Charges

---

## **21. County Council's Covenants**

The County Council covenants with the Owner and as a separate covenant with the Developer and their respective successors in title:

- 21.1. To expend all sums and contributions paid by the Owner to the County Council in accordance with this Deed in the manner and solely for the purpose for which the sums and contributions are respectively made PROVIDED ALWAYS that (save where expressly provided otherwise) if the said contributions or any part thereof have not been spent by the County Council for such purposes for the purpose for which that sum or contribution was paid within ten years after the date of payment by Owner to the County Council that sum or the unspent part thereof shall be reimbursed by the County Council to the Owner (hereby meaning the person who paid the contribution or sum in the first instance and not its successors in title) together with interest at the rate of 1% per annum below Barclays Bank Plc's base rate from the date of payment until the date of repayment



21.2. Upon the written request of the Owner at any time after payment of the Education Contribution to issue a letter of release in respect of the Owner's obligation in that regard and thereafter to request the cancellation of the related entry in the Register of Local Land Charges

22. **Release**

No person shall be liable for breach of an obligation contained in this Agreement after they shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach prior to parting with such interest

## Schedule 1

### Calculation of the Restricted Price

- 1.1. On any sale or lease of an Affordable House to any person prior to its first occupation in accordance with this Agreement (and any other such sale or lease where no proportion has been certified under Clause 1.2 below) the Restricted Price shall be the price which does not exceed that which can be purchased with a ninety five per cent mortgage equivalent to two and a half times the average annual household income within Torridge District, the exact price being certified to the Owner by the Proper Officer within 10 working days of receipt of notice by the Owner to the Council requiring such a certificate.
- 1.2. Prior to the completion of any sale or lease to which clause 1.1 applies the Owner shall notify the Council of the proposed sale price of that dwelling and the price at which any Unrestricted Dwellings have been sold and the Council shall within 10 working days of the receipt of such notification issue a certificate stating the proportion of the Unrestricted Value of the said Affordable House represented by the price certified under Clause 1.1 above.
- 1.3. On any sale or lease of an Affordable House by any person (other than an RSL) subsequent to its first occupation in accordance with this Agreement the Restricted Price shall be the Unrestricted Value of that dwelling at the time of the proposed sale multiplied by the proportion certified under Clause 1.2 above.
- 1.4. after any Affordable House has been acquired by an RSL and has then been let as a Shared Ownership House the Restricted Price shall be the Unrestricted Value of the share of the equity to be acquired by the tenant of that house and accordingly nothing in this Agreement shall prevent such a tenant purchasing an increased share of the equity (up to and including the whole of the freehold equity) in accordance with the terms of his lease.
- 1.5. If the amount outstanding under any charge granted solely for the purpose of assisting an Owner to acquire an Affordable House (including not more than 12 months' interest on that principal and costs accruing under that charge) exceeds the Restricted Price (calculated ignoring the uplift permitted under this clause) then:-
  - 1.5.1. the Restricted Price for any sale by the Mortgagee shall be increased to the amount then owing to the Mortgagee
  - 1.5.2. the Proper Officer shall certify the uplifted Restricted Price by calculating the appropriate proportion of the Unrestricted Value
  - 1.5.3. the Restricted Price for any subsequent sale of that dwelling shall be calculated by applying the proportion so certified.

## Schedule 2

### The RSL Price

- 1.1. The RSL Price for each Affordable House shall be the price which represents the maximum loan which the RSL could secure on the most preferential terms available to it to purchase that Affordable House for letting on a Shared Ownership [or Homebuyer] or as the case may be Affordable Rented basis arrangement without public subsidy
  - 1.2. If within three months from the Commencement Date no agreement on the RSL Price has been reached the Owner or the nominated RSL or the Council shall be entitled to refer the matter of the RSL Price which has not been agreed for decision of an independent surveyor with knowledge of the Housing Corporation's systems who shall be agreed between the parties or in default of agreement within 14 days shall at the request of either party be appointed by the president for the time being of the Royal Institution of Chartered Surveyors. Within one month of his appointment such independent surveyor shall determine the price in accordance with Clause 1.1. of this Schedule 2 and shall act as an expert and not as an arbitrator and his decision shall be final.
  - 1.3. For the avoidance of doubt the Development may continue during the course of the negotiations in relation to the transfer of the Affordable Housing.
-

Schedule 3  
Public Open Space Works

**Part A Landscaping**

Details of landscaping, fencing, planting and drainage (if any) to be submitted by the Owner to the Council prior to the Commencement of the Development and agreed in writing with the Council (such agreement not to be unreasonably withheld or delayed) prior to the commencement of the Open Space Works.

**Part B Play Equipment**

Details of surfacing and play equipment to be submitted by the Owner to the Council prior to the Commencement of the Development and agreed in writing with the Council (such agreement not to be unreasonably withheld or delayed) prior to the commencement of the Open Space Works.

#### Schedule 4

#### Village Car Park Works

Details of construction surfacing fencing, drainage and lighting to be submitted by the Owner prior to the Commencement of the Development and agreed in writing with the Council prior to the commencement of the Village Car Park Works.

Schedule 5  
Affordable Housing

The Affordable Housing shall comprise 15 dwellings equalling 30% rounded to the nearest whole number of the housing mix of the Development as follows:-

1 bed 2 person flat at 44 sq metres =	1 No for rent.
1 bed 2 person flat at 51 sq metres =	1 No for rent.
2 bed 3 person flat at 55 sq metres =	2 No for rent.
2 bed 3 person flat at 62 sq metres =	2 No for rent.
2 bed 3 person flat at 55 sq metres =	1 No for sale.
2 bed 3 person flat at 62 sq metres =	1 No for sale.
3 bed 4 person house at 76 sq metres =	2 No for rent.
3 bed 4 person house at 76 sq metres =	2 No for sale.
3 bed 5 person house at 86 sq metres =	2 No for rent.
4 bed 5 person house at 98 sq metres =	1 No for rent.

SCHEDULE 6

DRAFT OUTLINE PLANNING PERMISSION

The Torridge District Council pursuant to the provisions of the above-mentioned Act hereby grant planning permission for the

Proposal: Residential Development, site access, surface water attenuation and suds drainage scheme and footpath access to Winkleigh Village centre  
Location: Land Between Shute Lane And Exeter Road Winkleigh

In accordance with the above numbered application and plans submitted therewith **SUBJECT TO** the following conditions:

- (a) In the case of any reserved matter application for approval must be made not later than the expiration of three years beginning with the date on which this permission is granted; and
- (b) The development to which this permission relates must be begun not later than whichever is the later of the following dates:
  - (I) the expiration of five years from the date on which this permission is granted; or
  - (II) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

01. The development hereby permitted shall be carried out only in accordance with detailed drawings which shall previously have been submitted to and approved in writing by the Local Planning Authority.

Such detailed drawings shall show:-

- (i) design and external appearance of all proposed buildings;
- (ii) their siting and layout;
- (iii) the materials of which they are to be constructed;
- (iv) the arrangements for the disposal of foul and surface water;
- (v) the means of access from public highways and areas for vehicle parking;
- (vi) all other works including walls, fences and other means of enclosure and screening;
- (vii) the location and species of all trees existing on the site showing those to be felled and those to be retained.

02. No building work shall be commenced until details (and/or representative samples) of the colour and texture of the facing and roofing materials to be used in the construction of the proposed development have been submitted to and approved in writing by the Local Planning Authority.

03. Prior to commencement of the development, all finished floor levels relative to an identifiable datum, shall be agreed in writing with the Local Planning Authority.

04. The existing trees/hedgerows shall be protected and retained to the satisfaction of the Local Planning Authority for the duration of the development and shall not be wilfully damaged or destroyed, uprooted, felled, lopped or topped during that period without the previous written consent of the Local Planning Authority. Any trees/hedgerows removed without such consent or dying or being or becoming significantly damaged or diseased during that period shall be replaced with such size and species as may be agreed in writing with the Local Planning Authority.

05. No development shall take place until the applicant, their agent or successor in title has secured the implementation of a programme of archaeological recording in accordance with a written scheme of investigation that has been submitted to and approved in writing by the Local Planning Authority.

06. No buildings shall be constructed within 3 metres of the existing foul sewer crossing the site.

07. Full details of the proposed surface water drainage system shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced. As approved the scheme shall be implemented before any of the dwellings are occupied.
08. This permission shall not constitute an approval of the layout plan submitted with the application which has been treated as being for illustrative purposes only.
09. The layout of the development shall include the provision of footway/cycleway connections and details of these provisions shall be included in the reserved matters.
10. The proposed estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance/vehicle overhang margins, embankments, visibility splays, accesses, car parking and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections indicating as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.
11. Full details of the proposed vehicle parking shall be submitted for the approval of the Local Planning Authority as part of the reserved matters and shall be implemented in accordance with the approved details before the proposed dwellings are occupied.
12. The proposed roads, footways, footpaths, verges, visibility splays, junctions, cuttings, embankments, sewers, drains, service routes, car parking/garage spaces, access drives, construction traffic roads, construction staff car parking and construction site compound shall be laid out, constructed and completed in accordance with a detailed programme that is to be submitted to and approved by the Local Planning Authority in writing before any part of the development commences.
13. No other part of the development hereby approved shall be commenced until the access road has been laid out, kerbed, drained and constructed up to base course level for the first 20 metres back from its junction with the public highway with the ironwork set to base course level, the visibility splays required by this permission have been laid out, the footway on the public highway frontage required by this permission has been constructed up to base course level and a site compound and car park have been constructed, to the written approval of the Local Planning Authority.
14. The occupation of any dwelling in an agreed phase of the development shall not take place until the following works have been carried out to the written satisfaction of the Local Planning Authority:
- i) the carriageway including the vehicle turning head within that phase shall have been laid out, kerbed, drained and constructed up to and including base course level with the ironwork set to base course level and the sewers, manholes and service crossings completed;
  - ii) the footways and footpaths which provide that dwelling with direct pedestrian routes to an existing highway maintained at public expense have been constructed up to and including base course level;
  - iii) all visibility splays have been laid out to their final level;
  - iv) the street lighting has been erected and commissioned;
  - v) the car parking and any other vehicular access facility required for the dwelling by this permission have been completed;
  - vi) the verge, service margin and vehicle crossing on the road frontage of the dwelling have been completed with the highway boundary properly defined;
  - vii) the street nameplates have been provided and erected.
15. When once constructed and provided in accordance with condition 14 above, the carriageway, vehicle turning head, footways and footpaths shall be maintained free of obstruction to the free movement of vehicular and pedestrian traffic and the street lighting and nameplates maintained to the satisfaction of the Local Planning Authority.
16. Within twelve months of the first occupation of the first dwelling in an agreed phase of the development all roads, footways, footpaths, drainage, statutory undertakers' mains and apparatus, junctions, access, retaining wall and visibility splay works shall be wholly completed to the written approval of the Local Planning Authority.
17. Provision shall be made within the curtilage of each dwelling for the disposal of surface water so as to restrict its discharge on to the highway to the satisfaction of the Local Planning Authority.
18. Any dwelling to be used as a "show house" for sales or demonstration purposes shall be provided with off street parking facilities, in addition to those required by any other condition of this permission, the number and siting to be agreed in writing with the Local Planning Authority and the provision to be made before the first use of the dwelling for that purpose.



19. Details of the foul water drainage and its approval by the Local Planning Authority to be submitted prior to commencement of development.

20. Before any works are carried out to Shute Lane a management plan for the preservation of the land (the landscape to include trees/hedges and the existing bank) shall be submitted to and approved in writing by the Local Planning Authority.

The reasons for the Council's decision to grant consent for the works subject to compliance with the conditions hereinbefore specified are:

The time limit condition is imposed in order to comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

01. The application is in outline only.
02. To enable the Local Planning Authority to consider the suitability of the materials to be used for the development.
03. To minimise the visual impact of the development/loss of privacy to nearby properties
04. To assimilate the development into the landscape and to safeguard the appearance and character of the area.
05. To protect any archaeological remains that may exist on the site, in accordance with Policy ENV4 of the Torridge District Local Plan.
06. To safeguard the route and prevent damage to the sewer.
07. To secure satisfactory surface water drainage of the site.
08. For the avoidance of doubt.
09. In the interest of sustainable development.
10. To ensure that adequate information is available for the proper consideration of the detailed proposals.
11. To ensure the provision of adequate parking off the highway.
12. To ensure the proper development of the site.
13. To ensure that adequate on site facilities are available for all traffic attracted to the site during the construction period, in the interest of the safety of users of the adjoining public highway and to protect the amenities of adjoining residents.
14. To ensure that adequate access and associated facilities are available for the traffic attracted to the site.
15. To ensure that these highway provisions remain available.
16. To ensure that the access arrangements are completed within a reasonable time.
17. In the interest of public safety and to prevent damage to the highway.
18. To minimise parking on the highway in the interest of public safety and to protect the amenities of occupiers of adjoining dwellings.
19. To secure satisfactory foul drainage of the site.
20. In the interests of the visual amenities of the area.

INFORMATIVE:

01. The plans relating to the development hereby approved are:

Drawing Number	Date Received
1491/01	24/03/05
1491/02(A)	15/06/05
30467 (D-01(A)	24/03/05
Unnumbered Survey Plan	24/03/05

02. The development to which this permission relates is the subject of an agreement under, inter alia, Section 106 of the Town and Country Planning Act 1990.

The Council has granted permission because the proposal is:

Satisfactory proposal for residential development in principle, in accordance with Proposal WINK4 of the adopted Torridge District Local Plan.

The scheme is therefore considered appropriate and in accordance with Policies: Torridge District Local Plan 2004 - DVT1 (Development in Strategic Centres); Torridge District Local Plan 2004 - DVT6 (Local Distinctiveness); Torridge District Local Plan 2004 - DVT16 (Infrastructure Provision); Torridge District Local Plan 2004 - DVT24 (Sewerage and Drainage); Torridge District Local Plan 2004 - HSC2 (Affordable Housing); Torridge District Local Plan 2004 - HSC13 (Play Facilities in New Housing Devt); Torridge District Local Plan 2004 - ENV1 (Conservation Interest); Torridge District Local Plan 2004 - ENV4 (Archaeological Preservation); Devon Structure Plan 2001 2016 - ST1 (Sustainable Development); Devon Structure Plan 2001 2016 - ST16 (Development Strategy). It is therefore considered that subject to the compliance with the attached conditions and taking into account all other material planning considerations, including the development plan the proposal would be acceptable.

#### NOTE TO APPLICANT

Your attention is drawn to Condition(s) that may appear on this consent that may require certain details to be agreed prior to either the development being commenced, or certain works being carried out. It is important to recognise that failure to comply with such a condition or conditions may render any development carried out unauthorised, and open to the possibility of enforcement action.

L A Skinner  
Development Control Manager  
Riverbank House  
Bideford

# NOTES

1. This permission does not grant consent for works involving the demolition of a non-listed building in a Conservation Area or a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, for which, by virtue of Sections 8,60,74 and 75 of the Planning (Listed Buildings and Conservation Areas) Act 1990, a separate Listed Building Consent or Conservation Area Consent may be required.
2. If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Planning Inspectorate in accordance with Section 78 of the Town and Country Planning Act 1990 within six months of the date of this notice. (Appeals must be made on a form which is available from the Planning Inspectorate, Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN). The Planning Inspectorate has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Planning Inspectorate is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the Local Planning Authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him.
3. If permission to develop land is refused, or granted subject to conditions, whether by the Local Planning Authority, or by the Secretary for the Environment, and the owner of the land claims the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, he may serve on the Council of the district in which the land is situated a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
4. In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.
- 5.

**THIS IS NOT A BUILDING REGULATION APPROVAL**

Please contact Building Control on 01237 428778 for further advice

## SCHEDULE 7

### The draft Full Planning Permission

The Torridge District Council pursuant to the provisions of the above-mentioned Act hereby grant planning permission for the

Proposal: 51 two and three-storey houses, site access, surface water attenuation and suds drainage scheme and footpath access to Winkleigh Village Centre  
Location: Land Between Shute Lane And Exeter Road Winkleigh Devon

In accordance with the above numbered application and plans submitted therewith **SUBJECT TO** the following conditions:

01. The development to which this permission relates must be begun not later than the expiration of five years beginning with the date on which this permission is granted.
02. Prior to the commencement of development, details of the point of connection to the foul water sewer system together with the infrastructure connecting the development hereby granted planning permission with the existing system shall be submitted to and approved in writing by the Local Planning Authority.
03. No other part of the development shall be commenced until such time as the foul drainage system shall have been constructed in accordance with the details agreed under 2 above
04. Prior to the commencement of development, a phasing programme for the development hereby granted planning permission shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the phasing programme.
05. Prior to the commencement of development, details of the finished floor levels of the houses, car park, roads, footpaths, public open space and play area shall be submitted and approved in writing by the Local Planning Authority. The development shall subsequently be carried out in accordance with the approved details.
06. Prior to the commencement of development, details of the road construction shall be submitted to and approved in writing by the Local Planning Authority and subsequently carried out in accordance with the approved details.
07. A landscaping and tree planting scheme shall be submitted to and approved in writing by the Local Planning Authority before the development hereby approved is begun. The scheme shall indicate the species and size of all trees and/or shrubs and the position in which they will be planted. The scheme shall be carried out and completed during the planting season next following the substantial completion of the development hereby approved or during such later planting season as may be specified in writing by the Local Planning Authority. Any tree or shrub damaged or becoming seriously diseased within five years from the date on which the scheme shall have been completed shall be replaced with the same or similar species of tree or shrub. For the purpose of this condition the expression "planting season" shall mean the period between the 15th September and 15th March.
08. Before any development is commenced on site details of the method of protection of the trees and hedgerows shall be submitted to and approved by the Local Planning Authority. The approved protection shall be carried out before any other development takes place on the site.
09. Prior to the commencement of development, details of the proposed materials of construction and samples shall be submitted to and approved in writing by the Local Planning Authority and the development subsequently carried out in accordance with the approved details.
0. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995, (or any Order revoking and re-enacting that Order) no development of the types described in Part 1 (Classes ABCDE) on Plots 9-15, 17, 18, 24, 25, 32, 33 and 41-43; of Schedule 2, other than that hereby permitted shall be carried out without the written permission of the Local Planning Authority

11. Prior to the first occupation of the first floor, accommodation for Plots 1-4, the first floor north elevation, windows shall be fixed and obscure glazed for the lower half of each window and retained as soon thereafter.
12. The car parking and garaging shall be retained for that purpose
13. No dwelling hereby granted planning permission shall be occupied until such time as the Winkleigh Sewage Treatment Plant has been upgraded so as to allow foul drainage from the development to be treated, or until details of an alternative method of foul water disposal has been submitted to and agreed in writing by the Local Planning Authority and has been provided in accordance with these details.
14. No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in strict accordance with the approved scheme, or such details as may be subsequently agreed in writing by the Local Planning Authority.
15. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any other Order revoking and re-enacting that order) no access, either pedestrian or vehicle, shall be created onto Shute Lane from the site hereby granted planning permission.

The reasons for the Council's decision to grant consent for the works subject to compliance with the conditions hereinbefore specified are:

01. The time limit condition is imposed in order to comply with the time requirements of Section 91 of the Town and Country Planning Act 1990.
02. To ensure that the development is capable of disposing of foul water.
03. To ensure that the development is capable of disposing of foul water
04. To ensure that the development is carried out in such a way that all the appropriate infrastructure is in place to support the development and to ensure that the affordable housing is provided.
05. To protect the amenities of the occupiers of the neighbouring properties and to ensure that the site can be accessed and assimilated into the townscape.
06. To ensure the development is capable of accommodating the traffic attracted to the site.
07. In the interests of the appearance and character of the area.
08. In the interests of the visual amenity of the area.
09. In the interests of the visual amenities of the area
10. In respect of Plots 9-15 in order to retain the properties as affordable units, in respect of other plots to retain a level of amenity space for the use of the occupiers.
11. To protect the amenities of the occupiers of the adjoining property from loss of privacy by virtue of overlooking.
12. To ensure that car parking is available to serve the units of residential accommodation.
13. To ensure that foul water can be adequately dealt with from the proposed development
14. The site is of archaeological importance.
15. To protect the visual amenity and archaeological integrity of Shute Lane.

## INFORMATIVE:

01 The plans relating to the development hereby approved are:

Drawing Number	Date Received
1491/03G	24 October 2005
1491/04D	24 October 2005
1491/4B	14 October 2005
1491/AL	7 June 2005
1491/AL	7 June 2005
1491/ED	7 June 2005
1491/HA	7 June 2005
1491/O	7 June 2005
1491/RI	7 June 2005
1491/WA	7 June 2005
1491/WA	7 June 2005
1491/FA	7 June 2005
1491/1B/A	24 October 2005
1491/2B/A	24 October 2005
1491/2B	7 June 2005
1491/Garages	7 June 2005
1491/Enclosure	7 June 2005
30467/D-02 A	7 June 2005
1491/01	7 June 2005
1491/A	25 August 2005
R0176AL (Rednow)	7 September 2005
050720	11 August 2005
11030467	7 June 2005
1491/09	10 October 2005

The Council has granted permission because :

the proposed development is in accordance with the principle established by the allocation of housing within the Adopted Local Plan. Highway safety and parking are at an acceptable level. The visual and historic amenities of the locality will not be adversely affected. The design is in context with the local vernacular. The appropriate levels of infrastructure can be provided to support the development and there will not be an unacceptable impact on the amenities of neighbouring properties and an appropriate level of amenities is provided for the occupiers of the proposed residential properties.

The scheme is therefore considered appropriate and in accordance with Policies: . It is therefore considered that subject to the compliance with the attached conditions and taking into account all other material planning considerations, including the development plan the proposal would be acceptable. This also includes a consideration of whether the decision to grant permission is compatible with the Human Rights Act 1998.

### NOTE TO APPLICANT

Your attention is drawn to Condition(s) that may appear on this consent that may require certain details to be agreed prior to either the development being commenced, or certain works being carried out. It is important to recognise that failure to comply with such a condition or conditions may render any development carried out unauthorised, and open to the possibility of enforcement action.

L A Skinner  
Development Control Manager  
Riverbank House  
Bideford  
NOTES

1. This permission does not grant consent for works involving the demolition of a non-listed building in a Conservation Area or a listed building or for its alteration or extension in any manner which would

affect its character as a building of special architectural or historic interest, for which, by virtue of Sections 8,60,74 and 75 of the Planning (Listed Buildings and Conservation Areas) Act 1990, a separate Listed Building Consent or Conservation Area Consent may be required.

2. If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Planning Inspectorate in accordance with Section 78 of the Town and Country Planning Act 1990 within six months of the date of this notice. (Appeals must be made on a form which is available from the Planning Inspectorate, Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN). The Planning Inspectorate has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Planning Inspectorate is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the Local Planning Authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him.
3. If permission to develop land is refused, or granted subject to conditions, whether by the Local Planning Authority, or by the Secretary for the Environment, and the owner of the land claims the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, he may serve on the Council of the district in which the land is situated a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
4. In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.

5. **THIS IS NOT A BUILDING REGULATION APPROVAL**  
Please contact Building Control on 01237 428724 for further advice

IN WITNESS whereof the Owner has signed this Agreement as its Deed and the Council,  
the County Council and the Developer have caused their respective Common Seals to be  
hereunto affixed in execution as a Deed the day and year first before written.

Executed and delivered as )  
A Deed by )  
MARGARET ELIZABETH PARTRIDGE )  
in the presence of )  
[Witness Name] )  
[Witness Signature] )  
Address )  
Occupation )

Executed and delivered as )  
A Deed by )  
WILLIAM GEORGE COWLE )  
in the presence of )  
[Witness Name] )  
[Witness Signature] )  
Address )  
Occupation )

THE COMMON SEAL OF )  
TORRIDGE DISTRICT COUNCIL )  
was hereunto affixed )  
in execution as a Deed )  
in the presence of: )





Secretary & Solicitor

THE COMMON SEAL OF

DEVON COUNTY COUNCIL

was hereunto affixed

in execution as a Deed

in the presence of:



Secretary & Solicitor

THE COMMON SEAL OF

REDROW HOMES (WEST COUNTRY)

LIMITED

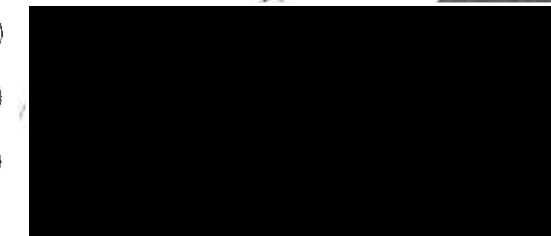
was hereunto affixed

in execution as a Deed

in the presence of:

36798

House 52d



DATED 2006

REDROW HOMES (WEST COUNTRY) LIMITED

and

DEVON COUNTY COUNCIL

and

TORRIDGE DISTRICT COUNCIL

DEED OF VARIATION

of

AGREEMENT

under Section 106A  
of the Town and Country Planning Act 1990  
in respect of land off Exeter Road, Winkleigh  
in the County of Devon

Trowers & Hamlins solicitors  
First Floor  
Portland House  
Longbrook Street  
Exeter  
Devon  
EX4 6AB

Telephone:- 01392 217 466  
Fax:- 01392 221 047  
DX: 134051 Exeter 15

AN AGREEMENT made the

day of

2006

BETWEEN:-

REDROW HOMES (WEST COUNTRY) LIMITED of Redrow House, St David's Park, Flintshire CH5 3RX Company Registration No. 4984069 ("the First Owner") of the first part and;

DEVON COUNTY COUNCIL of County Hall, Topsham Road Exeter ("the County Council") of the second part and;

TORRIDGE DISTRICT COUNCIL of Riverbank House Bideford Devon ("the District Council") of the third part

pursuant to Section 106A(1)(a) of the Town and Country Planning Act 1990 ("the Act")

WHEREAS

- 1 Margaret Elizabeth Partridge and William George Cowle (1) Redrow Homes (West Country) Limited (2) Devon County Council (3) and Torridge District Council (4) entered into an agreement dated 2 June 2006 pursuant to Section 106 of the Act and other powers concerning various matters relating to residential development on land off Exeter Road Winkleigh the County of Devon ("the Original Agreement")
- 2 The First Owner as successors in title to the land and the County Council as Highways Authority the District Council as the local planning authority and a original signatories to the Original Agreement have agreed to enter into this Deed of Variation to vary the obligations to the Original Agreement in the manner hereinafter appearing in order to allow the development to be carried out approved by Outline Planning Permission 1/0641/2005/OUT and the Original Agreement

NOW THIS DEED WITNESSETH AS FOLLOWS:

- 1 This Agreement is made pursuant to Section 106A(1)(a) of the Act
- 2 Words and phrases used in this agreement which begin with a capital letter have the same meaning as those used in the Original Agreement
- 3 The Original Agreement is modified as follows:
  - 3.1 Clause 18 of the Original Agreement shall be deleted in its entirety and substituted with the following:

"18 For the avoidance of doubt nothing in this Agreement shall prevent a mortgagee in possession or a receiver appointed by such mortgagee when offering an Affordable House for sale the Affordable House may be sold at open market value subject to the Council having the right to nominate a potential purchaser within a four (4) week period of the Affordable House being made available for occupation. Following the end of the said four (4) week nomination period Signpost Housing Association or its successors in title will be entered to re-purchase the Affordable House on a shared equity basis tenure PROVIDED THAT a period of three (3) months will be allowed for contract documentation to be exchanged for the purchase of the Affordable House. If by the end of the three (3) month period exchange of contracts for the purchase of the Affordable House has not occurred

then the mortgagee in possession shall be allowed to sell the Affordable House on the open market at an open market value".

4 The First Owners the County Council and the District Council expressly agree and declare that except for the modifications as set out in this Deed the Original Agreement shall remain in full force and effect

5 [The First Owner agrees to pay to the Councils in equal share the Council's legal costs incurred in preparing and entering into this Agreement not to exceed £500.00]

6 The First Owner the County Council and the District Council agree that:

6.1 Nothing in this agreement constitutes an obligation to grant (or grants) planning permission or any other approval consent or permission required from the District Council in the exercise of any other statutory function

6.2 Nothing in this agreement fetters or restricts the exercise by the District Council of any of its powers

6.3 This agreement constitutes a Deed which shall be registered as a Local Land Charge

6.4 This agreement is enforceable by the District Council as the local planning authority

6.5 This agreement does not nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999

6.6 Where any party to this agreement comprises more than one person the obligations and liabilities of that party under this agreement shall be the joint and several obligations and liabilities of those persons

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

EXECUTED AS A DEED BY AFFIXING )  
THE COMMON SEAL OF: )  
TORRIDGE DISTRICT COUNCIL )  
was hereunto affixed in the presence of: )

Head of Legal Services

EXECUTED AS A DEED BY AFFIXING )  
THE COMMON SEAL OF: )  
REDROW HOUSE (WEST COUNTRY) )  
LIMITED in the presence of: )

Director

Director/Secretary

EXECUTED AS A DEED BY AFFIXING )  
THE COMMON SEAL OF: )  
DEVON COUNTY COUNCIL )  
in the presence of: )

Proper Officer