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|  | DATED 2020**MARY ANNE TADMAN** **- and -** **PEMBURY ESTATES LIMITED****- to -****CHERWELL DISTRICT COUNCIL** **- and -****OXFORDSHIRE COUNTY COUNCIL** **unilateral undertaking****- relating to -****Land at Stone Pits, Hempton Road, Deddington, Banbury OX15 0QH under Section 106 of the Town and Country Planning Act 1990**  |

**This unilateral undertaking** is made on the day of 2020

**BETWEEN:**

1. **MARY ANNE TADMAN** of 12 Wayside Acres, Bodelwyddan, Denbighshire LL18 5US (hereinafter called **"the Owner 1"**);
2. **PEMBURY ESTATES LIMITED** (Company number 08970478) whose registered address is at 27 St. Johns Street, Devizes, Wiltshire, SN10 1BN (hereinafter called **"the Promoter"**);
3. **CHERWELL DISTRICT** **COUNCIL** of Bodicote House, Bodicote, Banbury, Oxfordshire OX15 4AA (hereinafter called **"the District Council");** and
4. **OXFORDSHIRE COUNTY COUNCIL** whose main office is at County Hall, New Road, Oxford OX1 1ND (hereinafter called **"the County Council"**).

**RECITALS**

1. The District Council is the Local Planning Authority for the purposes of this Deed.
2. The County Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
3. The County Council is the county planning authority for the purposes of the Act for the area in which the Site is situated.
4. For the purposes of the 1980 Act the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004 the County Council is the highway authority and the traffic authority for certain highways in the area which includes the Site and it also has powers and duties in respect of education.
5. The Owner is the freehold owner of the Site that is registered at the Land Registry under [Title Number ON217519] free from encumbrances.
6. The Application is submitted to the District Council by the Promoter with the full knowledge and consent of the Owner and the Owner and Promoter have agreed to provide this Undertaking to secure the obligations herein which will take effect as provided below and is intended to mitigate the impact of the Development.
7. The parties hereto have accordingly agreed to enter into this Deed pursuant to the provisions of section 106 of the 1990 Act upon the terms and conditions hereinafter appearing with the intent that it should be binding not only upon the said parties but also upon any person deriving title from them as provided by Section 106 of the 1990 Act and any persons claiming through under or in trust for them.
8. interpretation
	1. In this Deed the following words and expressions shall unless the context otherwise requires have the following meanings:

|  |  |
| --- | --- |
| “1980 Act” | 1. the Highways Act 1980;
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| “Act” | 1. the Town and Country Planning Act 1990 (as amended);
 |
| “Application” | 1. the application for outline planning permission submitted to the District Council and validated on [ 2020] for the Development and allocated reference number [ ];
 |
| “Commencement of the Development” | occurs on and means the carrying out of any material operation (as defined in Section 56(4) of the Act) pursuant to the Planning Permission or ( where clause [ ] applies ) a Section 73 Permission forming part of the Development other than (for the purposes of this Deed and for no other purpose) operations consisting of: * 1. site clearance and access;
	2. demolition work;
	3. archaeological investigations;
	4. diversion and laying of services;
	5. investigations for the purpose of assessing ground conditions;
	6. works required to conduct topographical surveys
	7. remedial work in respect of any contamination or other adverse ground conditions;
	8. erection of any temporary means of enclosure or hoardings;
	9. the temporary display of site notices or advertisements;
	10. any other preparatory works which may be agreed in writing with the District Council and the County Council (both acting reasonably having regard to their respective functions);
1. and **“Commence” “Commenced”** and **“Commencing”** or any other derivation of this term shall be construed accordingly;
 |
|  “Construction” | 1. the construction of any building forming part of the Development including footings or foundations and **“Construct”** and **“Constructed”** shall be construed accordingly;
 |
| “Development” | 1. the development of the Site with the erection of up to 14 Dwellings comprising [1, 2, 3 and 4 bedroomed dwellings together with access, garaging and landscaping] as set out in the Application;
 |
| “Due Date” | 1. the date on which any sum payable hereunder is required to be paid or if any sum is to be paid before an event the day before that event occurs;
 |
| “Dwelling” | 1. a building (including a house flat or maisonette) Constructed or proposed to be Constructed on the Site as part of the Development or part of such building designed for residential Occupation by a single household pursuant to the Planning Permission or a Section 73 Permission and including Affordable Housing (as defined in the Second Schedule);
 |
| “Interest” | 1. interest at the rate of 4% above the base lending rate of Lloyds Bank PLC from time to time;
 |
| “Market Dwelling” | 1. means a Dwelling forming part of the Development which is general market housing for sale or rent on the open market and which is not Affordable Housing and “Market Dwellings” shall be construed accordingly;
 |
| “Occupation” | 1. occupation for the purposes permitted by the Planning Permission or ( where clause [ ] applies) a Section 73 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 **“Occupied”** and **“Occupy”** shall be construed accordingly
 |
| “Open Space” | 1. all those areas of open space to be provided on the Site by the Owner including areas of informal open space and landscape buffers in accordance with the minimum standards of provision under Policy BSC11 and ‘Table 7: Local Standards of Provision – Outdoor Recreation’ of the Cherwell Local Plan Part 1 2015;
 |
| “Plan” | 1. the plan attached to this Deed at the Appendix;
 |
| “Planning Permission” | 1. the planning permission subject to conditions to be granted by the District Council pursuant to the Application substantially in the form of the draft annexed to this Deed at the Tenth Schedule;
 |
| “Qualifying Applications” | 1. an application for approval of Reserved Matters or any separate application(s) for full planning permission for any part of the Development or any application under Section 73 of the Act relating to the Planning Permission or any application for approval of Reserved Matters relating to such permission further to an application under Section 73 of the Act or an application for non-material amendments pursuant to section 96A of the Act [to check wording depending on application description];
 |
| “Qualifying Permissions” | 1. approval of Reserved Matters or full planning permission as the case may be issued pursuant to a Qualifying Application [to check wording depending on application description];
 |
| “Reserved Matters” | 1. details of any one or more of access, appearance, landscaping, layout and scale reserved under the terms of the Planning Permission for subsequent approval [to check wording depending on application description];
 |
| “Section 73 Permission” | 1. a planning permission which may be granted by way of approval of an application under Section 73 of the Act permitting the Development subject to conditions which differ from the conditions of the Planning Permission;
 |
| “Site” | 1. the land against which this Deed may be enforced as shown edged red on the Plan excluding any land falling within the boundaries of the adopted highway and for the avoidance of doubt this shall not prevent the County Council from enforcing the provisions of the Fifth Schedule against the Owner;
 |
| “Working Days” | Mondays to Fridays (excluding bank and other public holidays) and any day which is on or between 27th and 31st December in any Calendar Year. |

1. CONSTRUCTION OF THIS DEED
	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.
	2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
	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 interchangeably in that manner.
	4. Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
	5. **“Including”** means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and **“include”** shall be construed accordingly.
	6. Words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause, permit or allow infringement of that restriction.
	7. 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. References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the District Council and County Council the successors to their respective statutory functions and any duly appointed employee or agent of the County Council or such successor.
	9. The headings and contents list are for reference only and shall not affect construction.
2. LEGAL BASIS
	1. This Deed is made pursuant to Section 106 of the Act Section, 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011, Section 278 of the 1980 Act and all other enabling powers.
	2. The parties agree that the covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act which are binding on the interests of the Owner in the Site and are enforceable by the District Council, and County Council in the case of covenants made with them, as local planning authorities against the Owner and their successors in title.
3. conditionality
	1. This Deed is conditional upon:
		1. the grant of the Planning Permission; and
		2. the Commencement of the Development,

save for the provisions of

* + - 1. Clauses 12, 16, 17 and 19 (notifications, jurisdiction, delivery and promoter consent) which shall have immediate effect; and
			2. Paragraphs 2.1 to 2.8 inclusive which shall take effect on the grant of Planning Permission.

**IT IS HEREBY AGREED AND DECLARED between the parties hereto that:**

* + 1. Nothing contained or implied in this Deed shall prejudice or affect the rights powers and duties of the District Council in the exercise of their functions as Local Planning Authority and their rights powers and duties under al public and private statutes byelaws and regulations may be as fully and effectually exercised as if this Undertaking had not been given.
		2. If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired.
		3. No waiver (whether express or implied) by the District Council of any breach or default by the Developer in performing or observing any of the 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 said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owner or Promoter.
		4. 10. The provisions of the Contracts (Rights of Third Parties) Act 1999 (hereinafter called “the 1999 Act”) shall not apply to this Deed and FOR THE AVOIDANCE OF DOUBT it is further agreed that any future successors in title to any of the parties to this Deed shall not constitute third parties for the purposes of the 1999 Act.
		5. The Owner and Promoter shall not be liable for any breach of any of the planning obligations or other provisions in this Deed after it shall have parted with their entire interest in the Site (or the part in respect of which such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
		6. If the Planning Permission shall expire before the Commencement of Development or is quashed or revoked or otherwise withdrawn or is modified by any statutory procedure without the consent of the Promoter this Deed shall thereupon cease to have effect.
		7. Any bona fide individual purchaser and/or occupier of a Dwelling erected on the Site (or any mortgagee or mortgagee in possession of any such purchaser or receiver appointed by a mortgagee or mortgagee in possession of such persons) shall not be bound by any of the obligations and provisions contained herein.
		8. No statutory undertaker shall be liable for any of the obligations contained herein in respect of any part of the Site for the purposes of their undertaking.
		9. This Deed shall not be enforceable against any chargee or mortgagee (including the Mortgagee) unless acting as mortgagee in possession of the Site (or any part of the Site) when it will then be bound by the obligation of the Promoter as if it were a person deriving title from the Promoter.
		10. Any Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Site.
		11. **The Owner’s and Promoter’s covenants**
			1. The Owner and the Promoter covenant with the District Council as set out in the Second Schedule, the Third Schedule and the Fourth Schedule.
			2. The Owner and the Promoter covenant with the County Council as set out in the Fifth Schedule
		12. **Notifications**
			1. The Owner and the Promoter undertake to the District Council and the County Council:
				1. to give the District Council and the County Council written notice within 10 Working Days of any change in ownership of any of its interests in the Site occurring before all of 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 PROVIDED ALWAYS THAT this clause 12.1.1 shall not apply in the event of the transfer of an individual Dwelling;
				2. to notify the District Council and the County Council in writing

no later than 5 Working Days prior to Commencement of the Development of the anticipated date of Commencement of the Development and not to Commence until 5 Working Days have passed since service thereof; and

within 10 Working Days of the date of the Commencement of the Development the date on which such Commencement of Development occurred; and

* + - * 1. to notify the District Council and the County Council in writing no later than 10 Working Days prior to the anticipated date of the following events and after the event to specify in a further notification the date on which it occurred:

first Occupation of any Dwelling;

Occupation of 30% (30 per cent) of the Dwellings;

Occupation of 50% (50 per cent) of the Dwellings;

Occupation of 80% (80 per cent) of the Dwellings

and not to Occupy or cause or permit Occupation of such Dwellings until written notification has been sent to the District Council and the County Council

* + 1. **Interest**
			1. If any payment due under this Deed is paid after the Due Date, Interest will be payable on the amount owed from the Due Date to the date of full payment.
			2. Interest shall be calculated and accrue daily and shall be compounded monthly if any payment is made more than three months after the Due Date
		2. **VAT**
			1. All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable and the Owner shall pay to the District Council and separately to the County Council any value added tax properly payable on any sums paid to the District Council and/or the County Council or works undertaken under this Deed upon presentation of any appropriate value added tax invoice addressed to the Owner.
		3. **Dispute Provisions**
			1. In the event of any dispute or difference arising between the District Council and the Owner in respect of Schedules 2, 3 and 4 of in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the District Council and/or the Owner to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the District Council and the Owner in equal shares.
			2. In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 15.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on the District Council and/or the Owner in the absence of manifest error and his costs shall be payable by the District Council and/or the Owner to the dispute in such proportion as he shall determine and failing such determination shall be borne by the District Council and/or the Owner in equal shares.
			3. Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight Working Days after the conclusion of any hearing that takes place or twenty-eight Working Days after he has received any file or written representation.
			4. The expert shall be required to give notice to each of the District Council and/or the Owner requiring them to submit to him within ten Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days.
			5. The provisions of this clause shall not affect the ability of the District Council or County Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.
		4. **Jurisdiction**

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the courts of England

* + 1. **Delivery**

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.

* + 1. **Data Protection**

The parties to this Deed acknowledge and agree that information as to compliance with obligations pursuant to this Deed (including as to whether or not contributions have been paid) may be passed to:

* + - 1. persons who make enquiries on such matters and who advise that they or their clients are proposing to acquire an interest in the Site and it is acknowledged that the recipients of such information may then disseminate it further
			2. any person when so required in order to comply with statutory requirements including the Freedom of Information Act 2000
		1. **Promoter Consent**
			1. The Promoter consents to enter into this Deed provided that the obligations contained within this Deed shall not be binding or enforceable against the Promoter until such time as they acquire a legal interest in the Site (if such interest were to be acquired) in which case they too will be bound by the obligations as if they were a person deriving title from the Owner.

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

Details of the Owner’s Title, and description of the Site

All that freehold land at Stone Pits, Hempton Road, Dedington, Banbury OX15 0QH which is registered at the Land Registry under title numbers ON217519 and excluding any land identified as falling within the boundary of the adopted highway and for the avoidance of doubt this shall not prevent the County Council from enforcing the provisions of the Fifth Schedule against the Owner

**APPENDIX**

**THE PLAN**

affordable housing

COVENANTS WITH THE DISTRICT COUNCIL – AFFORDABLE HOUSING

1. DEFINITIONS
	1. In this Schedule the following additional definitions shall apply (for the avoidance of doubt any definition which does not appear below shall be given the meaning allocated to it in the main body of this Deed):

|  |  |
| --- | --- |
| "Affordable Housing" | 1. Social Rented, Affordable Rented and Intermediate Housing, provided to eligible households whose needs are not met by the market and should meet the needs of eligible households including at a cost low enough for them to afford determined with regard to local incomes and local house prices and include provision for the home 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 by the District Council and which meets the criteria contained in Annex 2 of the NPPF
 |
| "Affordable Housing Dwellings" | 1. Affordable Housing units comprised in the Development and provided in accordance with the agreed Affordable Housing Tenure Mix that shall together comprise 5 (Five) of the total number of Dwellings on the Development
 |
| “Affordable Housing Scheme” | a scheme submitted to the District Council pursuant to paragraph 2.1 of this Schedule which sets out:* 1. details of the locations and external appearance of the Affordable Housing Dwellings; including the timing of construction of the Affordable Housing Dwellings;
	2. details of the types and size of the Affordable Housing Dwellings provided that the Affordable Housing Dwellings shall be in a range of unit types and sizes having regard to the mix of the Market Dwellings;
	3. confirmation of tenures of the Affordable Housing Dwellings to which the scheme relates which shall reflect the Affordable Housing Tenure Mix;
	4. confirmation of the Affordable Housing Standards arrangements for the Affordable Housing Dwellings to which the scheme relates.
	5. occupancy criteria for determining the identity of occupiers of the Affordable Housing Dwellings and the means by which such occupancy shall be enforced;
	6. proposals to secure transfer of the Affordable Housing Dwellings to a Registered Provider at a price agreed between the Owner and the Registered Provider. The transfer shall contain a declaration that the Affordable Housing Dwellings are transferred subject to and with the benefit of this Deed; and
1. the identity of any prospective Registered Provider (if known)
 |
| "Affordable Housing Site" | that part or parts of the Site or any building or any buildings on the Site upon or within which there will be provided Affordable Housing Dwellings together with full rights of access to each Affordable Housing Site from the Site and the provision of all necessary Infrastructure and connections thereto and the necessary installations thereof for the Affordable Housing Dwellings to be constructed on the Affordable Housing Site |
| "Affordable Housing Standards" | the design criteria with which the Affordable Housing Dwellings shall comply namely:* 1. in relation to the Affordable Rented Housing and Social Rented Housing only 50% to comply with Building Regulations 2010 Part M4(2) Category 2: Accessible and Adaptable Dwellings and;
	2. shall be designed to the same external design as the Market Dwellings so as to be indistinguishable from the Market Dwellings;
	3. (in relation to the Affordable Rented Housing and Social Rented Housing only) shall be constructed to Technical Housing standards – nationally described space standards in consultation with the District Council; and

(in relation to the Shared Ownership Housing only) shall be built to a standard equivalent to the Market Dwellings to be agreed with the District Council;  |
| "Affordable Housing Tenure Mix" | the mix of tenure types of the Affordable Housing Dwellings whereby no less than 70% (seventy per cent) shall be Affordable Rented Housing or Social Rented Housing and the remaining 30% (thirty per cent) shall be Intermediate Housing or such alternative mix of tenure as at any time may be submitted to the District Council for approval in writing and which shall be provided as follows (unless otherwise agreed in writing with the District Council):**Affordable Rented** **and Social Rented Housing:**2 x 2 bed 4 person house2 x 3 bed 5 person house**Shared Ownership Housing:**1 x 3 bed 5 person house. |
| "Affordable Rented Housing" | rented housing provided by the Registered Provider to Qualifying Persons where the rents shall be: * 1. as provided for in Annex 2 of the NPPF
		1. set in accordance with the rent policy for Affordable Rent set by the Government; or
		2. no more than 80% of the local market rent (including service charge)

or * 1. no more than the relevant Local Housing Allowance rate in force at the time the property is advertised for letting [whichever is the lower
 |
| "Allocate" | any procedure whereby there are conferred or transferred rights of residential occupation in respect of an Affordable Housing Dwelling which could for the avoidance of doubt include the first occasion on which an Affordable Housing Dwelling is occupied and any subsequent changes in the occupier and 'allocating' 'allocated' and 'allocations' should be construed accordingly; |
| "Allocations Scheme" | the District Council's allocation policy from time to time which determines the District Council's priorities and procedures when allocating accommodation in accordance with the requirements of Section 166A of the Housing Act 1996 (and any amendment, re-enactment or successor provision); |
| "Chargee" | any mortgagee or chargee of the Registered Provider of the Affordable Housing Site or any part of it or a chargee or mortgagee of an individual Affordable Housing Dwelling as the case may be and includes any receiver or manager or administrator appointed pursuant to the Law of Property Act 1925 or any administrator appointed by such mortgagee or chargee including a Housing Administrator under the provisions of the Housing and Planning Act 2016 or any person appointed under any security documentation to enable such mortgagee or charge to realise its security; |
| “Constructed” | the completed construction of any building forming part of the Development including footings or foundations and “Construct” shall be construed accordingly; |
| "the Regulator" | the regulator of social housing constituted pursuant to the Housing and Regeneration Act 2008 and any successor or successors for the time being and any similar future authority responsible for the regulation of social housing; |
| "Help to Buy Agent" | that organisation which is appointed by the Regulator to assess eligibility for shared ownership and market low cost home ownership products; |
| “Infrastructure” | in relation to the Affordable Housing Site means* 1. roads and footpaths to serve the Affordable Housing Site;
	2. temporary services for contractors and a haul road for the use of contractors;
	3. adequate inverts for the foul and surface water drains sufficient to serve the drainage requirements of the Affordable Housing Site;
	4. pipes sewers and channels sufficient to serve the Affordable Housing Site;
	5. spur connections to agreed inverts (to be available at a time or times to be agreed with the Registered Provider) from the Owner’s foul and surface water drain run serving the Development up to the boundaries of the Affordable Housing Site such spur connections to be to a specification agreed with the Registered Provider;

and the following services:* 1. a standard fire hydrant supply and fire hydrants in the public highway in positions to be agreed with the Registered Provider;
	2. a water supply connection from the mains (size and termination position to be agreed with the Registered Provider);
	3. a telephone spur (terminating at a junction box at a location agreed with the Registered Provider);
	4. an electricity supply (size and termination position to be agreed with the Registered Provider);
	5. a gas supply (size and termination position to be agreed with the Registered Provider) (should it be required for the Affordable Housing Dwellings);
	6. if digital communication systems (for example cable television or fibre optic broadband) are provided on the Development to provide a spur to the Affordable Housing Site (final locations to be agreed with the Registered Provider);

PROVIDED THAT the Owner shall not be responsible for incurring the costs of any connection charges or actual supply for such Infrastructure to the Affordable Housing Site nor to the Affordable Housing Dwellings.  |
| "Intermediate Housing" | Affordable Housing Dwellings to be provided at a cost above social rent but below their value as Market Dwellings which are to be Shared Ownership Units or other tenures that meet the criteria set out in Annex 2 to the NPPF if agreed between the District Council and the Owner  |
| “Mortgage Land” | the Affordable Housing Site or any part of it or any individual Affordable Housing Dwelling which is mortgaged or charged to the Chargee |
| "Nominations Agreement" | an agreement which shall be entered into between the District Council and the Registered Provider, both parties acting reasonably, in relation to the Affordable Housing Dwellings that are Affordable Rented Housing and Social Rented Housing and that outlines the nomination policy and Local Connection Criteria to be used in nominating people to the Affordable Housing Dwellings |
| “NPPF” | the National Planning Policy Framework published in February 2019 (or as may be amended from time to time) or any Planning Policy Statement, Guidance Notes or Circulars which may amend, supplement or supersede it; |
| "Qualifying Persons" | those persons who are assessed by the District Council under its current Allocations Scheme and are nominated to an Affordable Housing Dwelling in accordance with this Allocations Scheme and the Nominations Agreement;  |
| "Registered Provider" | a private provider of Affordable Housing which is designated in the register maintained by the Regulator pursuant to section 111 of the Housing and Regeneration Act 2008 (“HRA 2008”) as a non-profit organisation under sub-sections 115(1)(a) or 278(2) of the HRA 2008 or which is designated in that register as a profit-making organisation under section 115(1)(b) of the HRA 2008 which is EITHER on the District Council’s list of preferred partners OR has demonstrated that it meets the performance criteria applicable to an organisation with preferred partner status and has been approved in writing by the District Council; |
| "Shared Ownership Housing" | housing offered via the Registered Provider under the terms of a lease which accords with the Shared Ownership Model Lease approved by the Regulator by which a lessee may acquire an initial share or shares of between 25% - 75% of the equity in an Affordable Housing Dwelling from the Registered Provider who retains the remainder and may charge a rent of up to 2.75% on the unsold equity with an option for the lessee to increase their percentage of ownership through a process of stair-casing up to 100% ownership;  |
| “Social Rented Housing” | rented housing owned and managed by Registered Providers for which guideline target rents are determined through a national rent regime as described in Annex 2 of the NPPF;  |

1. COVENANTS
	1. The Owner covenants with the District Council:
		1. not to Commence or cause or permit the Commencement of the Development until the Affordable Housing Scheme has been submitted to and approved by the District Council in writing FOR THE AVOIDANCE OF DOUBT it is declared that nothing required to be included in the Affordable Housing Scheme shall be construed as requiring anything that may be inconsistent with the Planning Permission and PROVIDED THAT the District Council shall endeavour to give notice of approval or rejection of the Affordable Housing Scheme at the earliest possible opportunity and in the event of its rejection set out its reasons for rejection and specify the measures required to produce an acceptable submission
		2. The Owner shall be permitted to seek to amend any approved Affordable Housing Scheme at any time following the initial approval thereof until construction begins on any Affordable Housing Dwelling SAVE THAT in seeking to do so the Owner shall submit such amendments to the District Council in writing for approval by the District Council in writing and once approved the Development shall be carried out in accordance with it
		3. not to Occupy or cause or permit the Occupation of more than fifty per cent (50%) of the Market Dwellings until there has been provided the Infrastructure to serve the Affordable Housing Site and the Affordable Housing Dwellings at no cost to or other contribution by the Registered Provider or (as applicable) any individual owner occupiers (where the Affordable Housing Dwellings include Intermediate Housing whose tenure involves homes for sale); and
		4. not to cause or permit the Occupation of more than seventy five per cent (75%) of the Market Dwellings until the Affordable Housing Dwellings have been Constructed and made ready for Occupation and either the freehold or long leasehold interest in the Affordable Housing Site together with the Affordable Housing Dwellings Constructed thereon have been offered to and transferred to a Registered Provider (or individual owner-occupier in the case of Intermediate Housing whose tenure involves homes for sale without the involvement of a Registered Provider) on terms to be agreed between the Owner and the Registered Provider together with all rights for Infrastructure and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Dwellings Constructed thereon and with a good and marketable title free from incumbrances and with vacant possession and capable of being fully serviced and properly connected to the public highway.
		5. not to use or cause or permit the use of the Affordable Housing Site or any part thereof or the Affordable Housing Dwellings erected thereon for any purpose other than for the provision of Affordable Housing in accordance with this Agreement;
		6. subject to the provisions of paragraphs 3 and 4 below not without the consent in writing of the District Council to transfer the freehold interest or the long leasehold interest in the Affordable Housing Site or any part thereof or the Affordable Housing Dwellings erected thereon except to the District Council or a Registered Provider provided that consent shall not be required for any mortgage or charge of the freehold or long leasehold interest and provided that this shall not apply to tenancies being granted to any of the occupiers of the individual Affordable Housing Dwellings or any transactions referred to in paragraph [check final reference];
	2. For the avoidance of doubt paragraphs 2.1.3 to 2.1.6 above are not binding on either a Chargee or a bona fide purchaser for value from a Chargee exercising its power of sale (other than a purchaser which is a Registered Provider) or the successors in title to such purchaser or persons deriving title therefrom PROVIDED THAT the provisions of paragraph [check final reference] have been complied with.
2. mortgagee and other exemptions
	1. It is hereby agreed and declared that the proviso contained in paragraph 2.2 above will only apply where the Chargee exercising its power of sale:-
		1. has first served written notice on the District Council of its intention to exercise its power of sale or other power or right conferred upon it, its mortgage, charge or other security; and
		2. has used reasonable endeavours over a period of three months from receipt of notification pursuant to paragraph 3.1.1 above to dispose of the Mortgage Land subject to any leases and tenancies then subsisting and to the terms of this Deed of Agreement to a Registered Provider or the District Council: and
		3. if upon the expiry of 3 months from the date of receipt by the District Council of the notice in paragraph 3.1.1 above and provided the steps in this paragraph have been completed and no transfer of the Mortgage Land to either the District Council or a Registered Provider has completed within the said period of 3 months

then upon expiry of the said 3 months the Chargee shall be able to sell the Mortgage Land free from the restrictions in paragraphs 2.1.2 to 2.1.6 above with the effect that they shall cease to bind those with an interest in the Mortgage Land

* 1. nothing herein shall require the Chargee to dispose of the Mortgage Land at a price which is less than a price equal to its open market value being the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses;
		1. any purchaser pursuant to the exercise of a statutory or voluntary right to buy, preserved right to buy or right to acquire or any successor in title thereto; or
		2. any purchase in respect of any Dwelling constructed on the Affordable Housing Land demised or to be demised by way of shared ownership lease or similar equity purchase arrangement once “staircasing out” has been effected whereby the leaseholder acquires 100% equity share in the Dwelling;
1. allocation
	1. The Owner will not Allocate or cause or permit to be Allocated any of the Affordable Housing Dwellings other than as follows:
		1. the Affordable Housing Dwellings shall only be Allocated to Qualifying Persons in accordance with the District Council's Allocations Scheme and in accordance with the terms of the Nominations Agreement; and
		2. the Shared Ownership Housing shall be marketed through the Help to Buy Agent or such other appointed body for the region and only those deemed eligible under the Help to Buy Agent's criteria shall be considered for the Shared Ownership Housing; or
		3. as agreed by the District Council.
2. miscellaneous

For the avoidance of doubt, if the Affordable Housing Dwellings are vested or transferred to another Registered Provider pursuant to a proposal made by the Regulator pursuant to Sections 143A-169 of the Housing and Regeneration Act 2008 (or any statutory provision amending or replacing the same) then the provisions of this Deed of Agreement shall continue in respect of such other Registered Provider.

PUBLIC OPEN SPACE INCLUDING SUDS AND ANY OTHER INFRASTRUCTURE TO TRANSFER TO THE DISTRICT COUNCIL

1. definitions
	1. In this Schedule the following additional definitions shall apply (for the avoidance of doubt any definition which does not appear below shall be giving the meaning allocated to it in the main body of this Deed):

|  |  |
| --- | --- |
| "Final Completion Certificate" | 1. means a certificate issued by the District Council confirming final completion of the laying out, landscaping and equipping of the Open Space and provision of the SUDS in accordance with the relevant scheme or specification approved pursuant to this Deed and the making good of all defects and completion of the Maintenance Period to the District Council's reasonable satisfaction
 |
| “Hedgerows Commuted Sum” | 1. means in relation to the application of the Management Company Default Deposit the sum of Twenty pounds and sixty-six pence (£20.66 per linear metre)
 |
| “Index” | 1. means the Consumer Prices Index published by the Office for National Statistics or any successor ministry or department of government or such other index as may from time to time replace the Consumer Prices Index or any such alternative index or comparable measure of price inflation as the Owner and the District Council may agree in writing
 |
| "Index Linked" | 1. means adjusted according to the increase (if any) in the Index between the date of this Agreement and the Due Date
 |
| "Informal Open Space" | 1. means areas of informal open space to be provided on the Development as identified within any Qualifying Permission
 |
| "Maintenance Period" | 1. means 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 the Open Space and/or SUDS have been maintained in accordance with the Maintenance Plan during that period PROVIDED THAT the total applicable maintenance period shall not exceed twenty four (24) months
 |
| “Management Company” | 1. means a private limited company or company limited by guarantee which is incorporated in accordance with the approved Management Company Structure Scheme and which has its registered office in the United Kingdom of Great Britain and Northern Ireland and whose primary objects require it to maintain and renew the Open Space and the SUDS to be approved in writing by the District Council and may be open to membership by any owner of a Dwelling or any Registered Provider
 |
| "Management Company Default Deposit" | means if applicable the sum calculated as follows:(A × the Open Space Commuted Sum) Index Linked + (B × the Hedgerows Commuted Sum) Index Linked+(C ×the SUDS Commuted Sum) Index Linked÷ 15Where: A is the area in square metres of the Open Space;B is the length in linear metres of hedgerows or mature trees comprised in the Open Space andC is the area in square metres of any attenuation pond comprised in the SUDS1. such areas and lengths being determined by reference to the appropriate Qualifying Permission
 |
| “Management Company Structure Scheme” | means a scheme to be submitted and approved in writing by the District Council prior to the Commencement of Development which identifies:* 1. details of the proposed constitution of the Management Company;
	2. the proposed banking arrangements for the Management Company;
	3. the proposed means of funding the ongoing maintenance and management of the Open Space and SUDS
	4. details of the mechanism that will be used by the Management Company to ring fence any funds paid to the Management Company or received from each of the future owners of the Dwellings for use solely in relation to the management and maintenance of the Open Space and SUDS
	5. details of the mechanism together with suitable documentation giving the District Council rights to step in to manage and maintain the Open Space and SUDS in the event that the Management Company either ceases to exist or goes into administration or otherwise fails to manage and maintain the Open Space and SUDS to the standards set out in the approved Management Plan where such step in rights also require any funds at the date the step in rights are exercised held by the Management Company for the purposes of managing and maintaining the Open Space and the SUDS to be paid to the District Council
 |
| “Management Plan” | means a scheme that substantially complies with the Technical Specification to be submitted to and approved in writing by the District Council in accordance with paragraph 2.1 below which identifies:* 1. the future management and maintenance requirements of the Open Space and the SUDS;
	2. the proposed ongoing maintenance operations for the Open Space and the SUDS, specifically identifying the management objective, task and the timing and frequency of the operation for all the features of the Open Space and the SUDS;
	3. adequate funding for the maintenance of the Open Space and the SUDS including any initial funding of any Management Company by the Owner as is reasonably necessary to make up any likely shortfall in funding from individual households;
	4. a mechanism for the periodic review with the District Council and where necessary amendment of the Management Plan;
	5. details of and arrangements for the maintenance of such insurance as shall be appropriate in respect of the use of the Open Space and SUDS
	6. arrangements to facilitate the monitoring by the District Council of the Management Plan
1. unless otherwise agreed in writing with the District Council
 |
|  |  |
| "Open Space" | 1. means the areas within the Site to be provided for recreation and amenity space and which is to be retained and maintained as open space to serve the Development in accordance with the provisions of this Schedule and which shall include the Informal Open Space;
 |
| “Open Space Commuted Sum” | 1. means in relation to the application of the Management Company Default Deposit the sum of Nine pounds and eighty-two pence (£9.82 per square metre)
 |
| "Open Space Scheme" | means a scheme for the provision, laying out, landscaping and equipping (as appropriate) of the Open Space to be submitted to and approved in writing by the District Council for approval in accordance with paragraph [2.1.1 - check final reference] which shall include:* 1. details of the locations of any Open Space to which the respective scheme relates; and
	2. a timetable for carrying out the works and the planting comprised in the laying out landscaping of the Open Space to which the respective scheme relates
 |
| "Practical Completion Certificate" | 1. means a certificate issued by the District Council confirming the practical completion of the laying out, landscaping and equipping of the land in question in accordance with the relevant scheme or specification approved pursuant to this Deed
 |
| “SUDS” | 1. means any balancing ponds, attenuation basins, ditches watercourses, swales or similar features, to be provided to form the sustainable urban drainage system for the Development as detailed in the approved SUDS Scheme and to be provided on the Development as determined by Qualifying Permissions
 |
| “SUDS Commuted Sum” | 1. means in relation to the application of the Management Company Default Deposit the sum of Thirty-two pounds and sixteen pence (£32.16 per square metre)
 |
| “SUDS Scheme” | 1. means a sustainable urban drainage system scheme for the Development which is to be submitted and approved in writing by the District Council in accordance with paragraph 3.1 below which includes details of all the works features and measures for the SUDS that are proposed to be carried out constructed and implemented on the Site during the Development and the timescales for when the said works and features are to be carried out
 |
| “Technical Specification” | 1. means the specification set out in the document headed “Cherwell District Council and South Northamptonshire Council Contract for the provision of landscape maintenance services 01 April 2018 - 31 March 2024 Document 3: Technical Specifications” attached as the Appendix to this Schedule
 |

1. open space

The Owner covenants with the District Council that they will:

* 1. not to Commence the Development until
		1. there has been submitted in writing
			1. the Open Space Scheme (which FOR THE AVOIDANCE OF DOUBT may be submitted and approved through the discharge of a condition of the Planning Permission or a Qualifying Permission including the approval of Reserved Matters); and
			2. the Management Plan;

and said Scheme and Plan has been approved in writing by the District Council;

and

* + 1. either
			1. the Management Company Structure Scheme has been submitted in writing to and subsequently approved by the District Council; or
			2. the Management Company Default Deposit has been paid;
	1. construct lay out and seed the Open Space, in accordance with the approved Open Space Scheme;
	2. not at any time use the Open Space or cause or permit the Open Space to be used for any purpose other than as public open space land (PROVIDED THAT the words "any other purpose" shall not prevent the use of the subsoil of the Open Space for the laying of services or for the storage of materials, the parking of cars and/or any other vehicles associated with the use of the Open Space or the reservation of any necessary rights of access over the Open Space to any adjoining land);
	3. notify the District Council upon completion of the Open Space and invite the District Council to inspect the Open Space within 21 days of receipt of the invitation and shall within the 21 days with a view to either issue a Practical Completion Certificate OR issue a notice (Defects Notice) which states the Open Space has not been provided to the District Council’s reasonable satisfaction and set out details of the work required to reach that standard
	4. if a Defects Notice is issued employ reasonable endeavours to complete the works specified in the Defects Notice as soon as reasonably practical and in any event no longer than 8 weeks from receipt of a Defects Notice (or such longer period as may be agreed by the District Council) and then invite the District Council to re-inspect the Open Space with a view to securing the issue of the Practical Completion Certificate.
	5. will not cause or permit the Occupation of more than 75% of the Dwellings until the Practical Completion Certificate has been issued for the Open Space;
	6. maintain the Open Space in accordance with the Management Plan after the issue of the Practical Completion Certificate to the reasonable satisfaction of the District Council for the Maintenance Period until issue of the Final Completion Certificate or (if later) a transfer of the Open Space to the Management Company has completed and the provisions of paragraph 2.4 and 2.5 above regarding Defects Notices shall apply to the issue of a Final Completion Certificate in the same manner as they apply to the issue of a Practical Completion Certificate
	7. provide right of access for the general public to the Open Space at all reasonable times following the issue of the Practical Completion Certificate for those areas save as necessary to carryout maintenance and in the interests of health and safety; and
	8. at all reasonable times and upon reasonable notice permit the District Council's officers servants and agents to enter onto any necessary part of the Site for the purpose of inspecting the Open Space upon those officers first giving reasonable notice and complying with all necessary and reasonable health and safety requirements whilst on Site.
	9. upon completion of the Maintenance Period and issue of the Final Certificate:
		1. pay the Monitoring Fee; and
		2. continue to maintain the area of Open Space in accordance with the Management Plan until its transfer to a Management Company such transfer to be with full title guarantee, vacant possession on completion and free unrestricted rights of access for the general public at all reasonable times;legal
1. suds

The owner covenants with the District Council that they will:

* 1. Not Commence Development until the SUDS Scheme has been submitted in writing to and approved in writing by the District Council FOR THE AVOIDANCE OF DOUBT such approval by the District Council may be through the discharge of a condition of the Planning Permission or a Qualifying Permission including the approval of Reserved Matters
	2. Lay out and equip the SUDS in accordance with the approved SUDS Scheme to the reasonable satisfaction of the District Council and such laying out and equipping shall be completed prior to the Occupation of 80% of the Dwellings;
	3. Will on completion of the SUDS Scheme secure the approval of the District Council and the provisions of paragraphs 2.4 to 2.10 above (in relation to the issue of a Practical Completion Certificate and a Final Completion Certificate) shall apply mutatis mutandis to the SUDS;
	4. at all reasonable times and upon reasonable notice permit the District Council’s officers servants and agents to enter onto any necessary part of the Site for the purposes of inspecting the SUDS PROVIDED THAT upon those officers first giving reasonable notice and complying with all necessary and reasonable health and safety requirements whilst on Site.
	5. following receipt of the Final Completion Certificate for the SUDS
		1. transfer the unencumbered freehold of the SUDS to a Management Company such transfer to be with full title guarantee, vacant possession on completion; but
		2. shall continue to maintain the SUD in accordance with the Management Plan until its transfer to a Management Company
	6. on the date of the transfer referred to in paragraph 3.5 above, to secure suitable arrangements in accordance with the Management Scheme including the imposition of estate charges on the Owners of each Dwelling to ensure adequate funding for the maintenance of the SUDS including any initial funding of the Management Company by the Owner as is reasonably necessary to make up any likely shortfall in funding from individual households such funding to be agreed with the District Council;
	7. will continue to maintain the SUDS to their original completed standard and to the reasonable satisfaction of the District Council until the date of completion of the transfers in paragraph 3.5
1. management company
	1. Where any of the Open Space and SUDS are to be managed and maintained by the Management Company in accordance with the terms of this Schedule the Owner will:
		1. upon approval of the Management Company Structure Scheme, establish the Management Company in accordance with the approved Management Company Structure Scheme
		2. not cause permit or allow the Occupation of any Dwelling on the Site prior to having received written approval from the District Council of the details of the Management Company Structure Scheme;
		3. not occupy more than 12 Dwellings until the Open Space and SUDS have been transferred to the Management Company; and
		4. after transfer of the Open Space and SUDS to the Management Company the Management Company shall maintain the Open Space and SUDS and secure the funding thereof and in all other respects comply with provisions of the Management Plan and shall have the sole responsibility therefor
	2. If no Management Company Structure Scheme is submitted to the District Council prior to Commencement of the Development
		1. the Owner will continue to be responsible for maintenance of the Open Space and SUDS in accordance herewith; and
	3. shall pay the Management Company Default Deposit to the District Council to be held by the District Council and used by it towards securing the maintenance of the Open Space and SUDS in the event that the District Council has invoked the provisions of paragraph 4.4 below because the Owner has failed to maintain the Open Space and/or SUDS in accordance with the Management Plan
	4. In the event that the Management Company or the Owner (as the case maybe)
		1. fails to maintain either the Open Space or SUDS in accordance with the Management Plan; or
		2. the Management Company or the Owner goes into liquidation or otherwise ceases to exist where a replacement Management Company or other entity to maintain the Open Space and SUDS is not immediately put in place,

the District Council may enter on to the relevant area of any of the Open Space or the SUDS together with relevant personnel and equipment to ensure the performance of the obligations contained in the covenants contained in this Schedule and/or carry out any works it considers reasonably necessary to maintain or make good any defect or damage or reinstate the relevant area of any of the Open Space or SUDS

* 1. If the District Council shall exercise the power set out in paragraph 4.4 above it shall be entitled to full reimbursement by the Management Company or the Owner as appropriate of all costs and expenses incurred in performing the said obligations.
	2. In the event that the Management Company or the Owner does not have adequate funds to cover these works in default, the District Council shall be entitled to recover such costs and expenses;
		1. from the owner for the time being of the Open Space or SUDS (as appropriate) and any successor in title thereto including (notwithstanding clause 8.1) individual owners of Dwellings required to contribute to the Management Company and/or
		2. from the Management Company Default Deposit if paid

at the discretion of the District Council

* 1. The District Council agrees that it shall not be entitled to take action under paragraphs 4.5 to 4.6 above nor recover reimbursement unless before taking action to enforce any of the terms of this Schedule the District Council shall have given written notice to the Management Company or such persons as may then be the Owners of the Open Space and/or the SUDS stating the nature of the failure to comply with the Management Plan, the steps required to remedy that failure, and a reasonable time period for remedying it and shall afford the opportunity to remedy the failure in accordance with the steps and time period in the written notice.

**APPENDIX**

**TECHNICAL SPECIFICATION – Take out ? Cherwell Landscape specification?**

COVENANTS WITH THE DISTRICT COUNCIL – OTHER CONTRIBUTIONS

1. definitions
	1. In this Schedule the following additional definitions shall apply (for the avoidance of doubt any definition which does not appear below shall be given the meaning allocated to it in the main body of this Deed):-

|  |  |
| --- | --- |
| “Community Hall Facilities Contribution” | 1. means a contribution of ten thousand one hundred and forty six pounds and seventy two pence £10,146.72 Index Linked for the provision of additional or enhanced facilities Windmill Community Centre
 |
| Index Linked | 1. means the calculation of any financial contribution (upwards only) between the date of this Deed and the quarter period in which payment is due to the District Council in the BCIS All in One Tender Price Index published by the Royal Intuition of Chartered Surveyors or any successor organisation
 |
| “Off Site Outdoor Sports Facilities Capital Provision Contribution” | 1. means a contribution of eighteen thousand eight hundred and twenty five pounds and sixty one pence (£18,825.61) Index Linked for the improvement of sports fields and the renovation of changing rooms at the Windmill Community Centre
 |
| “Off Site Indoor Sports Facilities Contribution”  | 1. means a contribution of Seven thousand Seven hundred and forty seven pounds and ninety nine pence £7,747.99 Index Linked towards the provision of fitness equipment at Spiceball Leisure Centre
 |
| “Play Equipment Commuted Sum” | 1. means a contribution of twenty three thousand Three Hundred and Forty Eight Pounds and eight pence £23,348.08 Index Linked for the upgrading of local play equipment at Wimborn Close including the provision of a footpath and/or the play area at the Windmill Community Centre
 |
| “Refuse Contribution” | 1. means a contribution of one hundred and six pounds (£106.00) per Dwelling towards the provision of refuse and recycling bins for the Development Index Linked
 |

1. other contributions

The Owner covenants with the District Council that they will:

* 1. pay to the District Council 50% of the Community Hall Facilities Contribution prior to the Occupation of 50% of the Market Dwellings;
	2. pay to the District Council the remaining 50% of the Community Hall Facilities Contribution prior to the Occupation of 75% of the Market Dwellings;
	3. not to cause or permit more than 50% of the Market Dwellings to be Occupied until 50% of the Community Hall Facilities Contribution has been paid to the District Council;
	4. not to cause or permit more than 75% of the Market Dwellings to be Occupied until the entire Community Hall Facilities Contribution has been paid in full to the District Council; and
	5. pay to the District Council 50% of the Off Site Outdoor Sports Facilities Capital Provision Contribution prior to the Occupation of 50% of the Market Dwellings;
	6. pay to the District Council the remaining 50% Off Site Outdoor Sports Facilities Capital Provision Contribution prior to the Occupation of 75% of the Market Dwellings;
	7. not to cause or permit more than 50% of the Market Dwellings to be Occupied until 50% of the Off Site Outdoor Sports Facilities Capital Provision Contribution has been paid to the District Council;
	8. not to cause or permit more than 80% of the Market Dwellings to be Occupied until the entire Off Site Outdoor Sports Facilities Capital Provision Contribution has been paid to the District Council; and
	9. pay to the District Council 50% of the Off Site Indoor Sports Facilities Contribution prior to the Occupation of 50% of the Market Dwellings;
	10. pay to the District Council the remaining 50% of the Off Site Indoor Sports Facilities Contribution prior to the Occupation of 80% of the Market Dwellings;
	11. not to cause or permit more than 50% of the Market Dwellings to be Occupied until 50% Off Site Indoor Sports Facilities Contribution has been paid to the District Council;
	12. not to cause or permit more than 80% of the Market Dwellings to be Occupied until the entire Off Site Indoor Sports Facilities Contribution has been paid to the District Council; and
	13. pay to the District Council the 50% of the Play Equipment Commuted Sum prior to the Occupation of 50% of the Market Dwellings;
	14. pay to the District Council the remaining 50% of the Play Equipment Commuted Sum prior to the Occupation of 80% of the Market Dwellings;
	15. not to cause or permit Occupation of more than 50% of the Market Dwellings to be Occupied until 50% of the Play Equipment Commuted Sum has been paid to the District Council;
	16. not to cause or permit Occupation of more than 80% of the Market Dwellings to be Occupied until the entire Play Equipment Commuted Sum has been paid to the District Council; and
	17. pay to the District Council the Refuse Contribution prior to the Occupation of any of the Market Dwellings;
	18. not to cause or permit any Market Dwellings to be Occupied until the Refuse Contribution has been paid in full to the District Council

COUNTY CONTRIBUTIONS

1. definitions
	1. In this Schedule in addition to the definitions provided in clause 1 of this Agreement the following words have the following meanings and where a word is defined in clause 1 of this Agreement and also in this paragraph the meaning given in this paragraph shall be applied for the purposes of this Schedule:

|  |  |
| --- | --- |
| Approval (Qualifying Permission): | 1. the Qualifying Permission which first establishes the Composition of the Development.
 |
| Approval (Variation): | 1. any Qualifying Permission which alters the Composition of the Development as established further to the Approval (Qualifying Permission) or as applicable preceding Approval (Variation).
 |
| Bedroom | a room in a Dwelling designed as a bedroom or study/bedroom and * 1. 1 Bedroom Dwelling means a Dwelling with 1 Bedroom
	2. 2 Bedroom Dwelling means a Dwelling with 2 Bedrooms
	3. 3 Bedroom Dwelling means a Dwelling with 3 Bedrooms
	4. 4 Bedroom Dwelling means a Dwelling with 4 or more Bedrooms.
 |
| Composition of the Development: | 1. the aggregate number of Dwellings comprised in the Development and the number of each Dwelling type classified by reference to the number of Bedrooms in the Dwelling
 |
| County Contributions: | 1. together the Early Years Contribution, the Library Contribution, the Primary Education Contribution and the Public Transport Contribution and “County Contribution” shall be construed accordingly.
 |
| Early Years Contribution: | 1. the sum of Five Thousand And Seventy Three Pounds and Thirty Three Pence £5,073.33 Index-Linked or the sum calculated by applying the Matrix to the Composition of the Development as identified in the Notification (Initial) Index Linked towards the expansion of nursery and early years provision in Deddington
 |
| Index Linked: | in relation to * 1. the Public Transport Contribution adjusted according to any increase occurring between the date of this deed and the date when the relevant payment is made to the County Council in the all Items Retail Prices Index excluding mortgage interest payments (RPIX) published by the Office of National Statistics or if at any time for any reason it becomes impracticable to use this index such alternative index as may be agreed between the Owner and the County Council.; and
	2. the Early Years Contribution, the Library Contribution, the Primary Education Contribution and any sum payable pursuant to paragraph 2.9 of this Schedule adjusted according to any increase occurring between the date of this deed and the date when a relevant payment is made to the County Council in the extension of PUBSEC Tender Price Index of Public Sector Building Non-Housing within the BCIS Public Sector Price and Cost Indices as made available through the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors or if at any time for any reason it becomes impracticable to use this index such alternative index as may be agreed between the Owner and the County Council
 |
| Library Contribution: | 1. the sum of Two Thousand Nine Hundred and Fifty Four Pounds and Sixty Six pence £2,954.66 Index-Linked or, the sum calculated by applying the Matrix to the Composition of the Development as identified in the Notification (Initial) Index- Linked towards capacity improvements at Deddington Library
 |
| Matrix | the formula:£(A x W) + (B x X) + (C x Y) + (D x Z) WhenA means the number of 1 Bedroom DwellingsB means the number of 2 Bedroom DwellingsC means the number of 3 Bedroom DwellingsD means the number of 4 Bedroom Dwellings 1. W, X, Y and Z being set out in Part 2 to this Schedule
 |
| Notification (Initial): | 1. written notification of the Approval (Qualifying Permission) containing a copy of that approval and details of the Composition of the Development established by that approval.
 |
| Notification (Variation): | 1. written notification of an Approval (Variation) containing a copy of that approval and details of the Composition of the Development established applying that approval.
 |
| Primary Education Contribution | 1. the sum of Sixty Six Thousand One Hundred and Fifty Three Pounds and Thirty Three Pence (£66,153.33)  Index-Linked or, the sum calculated by applying the Matrix to the Composition of the Development as identified in the Notification (Initial) Index- Linked and payable in two instalments towards the expansion of primary capacity at Christopher Rawlins Primary School
 |
| Public Transport Contribution | 1. the sum of Nine Thousand Three Hundred and Thirty Three Pounds and Thirty Three pence. £9333.33 Index-Linked towards the bus service that connects Deddington to Banbury and Oxford
 |
| Revised Contribution: | 1. the sum calculated by applying the Composition of the Development as identified in a Notification (Variation) to the Matrix in relation to the Early Years Contribution, the Primary Education Contribution and the Library Contribution where this results in a higher figure for any contribution or in the event that there is more than one Approval (Variation) the Revised Contribution means the sum calculated by applying the Composition of the Development established further to the later Approval (Variation) to the Matrix if that sum is higher.
 |

1. covenants

The Owner covenants with the County Council:

* 1. to give to the County Council the Notification (Initial) within 10 Working Days of the issue of the Approval (Qualifying Permission);
	2. to give to the County Council a Notification (Variation) within 10 Working Days of the issue of each Approval (Variation);
	3. where a Notification (Variation) has been given (or is required to be given further to paragraph 2.1) and the relevant Approval (Variation) results in the establishment of Revised Contributions then;
	4. for the purposes of calculating any relevant County Contribution which will be payable subsequent to the date of issue of the relevant Approval (Variation) the Revised Contribution shall be applied in place of the contribution in question;
	5. there shall be calculated the difference between any contribution paid prior to the issue of the relevant Approval (Variation) and the amount that such contribution would have been if they had been calculated by reference to the Revised Contribution (in both instances disregarding Index Linking);
	6. not to cause or permit the Planning Permission or any Qualifying Permission to be implemented until the Notification (Initial) has been given to the County Council;
	7. not to cause or permit the Occupation of any Dwelling within the Development until it has paid the Public Transport Contribution and the first instalment of 50% of the Primary Education Contribution to the County Council and to pay and the first instalment of 50% of the Primary Education Contribution to the County Council prior to first Occupation of any Dwelling within the Development
	8. not to cause or permit the Occupation of more than nine Dwellings to be first Occupied until it has paid the Early Years Contribution, the Library Contribution and the second instalment of the remaining 50% of the Primary Education Contribution to the County Council and to pay the Early Years Contribution, the Library Contribution and the second instalment of the remaining 50% of the Primary Education Contribution to the County Council prior to the Occupation of the tenth Dwelling;
	9. to pay to the County Council the sum calculated further to paragraph 2.5 Index- Linked with the next County Contribution subsequent to the date of grant of the relevant Approval (Variation) or if all the County Contributions have been paid to pay such sum Index Linked within 10 Working Days of the grant of the Approval (Variation.)
1. matrix sum calculation

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | 1-bedW | 2-bedX | 3-bedY | 4-bedZ |
| Early Years Contribution | £59.35 | £316.53 | £712.20 | £811.12 |
| Library Contribution | £155.14 | £224.23 | £349.07 | £479.96 |
| Primary Education Contribution | £0.00 | £3,953.70 | £9,070.24 | £11,861.09 |
| **TOTALS** | **£214.49** | **£4,494.46** | **£10,131.51** | **£13,152.17** |

**SIGNED AS A DEED** by **MARY ANNE TADMAN** in the presence of:-

Witness Name:………………………………

Witness Signature:………………………….

Witness Occupation:………………………..

Witness Address:……………………………

………………………………………………..

**EXECUTED AS A DEED** by **PEMBURY ESTATES LIMITED** acting by a Director in the presence of:

Signed…………………………………….

Name………………………………………

*Director*

Witness Name:………………………………

Witness Signature:………………………….

Witness Occupation:………………………..

Witness Address:……………………………

**THE PLAN**

**THE AFFORDABLE HOUSING PLAN**

**APPENDIX A**

**NOMINATION AGREEMENT**

**Nomination Deed for Shared Ownership Units**

DATED 20

[Registered Provider]

and

**AYLESBURY VALE DISTRICT COUNCIL**

**DEED OF NOMINATION RIGHTS**

**Shared Ownership Units**

**at**

**[Site Address]**

**Buckinghamshire**

**This DEED** is made on the day of 2020

**BETWEEN:**

1. "the Association" being [ ] [Company or Mutual NUMBER] of [ ] of the one part; and
2. "the Council" being **AYLESBURY VALE DISTRICT COUNCIL** of The Gateway, Gatehouse Road, Aylesbury, Buckinghamshire HP19 8FF of the other part.

WHEREAS

1. Definitions and Interpretation
	1. In this Deed words and phrases shall where the context so admits have the following meanings

|  |  |
| --- | --- |
| "the Act" | 1. means the Housing Act 1985 or (where appropriate) any statutory extension or modification amendment or re‑enactment thereof and any regulations or orders made thereunder.
 |
| "Affordable Housing" | 1. means a Dwelling or Dwellings already let or to be let on the basis of a Shared Ownership Lease by the Association being a Registered Provider, another similar social housing body or their successors in title so far as this Deed applies.
 |
| "Assignee" | 1. means an assignee of the Lessee of a Shared Ownership Lease to which this deed applies.
 |
| "the Association" | 1. for the avoidance of doubt includes its successors in title.
 |
| "Association's Qualifying Criteria" | 1. means the written statement prepared by the Association and submitted to and agreed by the Council (whose agreement shall not be unreasonably withheld or delayed) for the purpose of assessing the eligibility of person(s) nominated for a Dwelling the terms of which shall not be changed without the prior written approval of the Council.
 |
| "Available" | 1. means where:
	1. a Lessee intends disposing of the unexpired residue of the Shared Ownership Lease and notifies the Association that the Association may nominate an Assignee in the Nomination Period under the terms of the Shared Ownership Lease; or
	2. the Shared Ownership Lease has expired or been determined and the Dwelling can be re-let by the Association.
 |
| "Chargee" | 1. means any mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (however appointed) including a housing administrator.
 |
| "the Council" | 1. for the avoidance of doubt includes its successors in title.
 |
| "Council’s Allocation Criteria" | 1. means the criteria contained in the Council’s shared ownership policy that may available for inspection in force from time to time.
 |
| "Deed" | 1. means this deed granted on the date hereof and any document which is supplemental hereto or which is expressed to be collateral herewith.
 |
| "Dwelling" | 1. means each or any or one or more of the Affordable Housing units [specified in the s106 Agreement pertaining to the Land] [and] [contained in Schedule 1 of this Deed] constructed or to be constructed on the Land that shall be let or is already let on the basis of a Shared Ownership Lease and "unit" and “dwellings” shall be construed accordingly.
 |
| "Exempt Assignment" | 1. means an assignment pursuant to the terms of a Shared Ownership Lease:
	1. where the assignment is by operation of law and the Lessee is not obliged to notify the Association to nominate an Assignee; or
	2. where the Lessee may notify the Association to nominate an Assignee but elects not to do so.
 |
| "Exempt Dwelling" | 1. means each or any Dwelling:
	1. subject to a Shared Ownership Lease that where the Lessee has staircased their ownership to 100%; or
	2. whereby the Dwelling is a house and the freehold of the Dwelling has been transferred to the Lessee pursuant to the Shared Ownership Lease

And for the avoidance of doubt, an Exempt Dwelling shall remain an Exempt Dwelling until such time as an Exempt Dwelling reverts to the ownership and control of the Association and is again Available to be let under a Shared Ownership Lease. |
| "Help to Buy Affordable Home Ownership List" | 1. means a register of applicants assessed by the Help to Buy Agent for eligibility for the Government’s Help to Buy shared ownership schemes (and “applicants” and “referrals” shall be construed accordingly in this deed).
 |
| "Help to Buy Agent" | 1. means an agent appointed by the government’s Homes & Communities Agency to administer the government’s home ownership schemes.
 |
| "Homes England" | 1. means the government body responsible for grant funding of Affordable Housing (including its statutory successors in title or agent).
 |
| "Initial Lettings" | 1. means the initial grant of a Shared Ownership Lease of each and every Dwelling.
 |
| "the Land" | 1. means the land registered under title number [ ] which is shown for the purpose of identification edged in red on the plan annexed hereto which includes the Dwellings described in Schedule 1 [and specified in the S106 Agreement].
 |
| "Lessee" | 1. means the lessee of a Shared Ownership Lease situated on the Land.
 |
| "Nomination Notice" | 1. means notice given by the Council to the Association containing the name and contact details of a Nominee or Nominees or such other person the Council at its reasonable discretion sees fit to include to be served in such a manner agreed by the Council and the Association.
 |
| "Nomination Period" | 1. means the length of time in which the Association is permitted to nominate under the terms of the Shared Ownership Lease which shall be no less than 8 weeks unless otherwise specified by the Homes and Community Agency.
 |
| "the Nominee" or "the Nominees" | 1. means the person or persons who:
	1. are approved as meeting the Council’s Allocation Criteria;
	2. are recorded on the Help to Buy Affordable Home Ownership List held by the Help to Buy Agents; or
	3. meet the criteria contained in the s106 Agreement (if any)

and for the avoidance of doubt it is agreed that a Nominee may comprise two or more persons. |
| "Registered Provider" | 1. means a non-profit registered provider of social housing as defined in the Housing and Regeneration Act 2008.
 |
| "S106 Agreement" | 1. means the section 106 agreement dated [ ] entered into by the Council and [other parties] pursuant to which this Deed has been entered into together with all or any deeds and documents supplemental thereto whether or not expressed to be so.
 |
| "Shared Ownership Lease" | 1. means a lease of a Dwelling for a term of not less than 99 years granted to a Lessee on payment of a premium calculated by reference to a percentage of the value of the Shared Ownership unit that is the subject of the lease and which shall contain such provisions as required by statute and/or the requirements and regulations in force from time to time of the Homes and Community Agency decisions to satisfy the criteria for which the Association is required to be eligible for Homes and Community Agency funding in whole or in part.
 |
| "Subsequent Assignment" | 1. means an assignment of a Shared Ownership Lease that is not an Exempt Assignment or an assignment of an Exempt Dwelling.
 |
| "Working day" | 1. means any day Monday to Friday but excluding Bank and Public Holidays.
 |

* 1. The Interpretation Act 1978 shall apply to this Deed as it applies to an act of parliament
	2. words importing one gender shall be construed as importing any other gender words importing the singular shall be construed as importing the plural and vice versa
	3. the clause headings do not form part of this Deed and shall not be taken into account in its constructions or interpretation
	4. reference to a clause without further designation is to be construed as a reference to the clause of this Deed so numbered.
1. Recitals
	1. The Association [shall develop] [is developing] the Land by building on the Land [or part thereof] Affordable Housing units [pursuant to the S106 Agreement] and in compliance with statute currently in force and the Association shall make reasonable endeavours to ensure the units are affordable to Nominees subject to the provisions of this Deed.
	2. The Association agrees to grant to the Council the nomination rights contained in this Deed over the Land pursuant to the s106 Agreement.
	3. This Deed is one to which the provisions of Section 609 of the Act apply (subject as hereinafter mentioned).

**NOW IT IS AGREED** as follows:

1. Enforceability of Covenants
	1. This Deed is made pursuant to Section 111 of the Local Government Act 1972 and all other enabling powers, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 609 of the Housing Act 1985.
	2. The obligations contained in this Deed are covenants for the purpose of Section 33 Local Government (Miscellaneous Provisions) Act 1982 and Section 609 of the Act and the covenants rights and obligations on the part of the Association shall be enforceable without any limit of time (subject to the provisions hereof) against any body or person deriving title from the original covenantor in respect of its interest in the Land where the body or person so deriving title is a Registered Provider.
	3. The Association for itself and its successors in title covenants with the Council that the Association will not (subject to clause 3.4 and clause 3.5 of this Deed) transfer the Land or any part thereof without first obtaining a deed of covenant (in the form attached hereto in Schedule 2) duly executed by the transferee so that the transferee will duly observe and perform all of the obligations contained or referred to in this Deed.
	4. The provisions of this Deed shall not apply to Exempt Dwellings.
	5. A Chargee who is in possession or who wishes to exercise its power of sale over the Land or any part of it shall promptly notify the Council in writing of its intention to dispose of the Land or relevant part and for a period of three months (“the Relevant Period”) use reasonable endeavours to secure the continued availability of those Affordable Dwellings on the Land or the relevant part through the transfer of the Land or relevant part to a registered provider of social housing (as defined under the provisions of the Housing and Regeneration Act 2008) at a price sufficient to repay the mortgage or charge and all interest and reasonable costs accrued.
	6. In the event that despite using reasonable endeavours the Chargee is unsuccessful in disposing of the Land or the relevant part to a registered provider within the Relevant Period as required under paragraph 3.5, the Chargee shall supply the following information to the Council during the last week of the Relevant Period to enable itself and its successors in title to be automatically released from the terms of this Deed:
		1. notify the Council in writing of the date that the Relevant Period commenced; and
		2. produce written confirmation to the Council of the approaches that have taken place during the Relevant Period with registered providers of social housing (whose names shall be given in the said written confirmation) to secure the transfer of the Land or relevant part to them; and
	7. In the event that the steps referred to in paragraphs 3.6.1 and 3.6.2 have all been taken the Chargee shall be automatically released from the terms of this Deed which shall cease to apply to the Land absolutely.
2. The Association's Undertakings
	1. The Association undertakes with the Council to grant to the Council the nomination rights contained herein pursuant to the s106 Agreement.
	2. It is agreed that where the Association acts reasonably it shall not be obliged to offer a Shared Ownership Lease to a Nominee unless satisfied that the Nominee falls within the category of persons it is appropriate for the Association to house according to the s106 Agreement, the Association’s Qualifying Criteria and the Council’s Allocation Criteria.
3. Nomination Rights
	1. The Association grants to the Council the right to:
		1. nominate Lessees for 100% of Initial Lettings pursuant to the provisions of this Deed; and
		2. thereafter the right to nominate for 100% of Subsequent Assignments [within the Nomination Period] of each and any Dwelling except where the Dwelling is an Exempt Dwelling or where the proposed assignment of a Dwelling is an Exempt Assignment and pursuant to clause 8.

**INITIAL LETTINGS**

1. Notice of Intended Completion

The Association shall give to the Council and the Help to Buy Agents at least three (3) months’ prior notice of the date of expected practical completion of each or any or one or more of the Dwellings and shall promptly provide to the Council a list of interested referrals who are on the Help to Buy Home Ownership List and meet the Council’s Allocation Criteria and the Association’s Qualifying Criteria or liaise with the Council pursuant to such alternative practice as the Council and the Association shall agree both acting reasonably.

1. The Council's Nominations
	1. The Council shall within fourteen (14) days of service of the notice of intended completion, the service of the list (both referred to in Clause 6) or in accordance with such alternative practice or procedure as the parties may have agreed as provided for in this Deed, supply to the Association a Nomination Notice PROVIDED ALWAYS that by prior arrangement with the Association the Council may provide a Nomination Notice at a different date than that required by this Clause and where the Council does so provide a Nomination Notice the Association undertakes with the Council:
		1. to use all reasonable endeavours to assess the Nominees and to decide which Nominees are Nominees to whom offers will be made in due course in accordance with Clause 6
		2. to notify the Council of the names of those Nominees to whom the Association intends to make offers and of the names of those Nominees to whom the Association will not make offers and the reasons for such decisions such notification to be given within three (3) weeks of the Association receiving the Nomination Notice from the Council
	2. the Association may serve further lists of referrals to the Council and the Council may serve further Nomination Notices to the Association to replace some or all of those rejected Nominees which have been notified to the Council pursuant to Clause 7.1.2 unless or until each and any Dwellings have either been let or are subject to a binding contract for sale and the Association shall make a further offer to a Nominee assessed under clause 6 and shall repeat this process until all Dwellings have been let to Nominees.
2. Further Nominations
	1. If a Nominee acceptable to the Association in accordance with the provisions of Clause 6 either rejects the offer or does not exchange binding contracts for a Shared Ownership Lease of the Dwelling offered within six (6) weeks of draft documentation being submitted to the Nominee the Association shall make a further offer of a Shared Ownership Lease of the Dwelling to a further Nominee acceptable to the Association in accordance with the provisions of Clause 7 PROVIDED ALWAYS in calculating any period relative to this step there shall be wholly discounted any days or periods when default or delay in the completion of that step are attributable in whole or in part to the Association.
	2. Where a reasonable period of time has elapsed and the Association is not able to agree a grant of Shared Ownership Lease with a Nominee the Association may seek consent from the Council to have the right to offer a Shared Ownership Lease of the Dwelling to any person having regard to the Council’s shared ownership policy from time to time, having regard to the priorities specified in the S106 Agreement and the Council’s Allocation Criteria PROVIDED THAT the Association is able to provide sufficient evidence so that in the reasonable opinion of the Council, the Association has used its best endeavours to market the Dwelling or Dwellings within the Council’s boundaries.

**SUBSEQUENT ASSIGNMENTS**

1. Continuation of the Council's Nomination Rights

The Association covenants with the Council that so far as permitted by statute and having regard to the funding conditions of the Homes England, the provisions in the Shared Ownership Leases granted in accordance with this Deed shall contain covenants whereby the Lessee is required before assigning the lease to offer it to the Association or to a Nominee of the Association and the Association will enforce such provisions against the respective Lessees.

1. Council's Notice to the Association
	1. Where the Association [receives notice from the Lessee that a Dwelling is Available pursuant to the Shared Ownership Lease] the Association shall serve written notice to that effect on the Council and the Help to Buy Agents within 5 Working Days of becoming aware that the Dwelling is Available and provide to the Council a list of referrals (and shall promptly supply further lists of referrals if required) of persons approved as meeting the Council’s Allocation Criteria and the Association’s Qualifying Criteria and being on the Help to Buy Affordable Home Ownership List or liaise with the Council pursuant to such alternative practice as the Council and the Association shall agree both acting reasonably.
	2. The Council may (but shall not be obliged to) serve a Nomination Notice either within five (5) working days after receipt of the list referred to in clause [10.1].
	3. In the event of the above procedure being altered pursuant to clause [10.1] or as otherwise provided for in this Deed then the parties shall substitute such alternative practice or procedure in lien of clause [10.1] above.
	4. For the avoidance of doubt the Council shall only be entitled to make a nomination in respect of a Subsequent Assignment and only one Nomination Notice may be made by the Council on each such occasion PROVIDED THAT if the Association rejects the Nominee before notifing the Lessee of the Nominee in accordance with the terms of the Shared Ownership Lease or if the Lessee, for whatever reason, rejects or fails to make an offer to the Nominee or if the Nominee withdraws before the Association notifies the Lessee of the Nominee then the Council reserves the right to serve a subsequent Nomination Notice and the Association shall make further offers of a Shared Ownership Lease of the Dwelling to subsequent Nominees until such time as the Association has notified the Lessee of the Nominee or the Lessee makes an offer to the Nominee in accordance with the terms of the Shared Ownership Lease, whichever is later.
2. Provisos

The Association shall provide notice in writing of any changes it may from time to time propose in relation to the then current Association's Qualifying Criteria and such changes shall not take effect until the Council has agreed the same (such agreement not be unreasonably withheld or delayed) unless such change shall take effect by reason of principal or subordinate legislation or by decisions of the Homes & Communities Agency.

1. The Association's Choice of Nominees
	1. The Association may choose to offer to grant any Nominee a Shared Ownership Lease subject to the priorities contained in the Council’s Allocation Criteria and in the S106 Agreement (if any).
	2. The Association shall not be obliged to offer a Shared Ownership Lease of any Dwelling to a Nominee if the Association has assessed that the Nominee has not met the Association's Qualifying Criteria for assessment of a prospective lessee under a Shared Ownership Lease of a Dwelling under the Association's control and the assessment of the Association acting reasonably shall be final and binding save in the case of manifest error.
2. Alternative Offers by the Association

For the avoidance of doubt if the Association is unable to make or continue to make offers to Nominees in relation to Initial Lettings or Subsequent Assignments pursuant to the provisions herein contained because:

* 1. a Nominee or such remaining Nominees have not met the Association's Qualifying Criteria; or
	2. a Nominee or the remaining Nominees have either rejected offers of a Shared Ownership Lease of a Dwelling or failed to exchange contracts as set out in Clause 8; and
	3. The Council has served written notice that they do not intend to serve further Nomination Notices

then the Association may offer to grant a Shared Ownership Lease of the any remaining Dwelling or nominate an Assignee or consent to an Assignee to any persons having regard to the priorities specified in the S106 Agreement (if any) and the Council’s Allocation Criteria

1. Rights of Third Parties

No third party shall have or shall acquire any benefit claim or right of any kind whatsoever pursuant to or by virtue of this Deed where but for this clause such benefit claim or right would exist or come into existence solely by virtue of the Contracts (Rights of Third Parties) Act 1999 or any statute amending or replacing such Act but this clause shall not apply to nor affect any benefit right or claim of any person which exists or shall arise other than by virtue of such Act or Statute amending or replacing such Act.

1. Notices

Any written communication or notice required by this Deed to be served on the Council shall be deemed to have been received on the second working day after posting (where evidence of posting is available) if addressed to [CONFIRM CONTACT DETAILS] at [Aylesbury Vale District Council, The Gatehouse, Gateway Road, Aylesbury HP19 8FF] and sent by first class post and any written communication required to be sent to the Association shall be addressed to [HOUSING ASSOCIATION REPRESENTATIVE DETAILS] and shall be deemed to have been received on the second working day after posting (where evidence of posting is available) if addressed to him/her at the address of the Association set out above in this Agreement or such other address as the Association notifies in writing and sent to him/her by first class post or such other methods to be agreed by both parties.

1. Disputes
	1. In the event that any difference arises between the parties with regard to this deed such dispute shall in the first instance be referred to [HOUSING ASSOCIATION CONTACT DETAILS] of the Association and [AVDC representative] of the Council or their nominees who shall meet and attempt to resolve the dispute within 14 days from the date of such referral.
	2. If such dispute cannot be resolved as provided for in clause 16.1 above then the dispute shall be referred to the determination of a person chosen by the Chief Executive for the time being of the Chartered Institute of Housing and such person so chosen shall act as an expert and not as an arbitrator but shall consider written representations made to him/her by the parties and the costs of such persons shall be borne as (s)he may determine.
2. Liability

No liability shall devolve on the Council to reimburse the Association for any loss of rent or service charge or for any legal or other costs or fees or any other expenses incurred by the Association arising from or in any way connected with exercise of this Deed.

1. Severance
	1. If any provision or part-provision of this Deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Deed.
	2. If [one party gives notice to the other of the possibility that] any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
2. Governing Law

This Deed**aDeed** shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**IN WITNESS** whereof the Council and the Association have caused their respective Common Seals to be affixed to this deed the day and year first hereinbefore written

The Land at [shown edged red on the plan annexed hereto] on which the following Shared Ownership Units as specified in the s106 Agreement shall be located:

[Address] [no of beds/ no of persons] [Flat/House]

**This DEED OF COVENANT** is made on the day of 2020

**BETWEEN:**

1. [NAME OF PARTY] whose registered office is at [ ] (“the Covenantor”); and
2. AYLESBURY VALE DISTRICT COUNCIL of The Gateway, Gatehouse Road, Aylesbury, Buckinghamshire HP19 8FF (“the Council”)

**BACKGROUND**

1. By a deed of nomination rights dated [ ] 201 (“the Deed”) the Council was granted rights by [original party to deed] to nominate tenants to properties at (“the Property”)
2. Clause of the Deed requires that a deed of covenant is entered into with the Council upon a disposition by the Association of its freehold interest in the Property
3. By a transfer of even date herewith the Association transferred its interest in [the Property] [the part of the Property known as [ ] (“the Transferred Property”)] to the Covenantor
4. The Covenantor is required to enter into this deed of covenant in accordance with [clause] of the Deed

AGREED TERMS

1. INterpretation
	1. The following definitions and rules of interpretation apply in this deed.

|  |  |
| --- | --- |
| "Association" | 1. [INSERT NAME OF ORIGINAL ASSOCIATION] and its successors in title where the provisions of the Deed apply.
 |
| "Deed" | 1. a deed of nomination rights for the Property dated [DATE] and made between [PARTIES], and all documents supplemental to that Deed.
 |
| "Property" | 1. [ADDRESS **OR** DESCRIPTION OF THE PROPERTY] as [more particularly described in and] the Deed.
 |

* 1. References to the Council include statutory successors in title.
	2. Clause headings shall not affect the interpretation of this deed.
	3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
	4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
	5. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
	6. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
	7. A reference to writing or written includes fax but not e-mail.
	8. Except where a contrary intention appears, references to clauses are to the clauses of this deed.
	9. Where the Covenantor comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of the Covenantor arising under this deed. The Council may take action against, or release or compromise the liability of, or grant time or other indulgence to, any one of those persons, without affecting the liability of any other of them.]

**NOW THIS DEED WITNESSES**

1. Covenantor’s Covenants
	1. The Covenantor hereby covenants with the Council that it will at all times from the date hereof duly observe and perform all of the obligations on the part of the Association contained or referred to in the Deed [insofar as they relate to the Transferred Property/Property]
	2. The Covenantor hereby covenants with the Council that it will at all times from the date hereof allow the Council to nominate nominees to [the Property] [the Transferred Property] in accordance with [clause] of the Deed
	3. The Covenantor will within 28 days of completion of registration of its acquisition of [the Property] [the Transferred Property] at the Land Registry provide to the Council official copies of the register entries of its title to such property
2. Third party rights

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

The Parties hereto have executed this document as a deed and it is delivered on the date set out above.

**THE COMMON SEAL** of

**◼** )

was hereunto affixed )

in the presence of: )

Authorised Signatory

**THE COMMON SEAL** of

**AYLESBURY VALE DISTRICT** )

**COUNCIL** )

was hereunto affixed )

in the presence of: )

Authorised Signatory

**THE COMMON SEAL** of

**[HOUSING ASSOCIATION** )

**LIMITED]** )

was hereunto affixed )

in the presence of: )

Authorised Signatory