

(a) [Updated version](#) – Gateley 9.9.24 [GATELEY 6.9.24](#) [GATELEY 05/09/24](#) SCC 03/09/2024

SCC 05/09/2024

**Date**

**TANDRIDGE DISTRICT COUNCIL**

**- and -**

**SURREY COUNTY COUNCIL**

**-and-**

**OXTED RESIDENTIAL LIMITED**

traffic

**-and-**

**CALA MANAGEMENT LIMITED**

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**Deed of Agreement to Provide Planning Obligations  
pursuant to Section 106 of the Town and Country Planning Act 1990 and Section 111  
Local Government Act 1972  
in relation to the proposed development on Land to rear of 22 to 32 Chichele Road,  
Oxted, RH8 0NZ  
Planning Reference Number TA/2023/1345  
Appeal Reference Number APP/M3645/W/24/3345915**

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This Deed is made the \_\_\_\_\_ day of \_\_\_\_\_ 2024

BETWEEN

- (1) **TANDRIDGE DISTRICT COUNCIL** of 8 Station Road East, Oxted, Surrey RH8 0BT ("**District Council**"); and
- (2) **SURREY COUNTY COUNCIL** of Woodhatch Place, 11 Cockshot Hill, Woodhatch, Reigate, RH2 8 EF ("**County Council**"); and
- (3) **OXTED RESIDENTIAL LIMITED** (Company Registration number:06337431) of The Old Mill, Kings Mill, Kings Mill Lane, South Nutfield, Redhill, RH15NB ("**Owner**") and
- (4) **CALA MANAGEMENT LIMITED** (Company Registration number:SC013655) of Adam House, 5 Mid Cultins, Edinburgh, EH11 4DU ("**Developer**").

WHEREAS

1. The District Council is the local planning authority for the purpose of the Act for the area in which the Site is situated and by whom the obligations created by this Deed are enforceable.
2. The County Council is the local highway authority and a local planning authority for the area in which the Site is situated.
3. The Owner is the freehold owner of the Site under title number SY571690.
4. The Developer has an interest in the Site by virtue of a conditional contract for sale dated 7 October 2022.
5. The Developer submitted the Planning Application for planning permission for Development of the Site to the District Council which was refused on 26 February 2024 and the Developer has subsequently submitted the Appeal (ref **APP/M3645/W/24/3345915**) against the District Council's refusal of the Planning Application.
6. The District Council, County Council, Owner and Developer have agreed to enter into this Deed to secure the planning obligations set out herein in the event that the Planning Permission is granted pursuant to the Appeal.

NOW THIS DEED WITNESSES AS FOLLOWS:

7. **DEFINITIONS**

For the purposes of this Deed the following words and expressions shall have the following meanings:

**"Act"** the Town and Country Planning Act 1990, as amended;

**"1980 Act"** the Highways Act 1980 (as amended);

**"Additional First Homes Contribution"** means in circumstances where a sale of a First Home Dwelling other than as a First Home Dwelling has taken place in accordance with paragraphs 2.11, 2.12 or 4 of Part 2 of the First Schedule, the lower of the following two amounts:

- (a) thirty per cent (30%) of the proceeds of sale;  
and
- (b) the proceeds of sale less the amount due and outstanding to any First Homes Chargee of the relevant First Home Dwelling under

relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the First Homes Chargee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home Dwelling

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home Dwelling other than as a First Home Dwelling

**"Affordable Housing"**

means housing for sale or rent that will be available for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers) and which meets the definition in Annex 2 of the NPPF as may be amended from time to time including First Homes;

**"Affordable Housing Dwellings"**

shall mean 45% of the number of Dwellings for use as Affordable Housing consisting of a mix of First Homes, Affordable Rented Housing and Shared Ownership Housing which shall be built in compliance with the Standards (the exact size and mix of which are to be specified herein);

**"Affordable Housing Plan"**

means drawing CB\_36\_313\_004 Rev Cor other such plan that may be approved in writing by the District Council from time to time setting out the location of Affordable Housing Dwellings on the Site;

;

**"Affordable Rented Housing"**

shall mean rented housing provided by Registered Providers to households who are eligible for social rented housing and shall be subject to rent controls that require a rent of no more than 80% of local market rents (inclusive of service charges, where applicable and where local market rents are calculated using the Royal

Institution of Chartered Surveyors approved valuation methods) AND the rent levels shall not at any time (unless otherwise agreed in writing) exceed the maximum amount of Local Housing Allowance applicable for the size of the relevant dwelling and which is occupied pursuant to a Tenancy and **Affordable Rented** shall be construed accordingly;

**"Appeal"**

an appeal to the Secretary of State and which is to be determined by the Secretary of State or his appointed Inspector in relation to the District Council's refusal of the Planning Application given appeal reference number APP/M3645/W/24/3345915;

**"Armed Services Member"**

means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service;

**"Biodiversity Gain Plan"**

means the plan submitted to, and approved by the Council pursuant to conditions attached to the Planning Permission, to satisfy the development's biodiversity net gain requirements pursuant to Schedule 7A of the 1990 Act;

**"Biodiversity Gain Land"**

means the area of land on the Site where onsite biodiversity mitigation for the development will be provided and controlled by conditions attached to the Planning Permission;

**"Biodiversity Gain Land Monitoring Contribution"**

means the sum of £[\*\* ] ([number to be written out]) Index Linked to be paid by the Owner to the Council under paragraph 3, Part [ ] of the Fourth Schedule of this Deed to be applied by the Council as a financial contribution towards the Council's costs of monitoring compliance with the Biodiversity Gain Plan [as required by condition [\*\* ] of the Planning Permission] and approved by the Council;

<b>"Car Club Operator"</b>	means an accredited car club operator providing car club services in the vicinity of the Development;
<b>"Car Club Spaces"</b>	means the two spaces dedicated for use by a Car Club Operator to be provided by the Owner on Site in the location marked in orange and labelled "CC" on the Parking Strategy Plan (ref: CB_36_313_006 Rev B) attached to this Deed at [ detail];
<b>"Certificate of Practical Completion"</b>	means a certificate to be issued to the Owner by the District Council to certify practical completion of the laying out and / or construction of works;
<b>"Commencement of Development"</b>	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and no other purpose) operations consisting of marking out, surveying, ground investigations, archaeological investigations, demolition, site clearance, site preparation, investigation for the purposes of assessing contamination, remedial action in respect of contamination, diversion and laying services and the erection of any temporary means of enclosure for the purposes of site security and the temporary display of advertisements and "Commence" and "Commencement" shall be construed accordingly;
<b>"Compliance Certificate"</b>	means the certificate issued by the District Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 6.2 applies the Eligibility Criteria (Local);
<b>"Custom Build Plots"</b>	means the two (2) plots as shown shaded yellow on the plan entitled "Affordable Housing Plan" bearing reference CB_36_313_004 Rev C at Appendix [ ], both to be comprised within the Development upon which the Custom-Build Units are to be constructed and disposed of in accordance with the Sixth Schedule and the

Custom-Build Plots Scheme and **"Custom-Build Plot"** shall mean any such one;

<b>"Custom-Build Plots Scheme"</b>	means the scheme to be submitted in accordance with paragraphs 1 and 2 of the Sixth Schedule and which shall include the Marketing Strategy for the Disposal of the Custom-Build Plots for the development of Custom-Build Units thereon;
<b>"Custom-Build Units"</b>	means a dwelling which meets the definition at Section 1(A1) and Section 1(A2) of the Self-Build and Custom Housebuilding Act 2015;
<b>"Deed"</b>	means this deed made pursuant to section 106 of the Act;
<b>"Detailed Specification"</b>	means a document which sets out in sufficient detail the manner in which the relevant item of infrastructure/ subject of the document is to be laid out/constructed/ delivered and/or maintained;
<b>"Development"</b>	means the proposed residential development of 116 Dwellings (Class C3) including Affordable Housing with associated access, car parking, soft landscaping and play provision as set out in the Planning Application;
<b>"Discount Market Price"</b>	means a sum which is the Market Value discounted by at least 30%;
<b>"Disposal"</b>	means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home Dwelling other than:  (a) a letting or sub-letting in accordance with paragraph 3 of Part 2 of the First Schedule  (b) a transfer of the freehold interest in a First Home Dwelling or land on which a First Home Dwelling is to be provided before that First Home Dwelling is made available for occupation except where the transfer is to a First Homes Owner

(c) an Exempt Disposal

and "Disposed" and "Disposing" shall be construed accordingly;

**"District Council  
Monitoring Fee"**

the sum of £3,000 being the fee payable to the District Council for monitoring the implementation of the planning obligations in this Deed;

**"Dwelling"**

any dwelling (including a house flat or maisonette with associated garden garage driveway and parking spaces) constructed or proposed to be constructed on the Site as part of the Development or part of such building designed for residential Occupation pursuant to the Planning Permission and comprises:

- Affordable Housing Dwellings are those Dwellings provided and whose occupancy and ownership is restricted as set out in [the First Schedule 1](#);
- First Homes Dwellings are those Dwellings provided and whose occupancy and ownership is restricted as set out in [the Second Schedule 2](#);
- Open Market Dwellings are those Dwellings that are not Affordable Housing Dwellings or First Homes Dwellings;
- Custom-Build Plots;

**"Eligibility Criteria  
(Local)"**

means criteria (if any) published by the District Council at the date of the relevant disposal of a First Home Dwelling which are met in respect of a disposal of a First Home Dwelling if:

- (a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local) (if any); and
- (b) any or all of criteria (i) (ii) and (iii) below are met:
  - (i) the purchaser meets the Local Connection Criteria (or in the case of a

joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or

- (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or
- (iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker

**"Eligibility Criteria (National)"**

means criteria which are met in respect of a purchase of a First Home Dwelling if:

- (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and
- (b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National).

**"Exempt Disposal"**

means the transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home Dwelling in one of the following circumstances:

- (a) to a spouse or civil partner upon the death of the First Homes Owner;
- (b) to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner;
- (c) to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order; or



- (d) to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 4 of Part 2 of the First Schedule shall apply to such sale);

provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 3 of Part 2 of the First Schedule.

**"First Homes Chargee"**

means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home Dwelling.

**"First Home Dwelling"**

means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap and "First Home Dwellings" shall be construed accordingly.

**"First Homes Owner"**

means the person or persons having the freehold or leasehold interest (as applicable) in a First Home Dwelling other than:

- (a) the Owner; or
- (b) another person, persons or body or other entity to which the freehold interest or leasehold interest in a First Home Dwelling or in the land on which a First Home Dwelling is to be provided has been transferred before that First Home Dwelling is made available and is disposed of for occupation as a First Home Dwelling; or
- (c) the freehold a tenant or sub-tenant of a permitted letting under paragraph 3 of Part 2 of the First Schedule.

**"First Homes Provisions"**

means the person or persons having the freehold or leasehold interest (as applicable) in a First Home Dwelling other than:

- (a) the Owner; or
- (b) another person, persons or body or other entity to which the freehold interest or leasehold interest in a First Home Dwelling or in the land on which a First Home Dwelling is to be provided has been transferred before that First Home Dwelling is made available and is disposed of for occupation as a First Home Dwelling; or

the freehold a tenant or sub-tenant of a permitted letting under paragraph 3 of Part 2 of the First Schedule.

**"First Time Buyer"**

means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003

**"Final Certificate"**

means a certificate issued by the District Council confirming final completion of the laying out of the Open Space and Play Area in accordance with the relevant scheme or specification approved pursuant to this Deed and making good all of the defects and completion of the Maintenance Period to the District Council's satisfaction;

**"Footpath Link"**

the footpath link shown to the east of the Site as shown for indicative purposes only on the planning layout plan drawing number CB)36\_313\_001 Rev E

**"Highway Agreement"**

means an agreement under Section 278 and section 38 of the 1980 Act which provides for the execution of the Highway Works by the Owner at the Owner's expense;

**"Highway Works"**

means the following works:

- i. Raised tables on west of the Chichele Road/ Silkham Road junction and east of the new access road/Chichele Road junction and outside St Mary's C. of E. Primary School ~~including a zebra crossing.~~

- ii. a scheme to be delivered in accordance with drawing no. 1907029-02 Rev A to relocate the existing zebra crossing and alteration to the guard railing on Station Road East.

**"Income Cap Local"**

means eighty thousand pounds (£80,000) or such other local income cap as may be published from time to time by the District Council and is in force at the time of the relevant disposal of the First Home

**"Income Cap National"**

means eighty thousand pounds (£80,000) or such other local income cap as may be published from time to time by the District Council and is in force at the time of the relevant disposal of the First Home

**"Index"**

means the Retail Prices (All Items) Index as published by the Office for National Statistics or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the District Council may specify;

**"Index-Linked"**

means that the sum of money payable to the District Council under this Deed shall be varied by movements in the Index between the date of this Deed and the date of actual payment in accordance with the following formula:

Amount Payable = Relevant Amount x (A divided by B)

Where the Relevant Amount = the payment to be Index-Linked

A = the figure for the Index which applied when the Index was last published prior to the date the Relevant Amount is actually paid under this Deed

B = the figure for the Index which applied when the Index was last published prior to the date of this Deed

It should be noted that the Index presents forecast figures which are published quarterly. These forecast figures are updated and finalised periodically. If the

indexation figure has not been finalised at such time as A is calculated then the forecast figure will be used for the purposes of the calculation

**"Key Worker"**

means such categories of employment as may be designated and published by the District Council from time to time as the "First Homes Key Worker criteria" and is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Key Worker" criteria which shall apply to that disposal it being acknowledged that at the date of this Deed the District Council has not designated any categories of employment as Key Worker.

**"Local Connection"**

means a person has a Local Connection if such person complies with the local connection criteria provisions set out in the neighbourhood plan (as applicable) AND has a local connection (as defined in the Allocation Scheme) to the administrative area of the District Council.

**"Maintenance Period"**

a period of twelve (12) months following the issue by the District Council of a Practical Completion Certificate or such longer period as the District Council may determine if it is not satisfied that any defects identified in the Open Space have been rectified;

**"Management Company"**

a body established by the Owner to carry out the long-term management and maintenance of the Open Space to be managed by it in accordance with the provisions of this Deed and whose objectives shall include:

- (a) managing the maintenance of the Open Space (including the Play Area);
- (b) setting the level of charges for funding the running of the Management Company and collecting such charges;
- (c) ensuring that the level of any charges levied against any Affordable Housing Dwellings shall not materially affect the ability of those

Dwellings to remain Affordable Housing but this will not prevent charges being levied at all, nor a full charge being levied if those Dwellings cease to be Affordable Housing Dwellings; and

- (d) ensuring accountability to occupiers of the Dwellings and this includes any/all subsequent body/bodies that take on this responsibility.

**"Management Company Structure Scheme"**

a scheme that addresses the following in relation to the Management Company:

- (a) details of the proposed constitution of the Management Company which shall be a private company limited by shares or guarantee;
- (b) details of and arrangements for maintenance of such insurances as shall be appropriate in respect of the use of the Open Space (including the Play Area) managed by the Management Company in circumstances where the Management Company is in breach of its obligations under this Deed (including step in rights for the District Council (if it so elects) or its nominee, how that mechanism may be exercised and details of settlement and transfer of estate charges and payments to the District Council/its nominee);

**"Market Value"**

means the open market value as assessed by a Valuer of a Dwelling as confirmed to the District Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation.

**"Marketing Period"**

means the period of not less than 12 months from the date the Marketing Strategy was approved by the District Council;

**"Marketing Strategy"**

means the strategy to be followed for the purposes of marketing the Custom-Build Plots for Disposal to prospective purchasers, which shall include the proposed Marketing Period and which may include but is not limited to:

- (a) preparing detailed particulars of the Custom-Build Plots to be advertised locally and regionally;
- (b) placing adverts online and in local/regional newspapers;
- (c) terms and conditions for the Disposal of the Custom-Build Plots which shall be no more restrictive or onerous as the terms and conditions for the Open Market Dwellings;
- (d) details of the pricing mechanism and such information required to satisfy the District Council the proposed Disposal price is reasonable and achievable;
- (e) appointing appropriate local estate agents; and

including the Custom-Build Plots in marketing and advertising for the sale of the Open Market Dwellings;

**"Nominations Agreement"**

an agreement substantially in the form of the draft nominations agreement in Part 3 of the First Schedule by which the District Council may nominate tenants for the Affordable Housing Dwellings;

**"Occupation" and "Occupied"**

the occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and in the context of Dwellings shall mean the first such occupation and "Occupied" and "Occupy" shall be construed accordingly

<b>"Open Market Dwellings"</b>	shall mean any Dwellings which are not designated as Affordable Housing Dwellings and includes the Custom-Build Plots;
<b>"Open Space"</b>	means the communal areas of informal and formal open space to be provided within the Development as shown within the Site on the Open Space Plan as set out in the Planning Application;
<b>"Open Space Plan"</b>	means drawing entitled "Land Use Plan bearing reference: CB_36_313_002 Rev B annexed to this deed showing the location of the Open Space and the Play Area;
<b>"Open Space Management Plan"</b>	means the Detailed Specification for the establishment and future maintenance of the Open Space which shall include the formation of the Management Company with responsibility to perform such obligations;
<b>"Parking Strategy Plan"</b>	means the plan attached at bearing reference CB_365_313_006 Rev E showing the location of the Car Club Spaces;
<b>"Plan"</b>	the plan entitled "Site Location Plan" attached to this Deed bearing reference CB 36 313 000 Rev A;
<b>"Planning Application"</b>	the detailed planning application for planning permission made under reference TA/2023/1345 for the Development;
<b>"Planning Inspector"</b>	an inspector appointed by the Secretary of State to determine the Appeal;
<b>"Planning Permission"</b>	means the planning permission for the Development granted by the Secretary of State or his Planning Inspector on appeal pursuant to the Appeal and shall include any planning permission granted or obtained in respect of the Planning Permission pursuant to an application relating to the Planning Permission under section 73 of the Act unless the District Council advises the Owner that the District Council requires fresh

planning obligations to be entered into in relation to such planning permission;

**"Play Area"** means the area of play to be provided in the location shown within the Site on the Open Space Plan;

**"Practical Completion"** means constructed to a level of practical completion and certified as such by the relevant project professional under the construction contract;

**"Price Cap "** means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed [Two Hundred and Fifty Thousand Pounds (£250,000) or Four Hundred and Twenty Thousand Pounds (£420,000) if the First Home is situated within the administrative area of any London Borough Council including the City of London or such other amount as may be published from time to time by the Secretary of State;

**"Protected Occupier"** means in respect of an Affordable Housing Dwelling a person who:

- i. has exercised the right to acquire pursuant to section 180 of the Housing and Regeneration Act 2008 and governed by the Housing Act 1985 and modified by the Housing (Right to Acquire) Regulations 1997 or any equivalent statutory provision for the time being in force
- ii. has exercised any statutory right to buy or statutory preserved right to buy pursuant to the Housing Act 1985 or any equivalent statutory provision for the time being in force
- iii. has been granted a lease of a unit of Shared Ownership Housing by a Registered Provider and has subsequently purchased from the Registered Provider 100% of the equity from the and owns the entire unit of Shared Ownership Housing;

**"Registered Provider" or "RP"** shall mean either:



	<p>(1) a registered provider within the meaning of the Housing &amp; Regeneration Act 2008 or any statutory modifications made thereto; or</p> <p>(2) the District Council;</p>
<b>"SDLT"</b>	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect;
<b>"Secretary of State"</b>	means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function;
<b>"Service Installations"</b>	means all sewers drains pipes wires cables channels watercourses ducts flues conduits optic fibres pumping stations holding tanks drainage systems and all other conducting media and associated equipment;
<b>"Shared Ownership Housing"</b>	shall mean housing provided by a Registered Provider where the occupier will initially be offered an equity share in the property of up to 75% (with an option of staircasing up to 100% should the occupier so wish);
<b>"Site"</b>	the land known as Land to the rear of 22 to 32 Chichele Road, Oxted, RH8 0NZ and shown for identification purposes only edged red on the Plan annexed to this Deed;
<b>"Standards"</b>	means built in accordance with the standards requirements and latest guidance issued by Homes England and/ or the Regulator of Social Housing and to meet the national space standards;
<b><u>"Traffic Calming Contribution"</u></b>	<u>means the sum of £95,000 Index linked towards traffic calming, measures on Chichele Road, Silkham Road, Central Way, Eastlands Way, Chalkpit Wood, Barnett's Shaw, Memorial Close, Oakshaw, Woodland Court, Field Court, Downs Way and Greenacres and including a zebra crossing adjacent to St Mary's Primary School;</u>
<b>"Transfer"</b>	means transfer of the ownership of any part of the Site and includes appropriation where at the time of any intended transfer to the Management Company;

<b>"Travel Plan"</b>	means the travel plan to be submitted to the County Council pursuant to the conditions attached to the Planning Permission and to the County Council for approval in accordance with the sustainable development aims and objectives of the National Planning Policy Framework, Surrey County Council's "Travel Plans Good Practice Guide";
<b>"Travel Plan Auditing Fee "</b>	means the sum of £6,150 Index linked to be paid by the Owner to the County Council to be used towards the auditing of and monitoring compliance with the Travel Plan;
<b>"TRO"</b>	means a Traffic Regulation Order;
<b>"Valuer"</b>	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity
<b>"Working Days"</b>	means Mondays through Fridays but shall not include Saturdays, Sundays or Bank Holidays.

## 8. CONSTRUCTION OF THIS DEED

- 8.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 8.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 8.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 8.4 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of the restriction.

8.5 Where more than one person is obliged to observe or perform an obligation the obligation can be enforced against all such persons jointly and against each individually unless there is an express provision otherwise.

8.6 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

8.7 References to any party to this Deed shall include the successors in title to that party and to anyone deriving title through or under that party and in the case of the District Council the successor to its statutory functions.

8.8 The clause headings shall not be taken into account for the purposes of the construction or interpretation of this Deed.

## 9. LEGAL BASIS

9.1 This Deed is made pursuant to all powers enabling the parties and in particular Section 106 of the Act Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 1 Localism Act 2011 and creates planning obligations for the purposes of Section 106 of the Act and to the intent that it shall bind the Owner and its successors in title and assigns and the persons claiming under or through it.

9.2 The obligations imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council as local planning authority against the Owner and its successors in title and assigns and the persons claiming under or through it.

## 10. CONDITIONALITY

10.1 This Deed is conditional upon the grant of the Planning Permission and the Commencement of Development SAVE that clauses 11.3 and 11.4 which shall take effect from the date of this Deed.

## 11. THE OWNER'S COVENANTS

11.1 The Owner covenants with the District Council as set out in the First Schedule, [the Second Schedule](#)~~the Third Schedule~~, the Fourth Schedule, the Fifth Schedule, [the Sixth Schedule](#) and the ~~Sixth-Seventh~~ Schedule.

11.2 The Owner covenants with the County Council as set out in the ~~Second-Third~~ Schedule and the ~~EighthSeventh~~ Schedule.

11.3 The Developer covenants to pay to the District Council on completion of this Deed the reasonable legal costs of the District Council incurred in the negotiation, preparation and execution of this Deed.

- 11.4 The Developer covenants to pay to the County Council on completion of this Deed the reasonable legal costs of the County Council incurred in the negotiation, preparation and execution of this Deed.
- 11.5 The Owner covenants to pay the District Council Monitoring Fee to the District Council on Commencement of Development.
- 11.6 The Owner covenants with the District Council that it will give not less than seven (7) days prior notice in writing to the District Council of:
- 11.6.1 the date of Commencement of Development
  - 11.6.2 the date of first Occupation of the Dwellings
  - 11.6.3 the date of Occupation of 50% of the Dwellings
  - 11.6.4 the date of Occupation of 75% of the Dwellings

12. THE DISTRICT COUNCIL'S AND COUNTY COUNCIL'S COVENANTS

12.1 The District Council ~~County Council~~ covenants with the Owner as set out in the ~~Eighth~~ Ninth Schedule.

12.2 The County Council covenants with the Owner as set out in the Ninth Schedule.

13. MISCELLANEOUS

- 13.1 It is hereby agreed and declared that a person who is not a party to this Deed shall not be entitled in his own right to enforce any of the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 13.2 This Deed shall be enforceable as a local land charge and shall be registered as such by the District Council.
- 13.3 Where the agreement, approval, consent or expression of satisfaction is to be given by any party or any person on behalf of any party hereto under this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction may only be given in writing and may be validly obtained only prior to the act or event to which it applies and the party giving such agreement, approval, consent or expression of satisfaction shall at all times act reasonably.
- 13.4 Where any payment of costs or other payments are to be made by the Owner to the District Council such costs and other payments shall be deemed to be reasonable and proper.
- 13.5 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 13.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

- 13.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 13.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 13.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 13.10 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the County Council in the exercise of its functions in any capacity in particular its capacities as highway authority or the District Council as local planning authority and the rights, powers, duties and obligations of the District Council under private, public or subordinate legislation may be effectively exercised as if it were not a party to this Deed.
- 13.11 The obligations contained in this Deed shall not be binding upon nor enforceable against:
- 13.11.1 any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services;
  - 13.11.2 an individual owners, occupier or tenant or mortgagee of an Open Market Dwelling;
  - 13.11.3 an individual owner, occupier or tenant or mortgagee of an Affordable Housing Dwelling in their capacity as such EXCEPT for the obligations regulating the use of the Affordable Housing Dwellings as contained in First Schedule and the obligations in the First Schedule of this Deed which shall remain binding SAVE THAT the said obligations regulating the use of the Affordable Housing Dwellings shall not be binding on Protected Occupier(s) or their mortgagees and their successors in title or any successor in title to such Protected Occupier(s) or their mortgagees and their successors in title.

14. **WAIVER**

- 14.1 No waiver (whether expressed or implied) by the District Council of any breach or default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

15. **CHANGE IN OWNERSHIP**

- 15.1 The Owner agrees with the District Council to give the District Council immediate written notice of any change in ownership of any of its interests in the Site (save for sales of individual plots) occurring before all the obligations under this Deed have been discharged such notice to give

details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan save that this clause 15.1 shall not apply to the disposal of any Dwellings to individual owner/occupiers.

16. **INTEREST**

16.1 Any payment which is due to the District Council under the terms of this Deed that is paid after the date the payment is due shall attract interest at the rate of 4% above the National Westminster Bank PLC base rate from time to time being charged from the date payment was due to the date payment is received by the District Council.

17. **VAT**

17.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

18. **JURISDICTION**

18.1 This Deed is governed by and interpreted in accordance with the law of England and Wales.

19. **DELIVERY**

19.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

20. **THE DEVELOPER'S CONSENT**

The Developer hereby consents to the completion of this Deed and declares that from the date of this Deed its interest in the Site shall be bound by the terms of this Deed.

21. **APPEAL: MATERIALITY**

21.1 If the Secretary of State or his Planning Inspector for the purposes of the determination of the Appeal shall in his decision letter for the Appeal clearly and expressly indicate that one or more of the planning obligations secured by this Deed are incompatible with any one or more of the criteria for planning obligations set out at Regulation 122(2) of the CIL Regulations, and/or that any such obligation is not a material planning consideration in respect of the determination of the Appeal and/or that he attaches no weight to the relevant obligation(s) for the purposes of his determination then the relevant obligation so expressly specified in the decision letter shall, from the date of the decision letter cease to have effect and the Owner shall be under no obligation to comply with it (but this shall not affect the validity or enforceability of the other obligations under this Deed) and for the avoidance of doubt where the Secretary of State or his Planning Inspector is silent upon any obligations then the obligations shall apply and be enforceable by the District Council in accordance with the terms of this Deed.

**FIRST SCHEDULE**  
**Owner's Covenants**  
**AFFORDABLE HOUSING**

The Owner covenants with the District Council as follows:

**PART** **1**

**Provision of Affordable Housing**

1. That 450% of the Dwellings on the Site shall be provided as Affordable Housing in the location shown on the Affordable Housing Plan in the following number and tenure mix:

House type	First Homes	Shared Ownership	Affordable Rent	Total affordable units
1bed flat	12	0	6	18
2 bed flat	0	0	12	12
2bh	0	5	213	218
3bh	0	4	56	60

2. Not to Commence construction of any Affordable Housing Dwellings until it has submitted to the District Council the name of the chosen Registered Provider.

3. Not to permit more than 65% of the Open Market Dwellings to be used or Occupied unless and until all of the Affordable Housing has been completed and either the freehold ownership or a minimum 125 year lease has been transferred/granted to a Registered Provider or to an Registered Provider on the terms set out in Part 2 of this Schedule or as otherwise agreed in writing by the District Council.

**PART** **2**

**Terms of Offer**

1. The Affordable Housing Dwellings shall be transferred:
  - 1.1 with vacant possession;
  - 1.2 subject to any easements wayleaves and rights over on and under and any other matters to which the Owner's title is subject in relation to the Affordable Housing Dwellings as may exist at the date of the offer;
  - 1.3 free from any charge or other encumbrances which would prevent the same from being used for the development and the subsequent use of them as Affordable Housing;
  - 1.4 with full title guarantee;
  - 1.5 cleared of debris and building materials; and
  - 1.6 with all necessary rights of access and services.

**Occupation of the Affordable Housing Dwellings**

2. Subject to clause 8.12 (iii) above and paragraph 3 below, the Affordable Housing Dwellings shall not be used for any purpose other than as Affordable Housing and shall not be Occupied

until the Registered Provider has executed the Nominations Agreement and delivered the same to the District Council.

**Affordable Housing Mortgagee Sale Provision**

- 3. The Affordable Housing provisions in this Deed shall not be binding on a Mortgagee or chargee of a Registered Provider (or any receiver including an administrative receiver or administrator appointed by such Mortgagee or chargee or any other person appointed under any security documentation to enable such Mortgagee or chargee to realise its security (each a Receiver)) of the whole or any part of the Affordable Housing Dwellings or any persons or bodies deriving title through such Mortgagee or chargee or Receiver PROVIDED THAT:
  - 3.1 Such Mortgagee or chargee or Receiver shall first give written notice to the District Council of its intention to dispose of the Affordable Housing Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Dwellings to another Registered Provider for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and reasonable costs and reasonable expenses; and
  - 3.2 If such disposal has not completed within the three month period, the Mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Dwellings free from the Affordable Housing provisions in this Deed which provisions shall determine absolute.

**PART 3**

**Form of Nomination Agreement**

**DATED**

**2023**

**[ ] (1)**

**and**

**THE DISTRICT COUNCIL OF TANDRIDGE (2)**

**NOMINATION AGREEMENT**

Relating to land known as



**THIS NOMINATION AGREEMENT** is made the                      day of  
2024

## **BETWEEN**

- (1) [                      ] [a registered Co-Operative and Community Benefit Society (Community Benefit Society Number [     ]) under the Co-Operative and Community Benefit Societies Act 2014] [(Industrial and Provident Society Number [     ]) whose registered office is at [                      ] ("**the Registered Provider**")
- (2) **THE DISTRICT COUNCIL OF TANDRIDGE** (also known as Tandridge District Council) of Council Offices, Station Road East, Oxted, Surrey RH8 0BT ("**the District Council**")

## **1. BACKGROUND**

- 1.1 Words and expressions used in this Agreement are defined in clause 2.
- 1.2 The Registered Provider shall by virtue of an Agreement for Sale acquire the Property and pursuant to the provisions of the Section 106 Agreement & Grant Agreement the Registered Provider has agreed to grant to the District Council the nomination rights hereinafter contained in respect of the Affordable Housing Units.

## **AGREED TERMS**

### **2. INTERPRETATIONS**

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

**Affordable Housing** means housing to include Social Rented Units and Affordable Rented Units and Shared Ownership Units provided to specified eligible households whose needs are not met by the market. Affordable housing shall:

- 2.1.1 meet the needs of eligible households who the Local Planning Authority could reasonably expect to occupy this Development having regard to its Housing Allocation Scheme including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices; and
- 2.1.2 include provision for the homes to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision within the District subject to any such recycling of the subsidy being in accordance with the requirements of Homes England;

**Affordable Housing Units** means the                      units of residential accommodation as detailed in Schedule 1 which are to be constructed on the Property pursuant to the Planning Permission and which are to be occupied as Affordable Housing by a Nominee or Other Eligible Person in accordance with this Agreement and "Affordable Housing Unit" is any part of the Affordable Housing Units capable of separate occupation;

**Affordable Rent** means rented housing let to households who are eligible for social rented housing and shall be subject to rent controls that require a rent of no more than 80% of the

local market rent (including service charges where applicable and where local market rents are calculated using the Royal Institution of Chartered Surveyors approved valuation methods) AND in any event and in all cases the rent levels shall not at any time (unless otherwise agreed in writing by the Responsible Officer) exceed the maximum amount of Local Housing Allowance applicable for the size of the relevant Affordable Housing Unit and "Affordable Rented" shall be construed accordingly;

**Agreement for Sale** means the agreement dated [ ] made between (1) [ ] and (2) the Registered Provider;

**Allocation Scheme** means the scheme adopted by the District Council from time to time for determining priorities and the procedure to be followed in allocating housing accommodation in accordance with Part VI of the Housing Act 1996 as amended;

**Capital Funding Guide** means the rules and procedures published by Homes England on 4th November 2016 (as amended) or any successor documents issued by Homes England;

**Chargee** means a mortgagee or chargee of the Registered Provider (or any receiver including an administrative receiver) appointed by such mortgagee or chargee pursuant to either the Law of Property Act 1925 or appointed under security documentation or any other person appointed under any security documentation to enable such mortgagee or chargee of the Registered Provider to realise its security or any administrator (howsoever appointed) including a housing administrator appointed pursuant to Chapter 5 of Part 4 of the Housing and Planning Act 2016;

**Choice Based Letting Scheme** means a process through which the District Council may allocate the Affordable Housing Units in accordance with its adopted Allocation Scheme and which incorporates an advertising scheme under the Communities and Local Government Code of Guidance for Local Housing Authorities Allocation of accommodation: Choice Based Lettings or as set out in any subsequent guidance or legislation in relation to the allocation of accommodation which the District Council must or chooses to adopt;

**Data Controller** has the meaning as set out in the Data Protection Legislation;

**Data Protection Legislation** has the meaning set out in [clause 23.1];

**Data Subject** has the meaning as set out in the Data Protection Legislation;

**Decant** means moving a tenant out of his/her accommodation on a temporary basis whilst works are undertaken requiring the property to be vacated

**Help to Buy Agents** means the organisation appointed by Homes England to administer low cost home ownership products in the south of England or any agent from time to time appointed by Homes England;

**Help to Buy: Shared Ownership** means the government scheme for low cost home ownership products administered by the Help to Buy Agents and "Help to Buy" shall be construed accordingly;

**Homes England** means the body that funds and regulates Registered Providers and such expression shall include successors to the functions and powers of Homes England;

**Initial Let** means the first letting of each newly constructed and previously unoccupied Rented Unit;

**Initial Sale** means the first sale of a newly constructed and previously unoccupied Shared Ownership Unit

**Lease** means a shared ownership lease drawn in accordance with the guidelines and requirements of Homes England and substantially in the form of the Model Lease;

**Local Housing Allowance** means the flat rate rental allowance providing financial assistance towards the housing costs of low income households for different rental market areas and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department of Works and Pensions or such similar framework that may replace it; means the flat rate rental allowance providing financial assistance towards the housing costs of low income households for different rental market areas and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department of Works and Pensions or such similar framework that may replace it;

**Management Transfer** means a transfer of an existing tenant by the Registered Provider previously agreed by the District Council in writing in circumstances where the District Council is satisfied that the tenant needs or is required to move to a different area due to exceptional circumstances requiring immediate or urgent resolution;

**Market Value** means the value of the leasehold interest of a Shared Ownership Unit with vacant possession on the open market between a willing seller and a willing buyer as assessed by a qualified independent valuer and registered with the Royal Institution of Chartered Surveyors and calculated in accordance with the Capital Funding Guide;

**Model Lease** means the appropriate form of model lease for a shared ownership flat or house published by Homes England (as may be amended from time to time);

**Nominee** means a person who is selected by the District Council and whose name is taken from the Tandridge Housing Register originally established under section 162 of the Housing Act 1996 or such other procedure as may be implemented by the District Council including any Choice Based Letting Scheme and in compliance with the Local Criteria applicable to the Affordable Housing Units;

**Nomination Notice** means notice given by the District Council to the Registered Provider nominating a Nominee to a relevant Affordable Housing Unit;

**Nomination Request** means a written notice to the District Council requesting the District Council to nominate a Nominee for an Affordable Housing Unit (or part thereof)

**Other Eligible Person** means a person selected by a Registered Provider in accordance with this Nomination Agreement and who is in need of Affordable Housing and in the case of Shared Ownership who shall meet the criteria for Help to Buy (those eligible to be on the home ownership register held by the Help to Buy agent);

**Personal Data** has the meaning as set out in the Data Protection Legislation;

**Plan** means the plan annexed at Schedule 2;

**Planning Permission** means the planning permission granted by the District Council dated [ ] under reference [ ];

**Processing** has the meaning as set out in the Data Protection Legislation and "Process" and "Processed" shall be construed accordingly;

**Property** means the [freehold] **OR** [leasehold] land known as land at Surrey being registered at the Land Registry under title number(s) [ ] and shown for the purposes of identification only edged [ ] on the Plan **OR** means the land known as [ ] and shown for the more particularly delineated and edged [ ] on the Plan;

**Protected Occupier** means a person who is Occupying an Affordable Housing Unit and who:

- has exercised the right to acquire pursuant to Section 180 of the Housing and a person who is Occupying an Affordable Housing Unit and who:
- has exercised the right to acquire pursuant to Section 180 of the Housing and Regeneration Act 2008 or any equivalent statutory provision for the time being in force in respect of a particular Affordable Housing Unit; or
- has exercised any statutory right to buy or preserved right to buy pursuant to the Housing Act 1985 or any equivalent statutory provision for the time being in force in respect of a particular Affordable Housing Unit; or
- has been granted a lease of a Shared Ownership Unit by a Registered Provider and has subsequently purchased from the Registered Provider 100% of the equity from the Registered Provider and owns the entire Shared Ownership Unit

**Rented Units** means any Affordable Housing Units which are to be let at Affordable Rent as identified in the Schedule 1 [and coloured in [ ] on the Plan] which are to be provided by the Registered Provider and occupied by a Nominee or Other Eligible Person in accordance with the provisions of this Agreement pursuant to a Tenancy and "Rented Unit" is any of the Rented Units;

**Re-Sales** means any existing Shared Ownership Unit in respect of which the Registered Provider:-

- 2.1.3 has received from the existing leaseholder thereof notice of a proposed onward sale or assignment in accordance with the alienation provisions (or equivalent) contained within the Lease of the same; or
- 2.1.4 is entitled to dispose via the grant of a fresh Lease (whether as a result of a surrender or forfeiture of the previous Lease or otherwise)
- and "Re-Sale Shared Ownership Unit" shall be construed accordingly];

**Responsible Officer** means the Strategic Director of People or such person as the District Council may nominate in her place from time to time.

**Section 106 Agreement** means the agreement made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) dated [ ] and made between (1) the District Council (in its capacity as Local Planning Authority) and [ ] (2) relating to the development of the Property pursuant to the Planning Permission or any modification or variation thereof.

**Shared Ownership Unit** means an Affordable Housing Unit which is occupied under a form of Model Lease granted by the Registered Provider where the occupier purchases an initial share of the equity and Shared Ownership shall be construed accordingly;

**Social Rent** means rented housing for which guideline target rents are determined through the national rent regime or provided under equivalent rental arrangements as agreed in writing with the District Council or with Homes England and in all cases the rent levels shall not exceed the maximum amount of Local Housing Allowance applicable for the size of the relevant Affordable Housing Unit and "Social Rented" shall be construed accordingly;

**Tenancy** means an assured or assured shorthold tenancy drawn in accordance with the guidelines and requirements of Homes England or such other form of tenancy as may be authorised by Homes England from time to time for use by the Registered Provider or a secure tenancy under the Housing Act 1985 and "Tenancies" shall be construed accordingly;

**Void Rented Unit** means an existing Rented Unit which is vacant as a result of its previous tenant or occupier vacating and "Void" shall be construed accordingly;

**Working Day** means any day (other than a Saturday, Sunday, or any statutory bank holiday) on which Clearing Banks (being a bank which is a member of the CHAPS Clearing Company Limited and APACS Limited) are open in England for the transaction of banking business;

- 2.2 For the purposes of this Agreement words importing gender include any other gender and words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 For the purposes of this Agreement a reference to legislation (including subordinate legislation) is to that legislation as extended, amended, modified, consolidated or re-enacted from time to time and includes any instrument, order, regulation, permission, consent, licence, notice, direction, bye-law, statutory guidance or code practice made or granted under such legislation whether made before or after the date of this Agreement .

2.4 In the event of any inconsistency between this Agreement and the Section 106 Agreement, the Section 106 Agreement shall prevail.

### 3. **NOMINATION RIGHTS**

3.1 In consideration of the District Council discharging its responsibility for identifying, allocating and bringing forward sufficient housing land to meet the strategic housing requirements as they relate to its district and for facilitating the provision of Affordable Housing the Registered Provider hereby agrees for the benefit of the District Council as set out in this Agreement.

3.2 The Registered Provider covenants not to cause, permit or suffer the disposal or occupation of any Affordable Housing Unit at any time otherwise than strictly in accordance with the procedures set out in this Agreement.

### 4. **RENTED UNITS**

4.1 From the date hereof, the Registered Provider grants the District Council the right to nominate to 100% of the Initial Lets of the Rented Units and 75% of the subsequent lets upon the terms contained in this clause.

#### **Initial Let Rented Units**

4.2 In the case of all Initial Let Rented Units:-

4.2.1 The Registered Provider shall give the District Council not less than Three (3) months' prior written notice of the date when it reasonably believes an Initial Let Rented Unit will be ready for occupation.

4.2.2 The Registered Provider shall serve on the District Council a Nomination Request not less than two (2) months prior to such Initial Let Rented Unit becoming available for occupation. A Nomination Request shall be deemed to have been served if a Rented Unit is advertised as available to let through the Choice Based Letting Scheme. The nomination request shall contain details of the postal address, rent, property size and any required information relevant to the letting of the Affordable dwelling in question on the District Council's choice based letting system.

4.2.3 Within twenty-five (25) Working Days of receipt of the Nomination Request (or within twenty-five (25) Working Days of the relevant bidding cycle closing if the Choice Based Letting Scheme is applicable the District Council or its agents shall be entitled to give a Nomination Notice.

4.2.4 Upon receipt of the Nomination Notice the Registered Provider will (subject to clause 6) offer the Nominee identified in the Nomination Notice a Tenancy of the Initial Let Rented Unit.

4.2.5 If the District Council or its agents fail to serve a Nomination Notice within twenty-five (25) Working Days of receipt of the Nomination Request (or within twenty-five (25) Working Days of the relevant bidding cycle closing if the Choice Based Letting Scheme is applicable) the Registered Provider may make its own allocation in respect of the relevant Rented Unit to an Other Eligible Person.

4.2.6 If a Nominee named in a Nomination Notice served pursuant to clause 4.2.3 to whom the Registered Provider offers a Tenancy pursuant to clause 4.2.4 either:-

- (a) does not accept that offer within five (5) Working Days of the offer being made; or
- (b) thereafter fails to enter into a Tenancy within a reasonable time of the offer being accepted

then the Registered Provider must give the District Council a further Nomination Request and the District Council or its agents will then be entitled to serve a further Nomination Notice within fifteen (15) Working Days of the date of receipt of that further Nomination Request and the procedure set out in clauses 4.2.4 to 4.2.6 (inclusive) shall be repeated (and for the avoidance of doubt the procedure shall be repeated for a period of three (3) cycles after which time the Registered Provider may make its own allocation in respect of the relevant Rented Unit to an Other Eligible Person

### **Void Rented Units**

4.3 In the case of all Rented Units which have become Void after the Initial Let:

4.3.1 The Registered Provider shall give the District Council not less than fifteen (15) Working Days prior written notice of the date when it reasonably believes a Void Rented Unit will be ready for occupation.

4.3.2 The Registered Provider shall serve on the District Council a Nomination Request not less than five (5) Working Days prior to such Void Rented Unit becoming available for occupation. A Nomination Request shall be deemed to have been served if a Rented Unit is advertised as available to let through the Choice Based Letting Scheme.

4.3.3 Within twenty (20) Working Days of receipt of the Nomination Request (or within twenty (20) Working Days of the relevant bidding cycle closing if the Choice Based Letting Scheme is applicable) the District Council or its agents shall be entitled to give a Nomination Notice.

4.3.4 Upon receipt of the Nomination Notice the Registered Provider will offer the Nominee identified in the Nomination Notice a Tenancy of the Void Rented Unit.

4.3.5 If the District Council or its agents fail to serve a Nomination Notice within twenty (20) Working Days of receipt of the Nomination Request (or within twenty (20) Working Days of the relevant bidding cycle closing if the Choice Based Letting Scheme is applicable) the Registered Provider may make its own allocation in respect of the relevant Rented Unit to an Other Eligible Person.

4.3.6 If a Nominee named in a Nomination Notice served pursuant to clause 4.3.3 to whom the Registered Provider offers a Tenancy pursuant to clause 4.3.4 either:-

- (a) does not accept that offer within five (5) Working Days of the offer being made; or
- (b) thereafter fails to enter into a Tenancy within a reasonable time of the offer being accepted

then the Registered Provider must give the District Council a further Nomination Request and the District Council or its agents will then be entitled to serve a further Nomination Notice within fifteen (15) Working Days of the date of receipt of that further Nomination Request and the procedure set out in clauses 4.3.4 to 4.3.6 (inclusive) shall be repeated for a period of three (3) cycles after which time the Registered Provider may make its own allocation in respect of the relevant Rented Unit to an Other Eligible Person

## **5. SHARED OWNERSHIP UNITS**

5.1 From the date hereof the Registered Provider grants the District Council the right to nominate to 100% of the Initial Sales of the Shared Ownership Units and 75% of the subsequent sales upon the terms contained in this clause.



## **Initial Sale Shared Ownership Units**

5.2 In the case of all Initial Sale Shared Ownership Units:-

- 5.2.1 The Registered Provider shall give the District Council not less than four (4) months' prior written notice of the date when it reasonably believes an Initial Sale Shared Ownership Units will be ready for occupation.
- 5.2.2 The Registered Provider shall serve on the District Council a Nomination Request not less than two (2) months prior to such Initial Sale Shared Ownership Units becoming available for occupation.
- 5.2.3 Within ten (10) Working Days of receipt of the Nomination Request the District Council or its agents shall be entitled to give a Nomination Notice.
- 5.2.4 Upon receipt of the Nomination Notice the Registered Provider will offer the Nominee identified in the Nomination Notice a Lease of the Initial Sale Shared Ownership Units.
- 5.2.5 If the District Council or its agents fail to serve a Nomination Notice within ten (10) Working Days of receipt of the Nomination Request the Registered Provider may make its own allocation in respect of the relevant Shared Ownership Units to an Other Eligible Person.
- 5.2.6 If a Nominee named in a Nomination Notice served pursuant to [clause 5.2.3] to whom the Registered Provider offers a Lease pursuant to [clause 5.2.4] either:-
- (a) does not accept that offer within ten (10) Working Days of the offer being made; or
  - (b) thereafter fails to enter into a contract for the grant of a Lease within a reasonable time (but not less than eight (8) weeks following the offer being accepted)

then the Registered Provider must give the District Council a further Nomination Request and the District Council or its agents will then be entitled to serve a further Nomination Notice within 10 (ten) Working Days of the date of receipt of that further Nomination Request and the procedure set out in [clauses 5.2.4 to 5.2.6] (inclusive) shall be repeated (and for the avoidance of doubt the procedure shall be repeated until such time as the District Council is unable to provide a Nominee).

## **Re-Sale Shared Ownership Units**

5.3 In the case of all Re-Sale Shared Ownership Units:

- 5.3.1 On receipt of a notice from the existing leaseholder enquiring whether the Registered Provider has any nomination to offer pursuant to the terms of the Lease ("a Leaseholder Notice") or a Re-Sale Shared Ownership Unit becoming available for purchase, the Registered Provider must:
- (a) within five (5) Working Days register the Shared Ownership Unit with the Help to Buy Agents for advertisement and shall simultaneously notify the District Council that this has been done; and
  - (b) serve on the District Council a Nomination Request not more than ten (10) Working Days after advertisement pursuant to [clause 5.3.1(a)]
- 5.3.2 Within five (5) Working Days of receipt of the Nomination Request the District Council or its agents shall be entitled to give a Nomination Notice



- 5.3.3 Upon receipt of the Nomination Notice the Registered Provider will (subject to clause 8) offer (or procure a reasonable offer is made to) the Nominee identified in the Nomination Notice a Lease of the Re-Sale Shared Ownership Unit
- 5.3.4 If the District Council or its agents fail to serve a Nomination Notice within five (5) Working Days of receipt of the Nomination Request, the Registered Provider may make its own allocation in respect of the relevant Shared Ownership Unit to an Other Eligible Person
- 5.3.5 If a Nominee named in a Nomination Notice served pursuant to [clause 5.3.2] to whom the Registered Provider offers a Lease pursuant to [clause 5.3.3] either:-
- (a) does not accept that offer within ten (10) Working Days of the offer being made; or
  - (b) thereafter fails to enter into a contract for the grant or assignment of a Lease within a reasonable time (but not less than eight (8) weeks following the offer being accepted)
- then the Registered Provider (to the extent it is entitled to do so under the Lease) must give the District Council a further Nomination Request and the District Council or its agents will then be entitled to serve a further Nomination Notice within three (3) Working Days of the date of receipt of that further Nomination Request and the procedure set out in [clauses 5.3.3 to 5.3.5] (inclusive) shall be repeated until the eight (8) week period has been exhausted.]

## 6. **RELEASE OF NOMINATION RIGHTS ON RENTED UNITS**

- 6.1 The District Council may consent to a release of its nomination rights under clause 4 (such consent not to be unreasonably withheld or delayed) in relation to a specific Tenancy of a Rented Unit for:
- 6.1.1 a temporary Decant of a Rented Unit after which the tenant occupier will be returning to that Rented Unit;
  - 6.1.2 a Management Transfer
- 6.2 The District Council may consent to a release of its nomination rights under clause 4 (such consent not to be unreasonably withheld or delayed) in relation to a specific Tenancy of a Rented Unit in the following circumstances:
- 6.2.1 a mutual exchange; or
  - 6.2.2 a transfer of a Tenancy to a qualified successor being a person entitled to succeed to the Tenancy by reason of statute or the specific terms of the Tenancy
- PROVIDED ALWAYS that any such release under clause 6.1 and 6.2 will not affect the District Council's future nomination rights under clause 4.

## 7. **REJECTION OF NOMINEES**

- 7.1 The Registered Provider may reject a Nomination Notice given by the District Council in respect of an Affordable Housing Unit pursuant to clause 4 on the following (and no other) grounds:-
- 7.1.1 the Affordable Housing Unit does not meet the household's need in terms of size or accessibility;
  - 7.1.2 the Registered Provider considers that the Nominee is not a qualifying person as defined by the Allocation Scheme;
  - 7.1.3 the Registered Provider can demonstrate to the satisfaction of the District that the property is unaffordable for the nominated household and that all reasonable steps have been taken to verify its affordability for the nominated household ;

- 7.2 The Registered Provider may in exceptional circumstances reject a Nominee where the Registered Provider (acting reasonably) considers that the Nominee fails the criteria set out in its own internal policies and procedures for letting Rented Units and shall provide the reasons for refusal in writing to the District Council

PROVIDED THAT where such a rejection is made pursuant to clause [7.1 or 7.2] the District Council shall be entitled to serve another Nomination Notice in respect of the Affordable Housing Unit in accordance with clause 4 by way of replacement

## 8. CHOICE BASED LETTING SCHEME AND LOCAL CRITERIA

In the case of Rented Units the Registered Provider will comply fully at all times with the Choice Based Letting Scheme (where applicable).

## 9. ALLOCATION SCHEME

The Allocation Scheme shall apply to all nominations made by the District Council pursuant to this Agreement and shall take precedence over any other letting or allocation scheme, marketing strategy or other procedure or policy adopted by the Registered Provider.

## 10. TENANCY TERMS AND LETTINGS POLICY

- 10.1 In respect of all Tenancies of Rented Units offered or granted to Nominees and Other Eligible Persons pursuant to clause 4 the Registered Provider shall

- 10.1.1 ensure its tenure term and terms are reasonably appropriate to the relevant Nominee or Other Eligible Person; and
- 10.1.2 have reasonable regard to and reasonably reflect the District Council's Tenancy Strategy

- 10.2 The Registered Provider shall upon the date of this Agreement provide the District Council with copies of its current:

- 10.2.1 tenancy policy;
- 10.2.2 lettings/allocations policy; and
- 10.2.3 associated policies and documents adopted or followed by the Registered Provider

and provide to the District Council any revisions of the above from time to time promptly following their issue or adoption.

## 11. SUPPLY OF INFORMATION AND MONITORING MEETINGS

- 11.1 The Registered Provider shall promptly provide to the District Council upon reasonable request at any time any information in relation to the Affordable Housing Units relating to: -

- 11.1.1 waiting lists, allocation criteria, vacancies, allocations and (where applicable) rent levels and any policy relating to rent in advance payments;
- 11.1.2 Upon reasonable written notice from the District Council the Registered Provider shall attend monitoring meetings to consider and discuss its compliance with the provisions of this Agreement and in particular the Registered Provider shall ensure that:

proposed or actual sales pursuant to any statutory or contractual right to buy (whether under Part 1 of the Housing Act 1996 or otherwise); and

- 11.1.3 such other that the District Council may reasonably require in order to enable it to ensure that the Registered Provider is at all times complying with the provisions of this Agreement
- 11.1.4 any information requested by the District Council pursuant to [clause 11.1] shall be provided to it not less than five (5) Working Days prior to any such meeting; and
- 11.1.5 staff and agents with reasonable seniority and experience of the subject matter of this Agreement shall attend any such meeting

PROVIDED THAT the District Council shall not call such meetings more than once annually, unless the District Council has reasonable grounds to believe that the Registered Provider is in material breach of any of its any obligations under this Agreement (in which event the District Council will set out these grounds in its written notice to the Registered Provider requesting such meeting)

**12. MANAGEMENT AND MAINTENANCE**

12.1 The Registered Provider shall ensure or procure that following practical completion of the Affordable Housing Units they are at all times properly managed and maintained and that the Registered Provider (in its capacity as landlord of the Affordable Housing Units) complies at all times with all its statutory and contractual obligations to the tenants, leaseholders and occupiers of the same.

**13. FINANCIAL CONSTRAINTS ON RENTED UNITS**

13.1 In relation to the Rented Units the Registered Provider shall:

- 13.1.1 be responsible for providing (or procuring the provision of) all services required to be provided under each Tenancy; and
- 13.1.2 not require:
  - (a) any form of tenancy deposit (meaning any money intended to be held by the landlord under the Tenancy or otherwise as security for the performance of any obligations of the tenant or the discharge of any liability of his/hers arising under or in connection with the Tenancy);
  - (b) a charge for credit reference checks; or
  - (c) any form of guarantee or bond from any third-party guarantor unless the tenant is under the age of 18
- 13.1.3 be entitled to levy rent in advance but such a levy shall not be applied in such a way that excludes eligible households that meet the definition of Affordable Housing. Where such exclusion occurs, based on the household's income and expenditure, the Registered Provider will make arrangements with the Nominee to levy the rent in advance in instalments over a reasonable period of time.
- 13.1.4 ensure compliance at all times with the requirements for rents and service charges published by Homes England and/or contained in statute or other guidance affecting the Rented Units from time to time.

**14. DISPOSAL RESTRICTIONS**

- 14.1 The parties reaffirm the covenants and conditions contained in the Section 106 Agreement in relation to the occupation and disposal of the Affordable Housing Units.
- 14.2 The Registered Provider shall not dispose or part with possession of the Affordable Housing Units (or part thereof) unless the Registered Provider has ensured compliance at all times with the terms of this Agreement.
- 14.3 The Registered Provider shall not dispose or part with possession of the Affordable Housing Units (or part thereof) unless the Registered Provider shall first procure that the disponee (being a provider of Affordable Housing registered with Homes England and first approved in writing by the Responsible Officer for Housing ) shall have entered into a nomination agreement with the District Council which shall be substantially in the form of this Agreement

(or such other form of nomination agreement as the District Council shall adopt from time to time).

## 15. SHARED OWNERSHIP UNIT SALES

15.1 In respect of each sale of a Shared Ownership Unit (whether an Initial Sale or a Re-Sale as the context permits):-

15.1.1 the Registered Provider shall not (unless otherwise reasonably agreed with the prospective purchaser of a Shared Ownership Unit) on an Initial Sale offer a Shared Ownership Unit for sale at more than a 75% share of the equity in that Shared Ownership Unit PROVIDED ALWAYS this shall not prevent a buyer from acquiring a greater share in a Shared Ownership Unit where this can be afforded by the buyer taking into account their individual financial circumstances and in all cases should be in accordance with the requirements of Homes England;

15.1.2 the Registered Provider shall ensure compliance at all times with the requirements for rents and service charges published by Homes England and/or contained in statute or other guidance affecting the Shared Ownership Units from time to time;

15.1.3 the Registered Provider shall retain in perpetuity a legal interest in each Shared Ownership Unit as landlord under each Lease (subject to any right of the leaseholder under each Lease to staircase to 100%);

15.1.4 subject to any statutory provision and the requirements and/or guidance of Homes England published from time to time the leaseholder under each Lease shall be entitled to increase his share in the value of the Shared Ownership Unit in tranches of the Market Value so that on the final tranche the leaseholder shall acquire either the freehold interest or the whole of the leasehold interest;

15.1.5 the Registered Provider shall ensure that the Lease contains the following provisions (unless the terms of the Model Lease expressly provide otherwise):

(a) the leaseholder under the Lease shall occupy the Shared Ownership Unit as his only main residence for himself and his household only; and

(b) the leaseholder shall not be entitled to assign or transfer the Shared Ownership Unit or any part of it unless he has first offered in writing to assign his interest to a person nominated by the Registered Provider in accordance with the terms of the Lease (where applicable); and

15.1.6 the leaseholder under the Lease shall not without the prior consent of the Registered Provider underlet the whole or any part of the Shared Ownership Unit;

15.1.7 the sale price in respect of any assignment by the leaseholder under each Lease shall be determined in accordance with the provisions of that Lease (where applicable); and

15.1.8 in the event of any breach by the leaseholder under a Lease of the provisions of [subclauses 15.1.5, 15.1.5(a), (b) or (c)] herein the Registered Provider shall take all reasonably necessary action to enforce the provisions of the same (including the taking of legal proceedings where reasonably necessary)]

## 16. LAND REGISTRY RESTRICTION

16.1 [Clauses 16.1 and 16.2 are for use where the Land has not yet been transferred to the RP:

16.2 The Registered Provider shall promptly [enforce the Agreement for Sale and secure the transfer] OR [make an application to the Land Registry for registration of the transfer/lease] of the Affordable Housing Units pursuant to clause [ ] of the Section 106 Agreement].

16.3 [The Registered Provider shall supply to the District Council a copy of the title information document issued by the Land Registry immediately following receipt of notice of completion of registration].

16.4 Immediately following the completion of [this Agreement] OR [registration referred to at [clause 16.3] above] the Registered Provider shall apply to the Land Registry for entry of a restriction in the proprietorship register of the title(s) to the Property as follows:-

- 16.5 "No disposition of the registered estate (other than a charge) by the proprietor of the registered estate (or by the proprietor of any registered charge not being a charge registered before the entry of this restriction) is to be registered without a certificate signed on behalf of The District Council by its conveyancer that the provisions of [clause 14.3] of a Nomination Agreement dated [ ] have been complied with or that they do not apply to the disposition." (Land Registry Form L).
- 16.6 The Registered Provider shall promptly supply to the District Council a copy of the title information document issued by the Land Registry following receipt of notice of completion of registration of the restriction referred to in [clause 16.4].
- 16.7 Any certificates requested by the Registered Provider pursuant to the restriction referred to in [clause 16.4] must be made in writing to the District Council accompanied by the following information:
- 16.7.1 the full address of the Affordable Housing Units affected and up-to-date official copies of each and every Land Registry title relating to such Affordable Housing Units (including all superior freehold and leaseholds to the same and title plans);
  - 16.7.2 the date of the nomination agreement to which the Affordable Housing Units are subject and the addresses as stated in the nomination agreement;
  - 16.7.3 official copies of the Land Registry title(s) of the Registered Providers' interest (if not the same as in [clause 16.4]);
  - 16.7.4 a written description of the dealing for which the Registered Provider is requesting certificate;
  - 16.7.5 the name of the proposed donee;
  - 16.7.6 the anticipated completion date of the proposed disposal; and
  - 16.7.7 a copy of any plan to be used with such disposal
- 16.8 The District Council will deal with all requests for certificates received from the Registered Provider in accordance with [clause 16.4] within a reasonable period of time and the District Council shall be entitled to recover all reasonable and proper costs incurred in connection with the grant of any certificates required pursuant to this clause.
- 17. COUNCIL'S POWERS AND LIABILITIES**
- 17.1 Nothing contained in or implied by this Agreement shall:
- 17.1.1 prejudice or affect the District Council's rights, powers, duties or obligations relating to the exercise of the District Council's functions as a statutory body whether as a Council, Local Planning Authority or otherwise nor shall any consent (express or implied) given by the District Council under this Agreement be binding upon it in any capacity other than as a beneficiary of the covenants contained in this Agreement; and
  - 17.1.2 imply that the District Council has any further or future liability for the Affordable Housing Units in respect of the management, maintenance, repair, insurance or general upkeep of the Affordable Housing Units.
- 18. MORTGAGEE PROTECTION**
- 18.1 The District Council will retain the nomination rights contained in this Agreement in respect of the Affordable Housing Units in perpetuity and notwithstanding any sale or transfer to another provider of Affordable Housing the nomination rights shall be retained by the District Council EXCEPT THAT:
- 18.1.1 in the event of any Chargee lawfully exercising a power of sale granted to it under any mortgage or charge created by the Registered Provider in respect of any Affordable Housing Units (or part thereof) the terms of this Agreement shall cease to have effect in relation to the said Affordable Housing Units (or part thereof) and the terms of this Agreement shall not be binding or enforceable against any such Chargee PROVIDED THAT the Chargee has first complied with its obligations contained in clause [ 10 ] of the Section 106 Agreement EXCEPT THAT the District Council will retain the nomination rights as set out in this

Agreement in the event of a disposal of the Affordable Housing Units (or part thereof) or any Affordable Housing Unit (as the case may be) to another provider of Affordable Housing; and

- 18.1.2 the terms of this Agreement shall cease to have effect in respect of any Affordable Housing Unit which is occupied by a Protected Occupier and the terms of this Agreement shall not be binding or enforceable against any Protected Occupier or any mortgagee or chargee of a Protected Occupier or any person deriving title from a Protected Occupier or any successor in title thereto and their respective mortgagees and chargees SAVE THAT if any successor in title to a Protected Occupier is a provider of Affordable Housing this provision shall not apply and the terms of this Agreement shall still be binding and enforceable against such successors in title

## 19. **DISPUTE RESOLUTION**

- 19.1 In the event that any difference or dispute arises between the parties with regard to this Agreement such matter shall in the first instance be referred to [ ] of the Registered Provider and the Responsible Officer (or any persons nominated by them to act on their behalf) who shall within ten (10) Working Days of the referral to them, negotiate in good faith and attempt to resolve the dispute
- 19.2 If the matter cannot be resolved as provided for in [clause 19.1] then it shall be referred to the respective Chief Executive Officers of the Registered Provider and the District Council (or any persons nominated by them to act on their behalf) who shall within twenty eight (28) Working Days of the referral to them negotiate in good faith and attempt to resolve the dispute.
- 19.3 If the matter cannot be resolved as provided for in [clause 19.2] then either person referred to in [clause 19.2] may refer it to be determined by a person chosen by the Chief Executive for the time being of the Chartered Institute of Housing. That person shall act as an expert and not an arbitrator but shall consider written representations made to him/her by the parties.
- 19.4 The parties agree that the decision of the person named in [clause 19.3] shall be binding and that each party shall bear its own costs of resolving the dispute and share equally the costs of such person (unless otherwise directed by such person).

## 20. **NOTICES**

- 20.1 Any notice or other communication required or permitted to be given under this Agreement shall be given in writing and addressed to:
- 20.1.1 For the District Council: The Responsible Officer at the address of the District Council given herein
- 20.1.2 For the Registered Provider: [SPECIFY NAME OR ROLE] at [SPECIFY
- 20.1.3 For the County Council : For the attention of The Corporate Head of Planning Economy and Built Environment and also the Infrastructure Agreements and CIL Manager at the address of the County Council given herein
- or to such other person or address as one party shall notify to the other in writing from time to time
- 20.2 Any notice or other communication may be given by one of the following means and shall be deemed to be served as described unless the actual time of receipt is proved:
- 20.2.1 by first class post deemed served two (2) Working Days after posting;
- 20.2.2 by hand deemed served on signature of a delivery receipt provided that if delivery occurs before 9.00am on a Working Day, the notice will be deemed to have been received at 9.00am on that day, and if delivery occurs after 5.00pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00am on the next Working Day;
- 20.2.3 through a document exchange deemed served on the first (1st) Working Day after the day on which it would normally be available for collection by the addressee; and



20.2.4 by e-mail to a party who confirms they will accept service by electronic means other than fax will be deemed served if sent on a business day before 4.30pm on that day; or in any other case, on the next business day after the day on which it was sent.

## 21. COSTS

The Registered Provider shall pay to the District Council on or before the Date of this Deed the District Council's reasonable legal costs together with all disbursements incurred in connection with the preparation, negotiation and completion of this Deed.

## 22. NO FETTER OF DISCRETION

Nothing contained or implied in this Deed shall fetter or restrict the District Council's statutory rights, powers, discretions and responsibilities.

## 23. DATA PROTECTION

23.1 In this Agreement, "**Data Protection Legislation**" means, for the periods in which they are in force in the United Kingdom, the Data Protection Act 2018, the General Data Protection Regulation (Regulation (EU) 2016/679) ("**GDPR**"), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the GDPR and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner's Office, in each case as amended or substituted from time to time;

23.2 In relation to all Personal Data, each party shall at all times comply with the Data Protection Legislation in connection with this Deed.

23.3 The parties shall (and shall procure that any of their respective personnel shall) insofar as it relates to the performance of their respective obligations under this Deed:

23.3.1 adhere to all applicable provisions of the Data Protection Legislation;

23.3.2 comply with any notification requirements under the Data Protection Legislation; and

23.3.3 to the extent applicable, duly observe all their obligations under the Data Protection Legislation which arise in connection with this Deed.

23.4 Notwithstanding the general obligation in [clause 23.3], in respect of the parties' rights and obligations under this Deed, the parties acknowledge and agree that they are Data Controllers in respect of the Personal Data they hold for the purposes of the Deed.

23.5 Each party shall notify the other of the name and contact details of that party's designated data protection lead or Data Protection Officer (as that term is understood by reference to the Data Protection Legislation). Each party shall promptly inform the other of any change in its Data Protection Officer.

23.6 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each party shall, in relation to the Personal Data, implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

23.7 Each party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other (the "**Indemnified Party**") against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Indemnifying Party's non-compliance with the Data Protection Legislation. The Indemnified Party shall use its reasonable endeavours to mitigate the amount of any claim under the indemnity in this [clause 23.7].

23.8 The parties agree to provide reasonable assistance as is necessary to each other to enable them to comply with the application of Data Subjects' rights, including the right of subject access, as provided to Data Subjects under the Data Protection Legislation.

24. **GOVERNING LAW**

This Deed shall be governed and interpreted in accordance with the law of England and Wales.

**IN WITNESS WHEREOF THE PARTIES HERETO HAVE DULY EXECUTED THIS DEED ON THE DAY AND THE YEAR FIRST BEFORE WRITTEN**



### SCHEDULE 1- AFFORDABLE HOUSING UNITS

Plot	Postal No.	Street	Town	Postcode	Description	Tenure
<a href="#">20</a>					<a href="#">2bh</a>	<a href="#">AR</a>
<a href="#">21</a>					<a href="#">2bh</a>	<a href="#">AR</a>
<a href="#">22</a>					<a href="#">2bh</a>	<a href="#">AR</a>
23					2bh	SO
24					2bh	SO
25					3bh	SO
26					3bh	SO
<a href="#">27</a>					<a href="#">3bh</a>	<a href="#">AR</a>
<a href="#">28</a>					<a href="#">2bh</a>	<a href="#">AR</a>
<a href="#">29</a>					<a href="#">2bh</a>	<a href="#">AR</a>
34					3bh	AR
35					3bh	AR
36					1bf	FH
37					1bf	FH
38					1bf	FH
39					1bf	FH
40					1bf	FH
41					1bf	FH
42					<a href="#">1b</a>	<a href="#">FH</a>
43					<a href="#">2b</a>	<a href="#">AR</a>
44					<a href="#">2b</a>	<a href="#">AR</a>
45					<a href="#">2b</a>	<a href="#">AR</a>
46					<a href="#">2b</a>	<a href="#">AR</a>
47					<a href="#">2b</a>	<a href="#">AR</a>
48					<a href="#">1b</a>	<a href="#">AR</a>
49					<a href="#">1b</a>	<a href="#">AR</a>
50					<a href="#">1b</a>	<a href="#">AR</a>
51					3bh	AR
52					3bh	AR
<a href="#">53</a>					<a href="#">2bh</a>	<a href="#">AR</a>
<a href="#">54</a>					<a href="#">2bh</a>	<a href="#">AR</a>
<a href="#">55</a>					<a href="#">2bh</a>	<a href="#">AR</a>
<a href="#">56</a>					<a href="#">2bh</a>	<a href="#">AR</a>
<a href="#">57</a>					<a href="#">2bh</a>	<a href="#">AR</a>
<a href="#">58</a>					<a href="#">2bh</a>	<a href="#">AR</a>
71					3bh	SO
72					3bh	SO
73					3bh	AR
74					2bh	AR
75					2bh	AR
76					<a href="#">2bf</a>	<a href="#">AR</a>
77					<a href="#">2bf</a>	<a href="#">AR</a>
78					<a href="#">2bf</a>	<a href="#">AR</a>
79					<a href="#">2bf</a>	<a href="#">AR</a>
80					<a href="#">2bf</a>	<a href="#">AR</a>
81					<a href="#">2bf</a>	<a href="#">AR</a>
82					<a href="#">1bf</a>	<a href="#">AR</a>
83					<a href="#">1bf</a>	<a href="#">AR</a>
84					<a href="#">1bf</a>	<a href="#">AR</a>
91					1bf	FH
92					1bf	FH
93					1bf	FH

94					1bf	FH
95					1bf	FH
96					1bf	FH
97					2bh	SO
98					2bh	SO
99					2bh	SO

**SCHEDULE 2 - PLAN**

***[Insert appropriate attestation for RP]***

*[Execution clause: execution by a society of contracts or deeds using a common seal]*

Executed as a deed by affixing the common seal of

**[NAME OF SOCIETY]**

in the presence of:-

[COMMON SEAL]

.....

[SIGNATURE OF COMMITTEE MEMBER/DIRECTOR]

[Committee member **OR** Director]

.....

[SIGNATURE OF COMMITTEE MEMBER/DIRECTOR/SECRETARY]

[Committee member **OR** Director **OR** Secretary]

*[Execution clause: execution by a society of contracts and deeds without a common seal]*

Executed as a deed by **[NAME OF SOCIETY]**

acting by **[NAME OF FIRST DIRECTOR/COMMITTEE MEMBER]**,

a [director **OR** member of its Committee] and

**[NAME OF SECOND DIRECTOR/COMMITTEE MEMBER/SECRETARY]**,

[a director **OR** member of its Committee **OR** its secretary]

.....

[SIGNATURE OF FIRST DIRECTOR/COMMITTEE MEMBER]

[Director **OR** Committee member]

.....

[SIGNATURE OF SECOND DIRECTOR/COMMITTEE MEMBER/SECRETARY]

[Director **OR** Committee member **OR** Secretary]

The **COMMON SEAL** of  
**TANDRIDGE DISTRICT COUNCIL**  
was hereunto affixed in the presence of:

Authorised Officer .....

**EXECUTED AS A DEED** by  
affixing **THE COMMON SEAL**  
**OF SURREY COUNTY COUNCIL**  
in the presence of and attested by:

Director of Law and Governance /Authorised Signatory

**SECOND SCHEDULE**  
**FIRST HOME DWELLINGS**

1. The Owner covenants with the District Council as follows:
  - 1.1 To Construct the First Home Dwellings in accordance with the Affordable Housing Scheme unless otherwise permitted by the District Council in writing save that:
    - 1.1.1 paragraphs 2, 3, 4 and 5 of Part 1 to this Schedule shall not apply to a First Homes Owner;
    - 1.1.2 paragraphs 2 and 3 of this Part 4 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner; and
    - 1.1.3 paragraph 4 of this Part 4 applies as set out therein.
  2. DELIVERY MECHANISM
    - 2.1 The First Home Dwellings shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Home Dwellings to a person or persons who meet the:
      - 2.1.1 Eligibility Criteria (National ); and
      - 2.1.2 Eligibility Criteria (Local) (if any).
    - 2.2 If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 2.1 shall cease to apply.
    - 2.3 Subject to paragraphs 2.6 to 2.10, that no First Home Dwelling shall be Disposed of (whether on a first or any subsequent sale) unless not less than fifty per cent (50%) of the purchase price is funded by a first mortgage or other home purchase plan with a First Homes Chargee.
    - 2.4 No First Home Dwelling shall be Disposed of (whether on a first or any subsequent sale) unless and until:
      - 2.4.1 The District Council has been provided with evidence that:
        - (a) the intended purchaser meets the Eligibility Criteria
        - (b) the Dwelling is being Disposed of as a First Home Dwelling at the Discount Market Price; and
        - (c) the transfer of the First Home Dwelling includes:
        - (d) definition of the "District Council" which shall be District Council; and
        - (e) the First Homes Provisions.
      - 2.4.2 The District Council has issued the Compliance Certificate and the District Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 2.3 and 2.4.1 above have been met.
    - 2.5 On the first Disposal of each and every First Home Dwelling to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

*"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by the solicitor to Tandridge District Council of 8 Station Road East, Oxted, Surrey that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition."*
    - 2.6 The owner of a First Home Dwelling (which for the purposes of this clause shall include the Owner as defined herein and any First Home Dwelling Owner) may apply to the District Council to Dispose of it other than as a First Home Dwelling on the grounds that either:

- 2.6.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with paragraph 2.2 above (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home Dwelling but it has not been possible to Dispose of that Dwelling as a First Home Dwelling in accordance with paragraphs 2.2 and 2.4 above; or
- 2.6.2 requiring the First HomeOwner to undertake active marketing for the period specified in paragraph 2.6.1 before being able to Dispose of the Dwelling other than as a First Home Dwelling would be likely to cause the First Home Owner undue hardship.
- 2.7 Upon receipt of an application served in accordance with paragraph 2.6 the District Council shall have the right (but shall not be required) to direct that the relevant Dwelling is Disposed of to it at the Discount Market Price.
- 2.8 If the District Council is satisfied that either of the grounds in paragraph 2.6 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 2.6 above that the relevant Dwelling may be Disposed of:
- 2.8.1 to the District Council at the Discount Market Price; or
- 2.8.2 (if the District Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home Dwelling
- and on the issue of that written confirmation the obligations in this deed which apply to First Home Dwellings shall cease to bind and shall no longer affect that Dwelling apart from paragraph 2.10 below which shall cease to apply on receipt of payment by the District Council where the relevant Dwelling is disposed of other than as a First Home Dwelling.
- 2.9 If the District Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 2.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with that paragraph serve notice on the owner of the First Home Dwelling setting out the further steps it requires that owner to take to secure the Disposal of a Dwelling as a First Home Dwelling and the timescale (which shall be no longer than six (6) months) and if at the end of that period that owner has been unable to Dispose of the Dwelling as a First Home Dwelling he may serve notice on the District Council in accordance with paragraph 2.6 above following which the District Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home Dwelling.
- 2.10 Where a Dwelling is Disposed of other than as a First Home Dwelling or to the District Council at the Discount Market Price in accordance with paragraphs 2.8 or 2.9 the owner of the First Home Dwelling shall pay to the District Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.
- 2.11 Upon receipt of the Additional First Homes Contribution the District Council shall:
- 2.11.1 within ten (10) Working Days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 2.5 above 2.4.2 above where such restriction has previously been registered against the relevant title; and
- 2.11.2 apply all monies received towards the provision of Affordable Housing.
- 2.12 any person who purchases a First Home Dwelling free of the First Homes Provisions pursuant to the provisions in paragraphs 2.9 and 2.10 above shall not be liable to pay the Additional First Homes Contribution to the District Council.
3. USE
- 3.1 Each First Home Dwelling shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this deed PROVIDED THAT letting or sub-letting shall be permitted
- 3.1.1 for a fixed term of no more than two (2) years, provided that the First Home Owner notifies the District Council in writing before the First Home Dwelling is Occupied

by the prospective tenant or sub-tenant and PROVIDED THAT such lettings or sub-lettings during a First Home Owner's period of ownership may not exceed two (2) years in total.

3.1.2 for any period and the District Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent where:

- (a) the First Home Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
- (b) the First Home Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
- (c) the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
- (d) the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
- (e) the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
- (f) the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.

3.1.3 only by way of a written lease or sub-lease (as the case may be) of the whole of the First Home Dwelling on terms which expressly prohibit any further sub-letting.

3.2 Nothing in paragraph 3.1 above prevents a First Home Owner from renting a room within their First Home Dwelling or from renting their First Home Dwelling as temporary sleeping accommodation provided that the First Home Dwelling remains at all times the First Home Owner's main residence.

#### 4. FIRST HOMES CHARGE – MORTGAGEE EXCLUSION

4.1 The obligations in paragraphs 1 to 3 of this Part 2 in relation to First Home Dwellings shall not apply to any First Home Chargee or any receiver (including an administrative receiver appointed by such First Home Chargee or any other person appointed under any security documentation to enable such First Home Chargee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home Dwelling or any persons or bodies deriving title through such First Home Chargee or Receiver PROVIDED THAT:

4.1.1 such First Home Chargee or Receiver shall first give written notice to the District Council of its intention to Dispose of the First Home Dwelling; and

4.1.2 shall have used reasonable endeavours over a period of three (3) months from the date of the written notice referred to in paragraph 4.1.1 above to complete a Disposal of a First Home Dwelling to

- (a) a person or person(s) who meets the Eligibility Criteria and has a Local Connection; or
- (b) to the District Council

and such disposal has not completed within the said three (3) month period.

4.2 Subject to compliance with the provisions of paragraph 4.1 above the First Homes Chargee shall be able to Dispose of:

4.2.1 the relevant First Home Dwelling at full Market Value free from the restrictions in paragraph 2 above of this subject to

- (a) the payment to the District Council of the Additional First Homes Contribution; OR
- (b) if after the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses the sum realised from the Disposal is less



than the Additional First Homes Contribution the payment to the District Council of the proceeds of sale less the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses

with the effect that they such provisions shall cease to bind any person obtaining title to the relevant First Home Dwelling and shall determine absolutely.

4.3 The District Council shall:

4.3.1 forthwith provide to the purchaser of that First Home Dwelling a completed application to enable the removal of the restriction on the title set out in paragraph 2.5 above where such restriction has previously been registered against the relevant title; and

4.3.2 apply all monies received pursuant to paragraph 4.2 above towards the provision of Affordable Housing.

## **SECOND-THIRD SCHEDULE**

### **OWNER'S COVENANTS**

#### **TRAVEL PLAN**

The Owner covenants with the County Council:

1. Prior to first occupation of the Development to submit a full Travel Plan for the written approval of the Local Planning Authority in consultation with the County Council. The approved full Travel Plan shall then be implemented on first occupation of the development and for each and every subsequent occupation. The 'owner' shall maintain and develop the Travel Plan to the satisfaction of the Council on an annual basis for five (5) years after the Development is complete. The baseline survey represents the start of the Travel Plan (Year 0) for monitoring purposes. If the targets have not been met by year 5 then monitoring will continue until year 9 in accordance with the County Council's Travel Plan Guidance (July 2018)
2. Not to occupy the Development unless and until such time as the Travel Plan has been implemented.
3. To pay the Travel Plan Auditing Contribution to the County Council prior to commencement of the Development.
4. Not to commence the Development unless and until such time as the Travel Plan Auditing Contribution has been paid to the County Council.

**THIRD-FOURTH SCHEDULE**

**OWNER'S COVENANTS**

**OPEN SPACE PLAY AREA AND FOOTPATH LINK**

**Part 2  
OPEN SPACE**

1. The Owner covenants with the District Council not to Occupy nor permit or allow first Occupation of the Development until the Owner has submitted to the District Council the Open Space Management Plan for the District Council's written approval and until such approval is given in writing by the District Council.
2. Not to
  - 2.1 erect any Dwellings on the Open Space;
  - 2.2 use the Open Space other than for open space and outdoor recreation for the lifetime of the Development subject to paragraph 7 of this Schedule.
3. To submit to the District Council for its written approval (such approval not to be unreasonably withheld or delayed) a Detailed Specification in respect of the Open Space prior to construction of any Dwelling.
4. To construct and deliver the Open Space in accordance with the Detailed Specification as approved in writing by the District Council prior to the Occupation of 50% of the Dwellings on the Development or as otherwise agreed in writing by the District Council.
5. Following completion of the Open Space the Owner shall forthwith serve notice on the District Council inviting it to inspect the Open Space and to issue a Certificate of Practical Completion confirming that the Open Space has been completed to its reasonable satisfaction:
  - 5.1 if the District Council chooses to inspect the Open Space and identifies necessary remedial works, the Owner shall complete such remedial works to the reasonable satisfaction of the District Council as soon as reasonably practicable; and
  - 5.2 upon completion of any remedial works, the Owner shall serve notice on the District Council inviting it to inspect the remedial works identified pursuant to paragraph 5.1 and to issue a Certificate of Practical Completion confirming that the relevant Open Space has been completed to their reasonable satisfaction.

**PROVIDED THAT:-**

- 5.2.1 if the District Council fails to inspect the Open Space within 20 Working Days after receipt of the notice of invitation from the Owner; or
  - 5.2.2 fails to issue a Certificate of Practical Completion within 20 Working Days after the inspection where no remedial works have been identified
  - 5.2.3 then the Certificate of Practical Completion shall be deemed to have been issued at the end of those specified periods; and
  - 5.2.4 the inspection procedure identified in paragraph 5 may be repeated until such time as the District Council issues a Certificate of Practical Completion or a Certificate of Practical Completion shall have been deemed to have been issued in relation to the relevant Open Space.
6. Following issue or deemed issue of a Certificate of Practical Completion in respect of any relevant Open Space the Owner shall maintain the relevant Open Space for the Maintenance Period to the reasonable satisfaction of the District Council.
  7. To allow access to relevant Open Space (free of charge but on a permissive basis only) to members of the public each day for the purpose of recreation and play subject to reasonable regulations (unless the District Council agrees otherwise in writing), PROVIDED THAT the Owner shall not be prevented from where it is reasonably necessary to do so:

- 7.1 closing such areas (or any part thereof) for the purposes of maintenance repair decoration replacement or alterations to any Service Installations equipment, building or land on or abutting such areas (or any part thereof) for such period or periods as may be reasonably necessary to carry out and complete such maintenance repairs decorations replacements or alterations;
- 7.2 working on such areas (or any part thereof) as necessary in connection with the maintenance repair decoration or alteration of the Development or any part or parts thereof;
- 7.3 ejecting from or refusing access to such areas (or any part thereof) to any persons conducting themselves in any excessively noisy or disorderly manner or indecently behaving or causing any nuisance or annoyance;
- 7.4 closing such areas (or any part thereof) at any time on the advice of an officer in public authority (whether temporarily or permanently but only for so long as is necessary) in the event of there being a security risk or alert in the vicinity;
- 7.5 erecting barriers or gates whether temporarily or permanently to facilitate closure of such areas (or any part thereof) in the event of there being such a security risk or alert in the vicinity;
- 7.6 closing such areas (or any part thereof) during hours of darkness;
- 7.7 closing such areas (or any part thereof) temporarily for not more than one day per year to assert rights of proprietorship preventing public or private rights from coming into being by means of prescription or other process of law.
8. On expiration of the Maintenance Period the Owner shall:
  - 8.1 serve notice on the District Council inviting them to inspect the relevant Open Space and to issue a Final Certificate confirming that such works have been maintained to its reasonable satisfaction;
  - 8.2 either, as the Owner determine, acting reasonably:
    - 8.2.1 provide an inspection report relating to the relevant Open Space to be conducted in accordance with the District Council's reasonable specification; or
    - 8.2.2 pay the District Council's reasonably and properly incurred costs in carrying out said inspection.
  - 8.3 if the inspection identifies necessary remedial works, to complete such remedial works to the reasonable satisfaction of the District Council as soon as reasonably practicable;
  - 8.4 upon completion of any remedial works, to serve notice on the District Council inviting them to inspect the remedial works identified by them pursuant to paragraph 8.3 and to issue a Final Certificate confirming that the relevant Open Space has been maintained to the reasonable satisfaction of the District Council

PROVIDED THAT:-

- 8.4.1 if the District Council fails to inspect the relevant Open Space within 28 Working Days of invitation from the Owner; or
- 8.4.2 fails to issue a Final Certificate within 28 Working Days of the inspection where no remedial works have been identified
- 8.4.3 then the Final Certificate shall be deemed to have been issued at the end of those specified periods; and
- 8.4.4 the inspection procedure identified in this Schedule shall be repeated until such time as the District Council issue a Final Certificate or a Final Certificate shall be deemed to have been issued in relation to the relevant Open Space
9. At the expiration of the Maintenance Period referred to in paragraph 8 above which shall be the later of 12 months and any such further period required to make good any defects in accordance with paragraph 8 above the Owner shall transfer the Open Space to a Management Company in accordance with this Deed and shall be subject to such rights as the Owner shall reasonably reserve for the benefit of the rest of the Development in respect

of any Service Installations and with covenants that:

- 9.1 the Open Space shall not be used otherwise than as an area of open space and for outdoor recreation subject to the rights set out in paragraph 7 of this Schedule; and
- 9.2 the Management Company shall maintain the Open Space on the Development in accordance with the Open Space Management Plan as approved in writing by the District Council for the lifetime of the Development.
10. The Owner shall maintain the Open Space on the Development in accordance with the Open Space Management Plan as approved in writing by the District Council pursuant to the Open Space Management Plan until such time as the Open Space is Transferred to the Management Company subject to the rights of the Owner in paragraph 7 and the Owner shall procure in transfer to the Management Company an obligation to maintain to the same standard as set out in the Open Space Management Plan for the lifetime of the Development.

### **Part 3 PLAY AREA**

The Owner covenants with the District Council as follows:

- 1.1 Not to erect any Dwellings on the Play Area nor to use the Play Area other than for a Play Area.
- 1.2 To submit to the District Council for approval (such approval not to be unreasonably withheld or delayed) the Play Area Detailed Specification prior to the construction of any Dwellings comprised in the Development.
- 1.3 To construct and deliver the Play Area in accordance with the Play Area Detailed Specification as approved in writing by the District Council in accordance with paragraph 2 of Part 2 of this Schedule prior to the Occupation of the 50% of the Dwellings within the Development or as otherwise agreed in writing by the District Council.
- 1.4 Following completion of construction of the Play Area the Owner shall serve notice in writing on the District Council inviting it to inspect the constructed Play Area and to issue a Certificate of Practical Completion confirming that the Play Area has been constructed to its reasonable satisfaction and if the Council chooses to inspect them:
  - 1.4.1 On inspection the District Council will identify to the Owner any reasonably necessary remedial works and the Owner shall complete such remedial works notified to them to the reasonable satisfaction of the District Council as soon as reasonably practicable; and
  - 1.4.2 Upon completion of the remedial works notified pursuant to paragraph 4.1 of Part 2 of this Schedule the Owner shall serve notice in writing on the District Council inviting it to inspect such remedial works and to issue a Certificate of Practical Completion confirming that the Play Area has been completed to its reasonable satisfaction
- 1.5 On expiration of the Maintenance Period the Owner shall:
  - 1.5.1 serve notice on the District Council in writing inviting it to inspect the Play Area and to issue a Final Certificate confirming that such works have been maintained to its reasonable satisfaction and if the Council chooses to inspect them;
  - 1.5.2 On inspection the District Council will identify to Owner any reasonably necessary remedial works and the Owner shall complete such remedial works notified to them to the reasonable satisfaction of the District Council as soon as reasonably practicable; and

1.5.3 upon Completion of any remedial works notified pursuant to Paragraph 5.2 of Part 2 of this Schedule the Owner shall serve notice in writing on the District Council inviting it to inspect such remedial works and to issue a Final Certificate confirming that the Play Area has been maintained to the reasonable satisfaction of the District Council.

1.6 At the expiration of the Maintenance Period referred to in paragraph 5 above which shall be the later of 12 months and any such further period required to make good any defects as required in accordance with the terms of this Part 2 the Owner shall Transfer the Play Area to the Management Company pursuant to the Play Area Detailed Specification for the long term management subject to such rights as the Owner shall reserve for the benefit of the rest of the Development in respect of any Service Installations and with covenants that:

1.6.1 the Management Company shall maintain the Play Area on the Development in accordance with the Play Area Detailed Specification as approved in writing by the District Council;

1.6.2 the Management Company shall maintain the Open Space on the Development in accordance with the Open Space Management Plan as approved in writing by the District Council for the lifetime of the Development;

1.7 The Owner shall maintain the Play Area on the Development in accordance with the Play Area Detailed Specification as approved in writing by the District Council pursuant to the Play Area Detailed Specification until such time as the Play Area is Transferred to the Management Company subject to the rights of the Owner in paragraph 7 of Part 1 of this Schedule and the Owner shall procure in transfer to the Management Company an obligation to maintain to the same standard as set out in the Play Area Detailed Specification for the lifetime of the Development.

#### Part 4

#### FOOTPATH LINK

1.1 The Owner covenants with the District Council to provide the Footpath Link and use reasonable endeavours to facilitate a connection to Footpath 75 prior to Occupation of the Development

4.71.2 The Owner covenants with the District Council not to Occupy nor permit or allow first Occupation of the Development until the Footpath Link has been provided.

**Part 5**  
**BIODIVERSITY NET GAIN**

The Owner covenants with the Council:

1. To pay the Biodiversity Gain Land Monitoring Contribution to the prior to Occupation for the purposes of monitoring compliance with the Biodiversity Net Gain Plan.

**FOURTH-FIFTH SCHEDULE**

**OWNER'S COVENANTS**

**CAR CLUB SPACE**

The Owner covenants with the District Council:

1. Not to Occupy nor permit or allow first Occupation of the Development until the Owner has provided the Car Club Spaces.



**~~FIFTH-SIXTH~~ SCHEDULE**  
**OWNER'S COVENANTS**  
**MANAGEMENT COMPANY**

The Owner covenants with the District Council as follows:

1. To submit to the District Council prior to Occupation of 50% of the Dwellings a Management Company Structure Scheme for approval.
2. Not to Occupy more than 50% of the Dwellings until the District Council has approved the Management Company Structure Scheme.
3. To procure that the Management Company uses its reasonable endeavours to enforce the obligation of an owner of a Dwelling to pay an estate charge to the Management Company.
4. Not to transfer or grant a long lease of any Dwelling or to sell or cause or permit any Dwelling to be sold other than by way of a transfer or long lease:
  - 24.1 that includes (or has supplemental to it) a covenant from the transferee or lessee to contribute a fair and reasonable proportion by way of estate charge towards the costs of maintaining and managing the Open Space and the Play Area by the Management Company;
  - 24.2 that includes a covenant from the transferee or lessee to enter into a deed of covenant directly with the Management Company in respect of the covenant at Paragraph 4(a) above, such covenant to pass on to successors in title to the Dwelling and to be subject to a restriction on the registered title preventing any disposition without certifying compliance with this requirement; and
  - 24.3 without procuring a covenant by the Management Company covering maintenance and management of the Open Space and the Play Area through the Management Company in accordance with the approved Management Company Structure Scheme (if appropriate), Open Space Planning Specification and Open Space Management Plan and details approved by the District Council in respect of the Play Area and to use any estate charge received from the transferee or lessee for such management and maintenance but for the avoidance of doubt if the Occupation of a Dwelling is to be under a lease or tenancy, the covenant to contribute to an estate charge may be given by the owner of a reversionary interest.
5. To ensure that all relevant payments are made to the Management Company relating to its maintenance of the Open Space and Play Area.

## ~~SIXTH-SEVENTH~~ SCHEDULE

### CUSTOM-BUILD HOUSING

The Owner covenants with the District Council:

#### Custom-Build Plots Scheme

1. Prior to the Commencement of Development, to submit to the District Council for approval the Custom-Build Plots Scheme (which shall include the Marketing Strategy).
2. Not to Commence Development unless and until the Custom-Build Plots Scheme (which shall include the Marketing Strategy) has been approved in writing by the District Council.

#### Provision and use of Custom -Build Plots

3. To provide the Custom-Build Plots as part of the Development in accordance with the approved Custom-Build Plots Scheme.
  - 3.1.1 Not to cause or permit Occupation of more than 50% of the Open Market Dwellings unless and until all of the Custom-Build Plots have been provided in accordance with this Deed and the approved Custom-Build Plots Scheme.
4. Not to cause or permit the Disposal, use or Occupation of the Custom-Build Plots other than as Custom-Build Unit, unless otherwise approved in writing by the District Council pursuant to Paragraph 9(a).

#### Marketing

5. To market and advertise the availability for Disposal of the Custom-Build Plots during the Marketing Period in accordance with the Marketing Strategy set out in the approved Custom-Build Plots Scheme.

#### Terms of Disposal

6. To act reasonably and in good faith throughout the marketing and negotiation of the Disposal of the Custom-Build Plots to purchasers.
7. The Disposal of each Custom-Build Plot shall be:
  - 7.1.1 for the purpose of developing a Custom-Build Unit;
  - 7.1.2 Disposed of in a serviced state; and
  - 7.1.3 in accordance with the information approved by the District Council as part of the Marketing Strategy.

#### Release

8. If at the expiration of the Marketing Period any Custom-Build Plot has not been Disposed of, the Owner shall:
  - 8.1.1 provide reasonable evidence to the District Council (which does not breach prevailing laws regarding data privacy and protection) that the approved Marketing Strategy has been carried out for the Marketing Period;
  - 8.1.2 provide reasonable evidence to the Council (which does not breach prevailing laws regarding data privacy and protection) that it has acted reasonably in any negotiations for the Disposal of the remaining Custom-Build Plots; and
  - 8.1.3 promptly provide to the District Council any further reasonable evidence that the Council reasonably requires and which does not breach prevailing laws regarding data privacy and protection.
9. Upon receipt of the evidence provided at Paragraph 8 above, the District Council shall (having sought an Independent Assessment if it so elects) in writing either:
  - 9.1.1 if it is satisfied with the evidence provided, the District Council shall confirm that the Owner shall no longer be required to comply with the obligations in this Schedule for the remaining plot(s) to be provided as Custom-Build Plots and shall be free to develop them as Open Market Dwellings; or

- 9.1.2 if it is not satisfied with the evidence provided, the District Council shall require an extension to the Marketing Period of up to a maximum of three (3) months.
10. Where Paragraph 10(b) applies, the Owner shall continue to market and advertise the availability for Disposal of the Custom-Build Plots in accordance with the Marketing Strategy set out in the approved Custom-Build Plots Scheme for the further period as set out by the District Council in writing.
  11. Upon the expiration of the further period of marketing as required by Paragraph 9(b), the provisions of Paragraphs 8, 9 and 10 shall continue to apply to the Owner.
  12. To pay the reasonable and proper costs incurred by the District Council in connection with any Independent Assessment within 10 Working Days of the District Council's invoice.

## **SEVENTH EIGHTH SCHEDULE**

### **HIGHWAYS**

Unless otherwise agreed in writing with the County Council the Owner covenants with the County Council:

#### **1. Pedestrian and Cycle Access**

- 1.1 Prior to Occupation to provide an additional pedestrian/cycle access on the southern boundary of the Site onto Bluehouse Lane (with Bluehouse Lane).
- 1.2 Prior to Occupation to undertake the upgrade works to the surface along the private road necessary for pedestrian and cycle access.

#### **2. TROs**

- 2.1 To pay all the County Council's reasonable costs incurred in securing the necessary TROs for the speed limit reductions on Chichele Road, Silkham Road, Central Way, Eastlands Way, Chalkpit Wood, Barnett's Shaw, Memorial Close, Oakshaw, Woodland Court, Down's Way and Greenacres within 14 days of written demand and in any event prior to first Occupation of the Development.
- 2.2 In the event that the statutory process for securing the requisite TROs is unsuccessful then the Owner will identify and agree with the County Council an alternative set of mitigation measures to limit speed.

#### **3. Highway Agreement**

- 3.1 Not to cause or permit the Commencement of the Development until:
  - 3.1.1 There has been submitted to the County Council and approved by it in writing in principle drawings for the Highway Works together with associated drawings and technical information to include but not be limited to the anticipated duration of construction of the Works together with the longstop date for completion of the Highway Works;
  - 3.1.2 A Highway Agreement incorporating in principle drawings and plans and other matters approved and agreed pursuant to paragraph 3.1.1 has been entered into by the Owner in respect of the Highway Works.
4. Not to cause or permit the first Occupation of any Dwelling on the Site unless and until
  - 4.1 the Highway Agreement to which paragraph 3.1.2 of this Schedule refers has been entered into by the Owner, the County Council and all parties with an interest in any land to be dedicated; and
  - 4.2 the Highway Works have been completed pursuant to and in accordance with the Highway Agreement.

**EIGHTH-NINTH SCHEDULE**  
**DISTRICT COUNCIL AND COUNTY COUNCIL'S COVENANTS**

**1. BIODIVERSITY GAIN LAND MONITORING CONTRIBUTION**

**The Council covenants to use the Biodiversity Gain Land Monitoring Contribution for no other purpose than the purpose of monitoring implementation and ongoing compliance of the Biodiversity Gain Plan.**

**4.2. TRAVEL PLAN AUDITING FEE**

**4.42.1** The County Council hereby covenants to use the Travel Plan Auditing Fee received under the terms of this Deed for the purposes specified in this Deed

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

EXECUTED as a DEED  
by the District Council of Tandridge  
by affixing its common seal  
in the presence of:

\_\_\_\_\_

Authorised Officer

**EXECUTED AS A DEED** by  
affixing **THE COMMON SEAL**  
**OF SURREY COUNTY COUNCIL**  
in the presence of and attested by  
Director of Law and Governance/Authorised Signatory

**EXECUTED and DELIVERED as a DEED by** )  
**OXTED RESIDENTIAL LIMITED** ) .....  
acting by two directors or a director and a ) Director  
secretary )  
 ) .....  
 ) Director/ Secretary

**EXECUTED** and **DELIVERED** as a **DEED** by )  
**CALA MANAGEMENT LIMITED** acting by )  
two directors or a director and a secretary of )  
CALA Homes South Homes Counties Limited  
as attorneys for CALA Management Limited

.....  
Director

.....  
) Director/  
)

Secretary