

DATED

2014

(1) NAME

and

**(2) KNIGHTSTONE HOUSING
ASSOCIATION LIMITED**

AGENCY AGREEMENT

Relating to the Sale of ADDRESS

THIS AGREEMENT is made the day of 2013

BETWEEN

- (1) **HOMEOWNER** of **ADDRESS** (“the Vendor”)

- (2) **KNIGHTSTONE HOUSING ASSOCIATION LIMITED** (a charitable housing association Company No 21080R) whose registered office is at Weston Gateway Business Park Weston-super-Mare BS24 7JP (“the Agent”)

NOW IT IS HEREBY AGREED as follows;

I. DEFINITIONS

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

“Applicant”

a person or persons applying for consideration and acceptance under the shared ownership scheme under which the Property is to be sold

“Assignment Fee”

Any fee payable to the Landlord under the terms of the Lease for any administrative fees in connection with the nomination of purchasers and the costs of associated consents

“Fee”

the sum of 1.0% (plus VAT) of the Sale Price for the successful exchange of contracts of the Property between the Applicant and the Vendor payable in accordance with Clause 5

“Payment Event”

means the day that an exchange of Contracts on the Property is achieved

“Prescribed Rate”

means a rate of interest at 4% per annum over the base rate from time to time of Barclays Bank PLC or if no such rate is published a rate of interest of 2% per annum over the lowest rate published by any London Clearing Bank in relation to which such bank is prepared to make unsecured loans equivalent in amount to the sum which is to bear interest at the Prescribed Rate under this Agreement

“Property”

means the property to be sold by the Vendor under the shared ownership scheme to which this Agreement relates as the same are listed in Schedule 1 hereto

“Sale”

means the exchange of contracts to a third party independent of the Vendor of the Property

“Sale Price”

means 100% of the full market sale price of the Property and not the price of a share in the property paid for by a purchaser

“Services”

the services to be provided as set out in Schedule 2

“Start Date”

means the date of this Agreement

2 INTERPRETATION

2.1 Unless there is something in the subject or context inconsistent therewith:

2.1.1 words importing the singular number only shall include the plural number and vice versa

2.1.2 any reference to a statute (whether or not any specifically named herein) shall include any amendment or re-enactment thereof for the time being in force and shall include all instruments orders plans regulations bye-laws permissions and directions for the time being made issued or given thereunder or deriving validity therefrom

2.1.3 any reference to a clause or schedule shall be reference to a clause or schedule in this Agreement

2.1.4 the clause titles or headings appearing in this Agreement are for reference only and shall not affect the construction hereof

2.1.5 references to "Vendor" and "Agent" include the person or persons for the time being entitled to the benefit of this Agreement and also include the Vendor's and Agent's agents successors or assignors

2.1.6 where there are two or more persons included in the expressions "Vendor" or "Agent" then the terms Vendor and Agent include the plural numbers. Any obligation expressed to be made by or with either party is deemed to be made jointly and severally

3 APPOINTMENT OF AGENT

The Vendor hereby appoints the Agent and the Agent accepts the appointment upon the terms and conditions of this Agreement

4 SERVICES OF AGENT

- 4.1 The Agent will provide the Services in Schedule 2 with reasonable skill and care and with a view to sales of all the Properties being negotiated and completed as soon as reasonably practicable
- 4.2 The Agent will treat all information about Applicants which it obtains or has access to because of this Agreement as strictly confidential
- 4.3 Where the Agent keeps records of Applicants the Agent will comply with the terms of the Data Protection Act 1984
- 4.4 If in carrying out the duties of the Agent under this Agreement a board member office or employee of the Agent (or a close relative of such person) will gain personally from any lease or other benefit to be granted by the Agent that person shall declare to the board of the Agent the personal interest they have in the benefit to be granted. Where such a declaration of personal interest is made the person declaring the interest shall not take part in the decision on that matter and shall also withdraw from any meeting when a matter in which they have a personal interest is considered. The Agent shall also in reaching its decision ensure that corrupt undue or unfair personal gain is avoided. In deciding what is a personal interest which needs to be declared the Agent shall require committee/board members officers and employees to take due account of the National Housing

Federation's Code of Governance for Registered Providers and the guidance issued from time to time by the Homes & Communities Agency

4.4.1 For the purpose of this clause a person has a personal interest in the matter if they or a close relative or member of their family:

4.4.2 have an ownership interest in a business or other organisation which will benefit from the grant of a contract by the Agent;
or

4.4.3 are involved in a dispute or disagreement which is the subject of consideration; or

4.4.4 have any other interest which the committee or board of the Agent reasonably considers to be a conflict of interest

4.4.5 Once each year before the first committee/board meeting after the Agent's annual general meeting (or as soon as may be practicable after that date) committee/board members officers and employees of the Agent shall declare to the Secretary of the Agent any personal interests which create or may create a conflict of interest with the obligations of the Agent under this Agreement. The Secretary of the Agent shall keep a register of any such personal interests of committee or board members officers and employees which register shall be open to inspection by any person with an interest in the affairs of the Agent or by the Vendor on reasonable notice

5 FEE

5.1 The Vendor will pay to the Agent the Fee in accordance with Clause 5

- 5.2 The Agent will submit its invoices to the Vendor's solicitor in the amounts and on occurrence of the Payment Events as set out in Schedule 3
- 5.3 The Vendor will instruct their solicitor to pay the full amount of the invoice upon completion of the sale of the Property
- 5.4 The Vendor may not withhold or reduce any sum payable to the Agent under the Agreement by reason of claims or alleged claims against the Agent. All rights to set off which the Vendor may otherwise exercise (whether under statute, at common law or otherwise) are expressly excluded
- 5.6 All fees expenses and disbursements under this Agreement are exclusive of Value Added Tax. Any Value Added Tax properly chargeable by the Agent for its Services shall be paid by the Vendor upon receipt of a valid VAT invoice
- 5.7 If the Vendor fails properly to pay the Fee by the final date under Clause 5.3 Vendor shall pay to the Agent in addition to the amount not properly paid interest at the Prescribed Rate for the period until the payment is made
- 5.8 For the avoidance of doubt any fee payable to the Agent is in addition to any Assignment Fee which may be payable to the Landlord under the terms of the Lease

6 OBLIGATIONS OF THE VENDOR

The Vendor agrees to:

- 6.1 provide the Agent with full details of each of the Properties to allow the Agent to comply with its duties under this Agreement; and
- 6.2 provide any additional information regarding any of the Property not previously provided to the Agent at the outset in compliance with Clause 6.1 as soon as reasonably practicable upon receipt of a request for such information made by the Agent;
- 6.3 provide the information and/or undertake the obligations set out in Schedule 2, Part I I
- 6.4 to permit the Agent to undertake the initial assessment and investigation of the suitability of potential Applicants for shared ownership and to approve or refuse such applications as appropriate after giving due consideration to the advice and information provided by the Agent following initial assessment and investigation carried out by the Agent as part of its duties
- 6.5 approve all proposals for advertising of the Property put forward by the Agent provided that all such proposals are reasonable in the opinion of the Vendor and
- 6.6 to obtain an Energy Performance Certificate as required by law and provide the same to the Agent within 28 days of the Property being marketed for sale
- 6.7 to facilitate and conduct viewings of the Property for the benefit of any potential Applicant who shall be introduced by the Agent
- 6.8 to maintain insurance of the Properties until the date of legal completion of the sale thereof and to maintain the Properties in good condition and repair and in the event of any damage howsoever

caused to make good such damage as soon as possible and in any event before the date of completion of the sale of any Property

7 LIMIT OF LIABILITY

The Agent's liability to the Vendor is limited to the level of cover provided by its indemnity insurance

8 TERMINATION OR SUSPENSION

8.1 Without prejudice to any other right or remedy it may possess either party shall be entitled to terminate this Agreement by notice in writing forthwith upon the happening of the following:

8.1.1 material breach by the other party of any of the terms of this Agreement and where such breach is not reasonably capable of remedy

8.2 Upon the happening of one or more of the following events namely if the Vendor:

8.2.1 is otherwise in breach of this Agreement and such breach has prevented the Agent from carrying out its obligations for a continuous period of one month then the Agent may without prejudice to any other right or remedy serve notice in writing upon the Vendor specifying the event and requiring its remedy. If the Vendor fails to remedy the event within 14 days of service of the notice the Agent may by further notice in writing forthwith terminate its employment provided that such notice is not given unreasonably or vexatiously

8.3 Subject to the provisions for termination contained in this clause this Agreement shall operate for a period of three months from the date

hereof and shall continue thereafter until terminated by either party by not less than twenty one days notice in writing given to the other party

- 8.4 Either party may terminate this Agreement by notice in writing to the other forthwith if: the other ceases for any reason to carry on its business; is unable to pay its debts; any distress or execution is levied upon its property or assets; it makes or offers to make any arrangement or composition with its creditors; it commits any act of bankruptcy; any petition or receiving order in bankruptcy is presented or made against it; (if it is a limited company) any resolution or petition to wind up its business (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) is passed or presented; or a receiver, administrative receiver or administrator of its undertaking, property or assets or any part of them is appointed

9 ASSIGNMENT

- 9.1 Neither party may assign the benefit of this Agreement without the written consent of the other

10 INSTRUCTIONS AND PAYMENT FOR ADDITIONAL WORK

- 10.1 The Vendor shall have the authority to issue instructions to the Agent who shall comply therewith, provided that such instructions are reasonable and within the scope of this Agreement
- 10.2 If any instruction issued under Clause 10.1 requires the Agent to undertake work or do anything not provided for in this Agreement and has not arisen out of or in connection with or does not reveal any negligence omission or default of the Agent or of any of its servants or agents then the Vendor shall ascertain and shall make a fair and reasonable adjustment to the Fee in conjunction with Payment Events

in respect of compliance by the Agent with such instruction and any damage loss and/or expense incurred by the Agent arising out of or in connection with such instruction

10.3 If the Agent with the prior approval of the Vendor incurs extra work and/or expense for any other reasons beyond its control then the Vendor shall ascertain and make a fair and reasonable upwards adjustment to the Fee

11 ENTIRE AGREEMENT

11.1 This Agreement states the entire agreement and understanding of the parties and supersedes all prior oral or written agreements understandings or arrangements relating to the subject matter of this Agreement. Neither party shall be entitled to rely on anything which is not stated in this Agreement or which cannot be implied as being reasonably required to give it business efficacy and is not otherwise inconsistent herewith

11.2 This Agreement shall not be amended modified varied or supplemented except in writing by duly authorised representatives of both parties

11.3 No failure or delay on the part of either party to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be

12 JURISDICTION

The law covering this Agreement will be the law of England and Wales

13 DISPUTE RESOLUTION

Any dispute or difference which arises under or in connection with this Agreement (except any dispute relating to a decision of an adjudicator) shall be referred to be determined by an independent person to be agreed by the parties failing which agreement within 14 days such person shall be nominated by the Chartered Institute of Housing for determination in accordance with the rules of the Chartered Institute of Housing arbitration service and that decision shall be final and binding on both parties

14 MISCELLANEOUS

14.1 Notwithstanding the completion of the Sale of all of the Property this Agreement shall continue in full force and effect so long as any of the provisions hereof remain to be performed or observed by the Agent or the Vendor

14.2 The failure of any party hereto at any time to require performance by any other party of any provision of this Agreement shall in no way affect the right of such party to require performance of that provision

14.3 All notices request demands approvals consents and other communications hereunder shall be in writing and shall be duly and validly given if delivered personally or sent by telex or cable or by prepaid registered or recorded delivery mail or by email to a party at its address set forth above or at such address as such party may specify from time to time by written notice to the other party and shall be deemed to have been received if by telex or cable or email at the time of receipt and if by mail on the third working day after the day of posting

14.4 This Agreement does not create and shall not in any circumstances create or be deemed to create a partnership between the parties

hereto but each of the parties hereto shall owe a duty of good faith to the other in the carrying out of the obligations herein contained

- 14.5 This Agreement is not a lease and nothing in this Agreement gives the Agent any overriding or other legal rights in respect of the Property other than to market the Property in accordance with the terms of this Agreement

SIGNED by)
)
)
the Vendor)

SIGNED for and on behalf of)
KNIGHTSTONE HOUSING)
ASSOCIATION LIMITED)
the Agent)

SCHEDULE I – THE PROPERTY

SCHEDULE 2 – SERVICES TO BE PROVIDED BY THE AGENT

Part I – Services

The Agent shall provide the following services:

- 1 Obtain information about the Property from the Vendor
- 2 Produce sales particulars which will be subject to the Vendor's approval
- 3 Send copies of the approved particulars to potential Applicants who are registered with the local Homebuy Agent, South West Homes
- 4 Regularly draw new lists of potential Applicants from the Homebuy Agent's list (at intervals no greater than every three weeks until an Applicant is approved) and send such new potential Applicants copies of the approved particulars
- 5 Advertise the Property for sale on the Agent's own website and the Homebuy Agent's website
- 6 Handle all initial enquiries from potential Applicants and provide them with the Vendor's contact details to make viewing arrangements
- 7 Send out application packs to all interested parties
- 8 Qualify the Applicant to assess whether comply with the eligibility and affordability criteria for the share ownership scheme, updating the Vendor where appropriate
- 9 Receive Applicants' mortgage offers and approve them in accordance with the terms of the Vendor's lease

- 10 Provide written confirmation of any sale to individual purchasers, check mortgage offer and recommend sale to the Vendor prior to exchange of contract
- 11 Monitor the progress of individual sales
- 12 To give consideration to the merits and demerits of all potential Applicants and in particular:
 - 12.1 to carry out checks in line with Homes & Communities Guidance so as to ascertain the eligibility of Applicants such checks to include (where appropriate and by way of example only) employment checks credit checks and the Applicant's ability to obtain a mortgage
 - 12.2 to recommend potential purchasers to the Vendor for approval and to seek the approval of the Vendor of all potential applicants

SCHEDULE 3 – PAYMENT

The Fee is payable by the Vendor to the Agent in respect of each of the Properties in instalments as follows:

Payment Events	Amount Payable
On the exchange of contracts market	1.0% of the sale price plus VAT