

Dated

11 February

2019  
~~2018~~

**AYLESBURY VALE DISTRICT COUNCIL (1)**

-and-

**JOHN GERARD STACEY GRAINGE (2)**

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**DEED OF PLANNING OBLIGATION**

Under Section 106 of the Town and Country Planning Act 1990 and other enabling powers  
Relating to Land to the North of Little Horwood Road, Great Horwood

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**HB Public Law**

working in collaboration with you

**HB Public Law**

PO Box 2  
Civic Centre  
Harrow  
Middlesex  
HA1 2UH

DX 30450 HARROW 3  
Ref: PT/AVDC-PL999-035936

THIS DEED is made the

11

day of

February

2019  
~~2018~~

**BETWEEN:**

- (1) **AYLESBURY VALE DISTRICT COUNCIL** of The Gateway, Gatehouse Road Aylesbury, Buckinghamshire HP19 8FF ("the District Council")
- (2) **JOHN GERARD STACEY GRAINGE** of Redfield Farm, Winslow, Buckinghamshire MK18 3LZ ("the Owner")

**RECITALS**

- (1) The District Council is the local planning authority for the purposes of the 1990 Act for the area in which the Land is situated and by whom the obligations in this Deed are enforceable
- (2) The Owner is the freehold owner of the Land which forms part of the land registered at HM Land Registry under title number BM194195
- (3) On 6 May 2016, the District Council received the Planning Application to carry out the Development
- (4) On 3 April 2017, the District Council decided to defer determination of the Planning Application to be approved following completion of this Deed
- (5) The District Council has confirmed that the planning obligations secured by this Deed are necessary to make the Development acceptable in planning terms, are directly related to the Development and are fairly and reasonably related in scale and kind to the Development in compliance with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and that no more than five (5) obligations have been entered into by the District Council which provide for the funding or provision towards a project or towards a type of Infrastructure for which the same obligations are secured by this Deed in accordance with Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended)
- (6) The Parties have accordingly agreed to enter into this Deed to secure the planning obligations contained in this Deed with the intention that the obligations would be binding not only upon the Parties but also upon their successors in title and any

person claiming or deriving title through under or in trust for them

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

**1. INTERPRETATION**

1. In this Deed the following words and expressions shall unless the context otherwise requires have the following meanings:-

<b>"the 1972 Act"</b>	means the Local Government Act 1972 (as amended)
<b>"the 1976 Act"</b>	means the Local Government (Miscellaneous Provisions) Act 1976
<b>"the 1990 Act"</b>	means the Town and Country Planning Act 1990 (as amended)
<b>"the 2011 Act"</b>	means the Localism Act 2011
<b>"Affordable Dwellings"</b>	means 5 of the total number of Dwellings to be constructed on the Land as part of the Development the types numbers and tenure of which are to be detailed in the Affordable Housing Plan and which are to be provided as Affordable Housing in accordance with the Tenure Mix and made available for Occupation by Eligible Households unless otherwise specified in this Deed
<b>"Affordable Dwellings for Rent"</b>	means the dwellings forming part of the Affordable Dwellings which are to be made available for letting at an Affordable Rent to Eligible Households
<b>"Affordable Housing"</b>	means housing that complies with the requirements of Annex 2 to the National

	<p>Planning Policy Framework 2018 (or any successor policy or guidance issued thereto) and which is to be provided to specified Eligible Households whose incomes are insufficient to enable them to buy or rent housing available locally on the open market and which:-</p> <p>(a) meets the needs of Eligible Households including availability at a cost low enough for them to afford determined with regard to local incomes and local house prices; and</p> <p>(b) includes 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</p>
<p><b>"Affordable Housing Plan"</b></p>	<p>means a drawing to be submitted to the District Council for approval and which identifies the location and agreed mix of all the Affordable Dwellings to be constructed on the Land including the principal vehicular and cycleway access to the Affordable Dwellings</p>
<p><b>"Affordable Rent"</b></p>	<p>means (in accordance with the National Planning Policy Framework 2018 (or any successor policy or guidance issued thereto)) rent charged by the Association to Eligible</p>



	<p>Households at a rate not to exceed 80% of the local market rent for an equivalent property of the same size and location such that the total rent charged shall be:</p> <p>(a) inclusive of service charge; and</p> <p>(b) capped for 12 months at a level equal to or below that of the Local Housing Allowance Rate.</p>
<b>"Amenity Land"</b>	<p>means all those parts of the Land which are informal open space including amenity areas, verges or areas of landscaping forming part of the Development and all areas (not privately owned) in and around the Dwellings the exact position of which is to be agreed by the District Council as part of the Open Space Land Scheme as set out in the Fourth Schedule hereto and which shall not be or construed to be open space within the meaning of the Open Spaces Act 1906</p>
<b>"Association"</b>	<p>means a housing association or a housing trust registered as a provider of social housing (pursuant to section 111 of the Housing and Regeneration Act 2008) with Homes England or its successors which has been chosen from the Preferred Partners List or such other association or body as may be approved in writing by the District Council and the expression <b>"Associations"</b> shall be construed</p>

	accordingly
<b>"Broad Rental Market Area"</b>	<p>means an area the boundaries of which are defined by the Valuation Office Agency and within which a person could reasonably be expected to live having regard to facilities and services for the purposes of health, education, recreation, personal banking and shopping, taking account of the distance of travel, by public and private transport, to and from those facilities and services and which contains:</p> <ul style="list-style-type: none"> <li>(a) residential premises of a variety of types including such premises held on a variety of tenures; and</li> <li>(b) sufficient privately rented residential premises, to ensure that the local housing allowance rate for the area is representative of the rents that a landlord might reasonably be expected to obtain in that area</li> </ul>
<b>"Chargee"</b>	<p>means any mortgagee or chargee (including a successor in title) of the Association or individual owner or lessee (as the case may be) of any Affordable Dwelling and includes any receiver or manager or administrator (including any receiver appointed pursuant to the Law of Property Act 1925) or a housing administrator or any person appointed under any security documentation to enable such</p>

	mortgagee or chargee to realise its security in respect of an Affordable Dwelling
<b>"Commencement of the Development"</b>	<p>means commencement of the Development by the carrying out of a material operation (as defined in Section 56(2) of the 1990 Act) other than (for the purpose of this Deed only) operations consisting of:</p> <ul style="list-style-type: none"> <li>(a) site clearance</li> <li>(b) demolition work</li> <li>(c) archaeological investigations</li> <li>(d) investigations for the purpose of assessing ground conditions</li> <li>(e) remedial works in respect of any contamination or other adverse ground conditions</li> <li>(f) diversions and laying of services</li> <li>(g) erection of any temporary means of enclosure and</li> <li>(h) the temporary display of site notices or advertisements</li> </ul> <p>and the word <b>"Commence"</b> and <b>"Commenced"</b> shall be construed accordingly</p>
<b>"Common Housing Register Agreement"</b>	means an agreement between the District Council and registered providers of social housing for the purpose of establishing and maintaining a common housing register including a choice based lettings scheme

<p><b>"Commuted Sum"</b></p>	<p>means the sum of £23,520 calculated at a rate of £58,800 (fifty eight thousand eight hundred) per hectare of the Open Space Land and LEAP (or such higher figure as may be specified in updated versions of Appendix A to the Good Practice Guide which is in force at the time when a particular area of the Open Space Land and LEAP is ready to be transferred to the Parish Council) such sum to be increased by the amount (if any) equal to the rise in the Index from the date of this Deed until the date actual payment of the sum and which is to be paid by the Owner to the District Council for the future maintenance of the Open Space Land and LEAP</p>
<p><b>"Completion"</b></p>	<p>means in relation to any of the Dwellings the date on which the relevant Dwelling is certified as completed by the National House Building Council (or such other body replacing it) or by the District Council's building control officer (or other relevant officer of the District Council) or by the Owner's architect and in relation to the Development as a whole this means the date on which the last Dwelling has been so certified and the word "Completed" shall be construed accordingly</p>
<p><b>"Development"</b></p>	<p>means the residential development of 15 dwellings on 0.5ha of Land to the North of</p>

	<p>Little Horwood Road along with the allocation of 0.4ha of land as a public park to serve both the new development and the existing local community in accordance with Planning Application ref: 16/01664/AOP</p>
<b>"Dwellings"</b>	<p>means the Affordable Dwellings and the Market Housing Dwellings and the expression <b>"Dwelling"</b> shall be construed accordingly</p>
<b>"Eligible Households"</b>	<p>means those persons who are assessed by the District Council and/or the Association as being unable to meet their housing needs requirements on the open market because of the relationship between housing costs and incomes</p>
<b>"Final Certificate"</b>	<p>means a certificate to be issued by the District Council on expiration of the Open Space Maintenance Period when the Open Space Land has been maintained to the reasonable satisfaction of the District Council</p>
<b>"First Reserved Matters Application"</b>	<p>the first application to be made to the District Council as local planning authority for approval of the matters set out in the Planning Application and the appropriate conditions of the Planning Permission as being reserved for subsequent approval by the District Council</p>
<b>"Fully Serviced and Constructed"</b>	<p>means that each of the Affordable Dwellings has been completely constructed and connected to mains services including gas (if</p>



	<p>provided to the Development) water electricity sewerage and telephone services with sufficient vehicular and pedestrian access over those parts of the Land to be laid out as footway and highway which shall mean that the footway and highway to serve each Affordable Dwelling is fully constructed to the highway authority's adoptable standards in two stages namely:-</p> <p>(a) to base course during the construction of the Development; and</p> <p>(b) upon Completion of the Development to the full specification required to enable adoption to take place</p>
<b>"Good Practice Guide"</b>	<p>means the Good Practice Guide for the Provision of the Open Space Land prepared by the District Council in January 2004 as updated by revised editions of Appendix A of that guide (or such subsequent edition of that guide which is available when the Open Space Land Scheme is submitted to the District Council for approval)</p>
<b>"Index"</b>	<p>means the Buildings Costs Information Service All In Tender Price Index</p>
<b>"Inspection Fee"</b>	<p>means 1.8% of the Commuted Sum which is to be paid by the Owner to the District Council towards the District Council's administrative costs of approving and inspecting the Open</p>

	Space Land and LEAP
<b>"Land"</b>	means the land against which the obligations in this Deed may be enforced known as Land North of Little Horwood Road, Great Horwood and forming part of the land registered at the Land Registry under title number BM194195 and is shown for identification purposes edged red on the Plan
<b>"LEAP"</b>	means a Local Equipped Area of Play to be provided on the Land by the Parish Council in accordance with: <ul style="list-style-type: none"> <li>(a) the standards, policy, design principles and practice referred to in the Fields in Trust publication "Planning and Design for Outdoor Sport and Play" and the Play England publication "Design for Play – A guide to creating Successful Play Spaces" (or later revisions of these publications);</li> <li>(b) the Play Provision Guidance;</li> <li>(c) a minimum score rating target of "Good" measured against all relevant criteria in RoSPA's Play Value Assessment;</li> </ul> and subject to the provisions contained in the Fourth Schedule
<b>"Local Housing Allowance Rate"</b>	means the local housing allowance rate from year to year applicable in the Broad Rental

	Market Area in which the Land is situated
<b>"Local Plan"</b>	means the Aylesbury Vale District Local Plan adopted by the District Council on 15 January 2004
<b>"Management Company"</b>	means a company (or companies) to be appointed by the Owner for the purpose of managing and maintaining the Open Space Land in the event that the Parish Council does not accept the transfer of the Open Space Land
<b>"Market Housing Dwellings"</b>	means those dwellings to be constructed on the Land as part of the Development and sold on the open market but excluding the Affordable Dwellings
<b>"Monitoring Contribution"</b>	means the sum of (£1600.00) One Thousand Six Hundred Pounds and Zero Pence to be paid by the Owner towards the District Council's costs of monitoring the obligations in this Deed
<b>"Nomination Agreement"</b>	means an agreement substantially in the form of the District Council's standard nomination agreements annexed at Appendices D and E respectively to be entered into between the District Council and the Association and which relates to the nomination rights of the District Council in respect of the Affordable Dwellings and which sets out the process by which the Affordable Dwellings are to be Occupied

<p><b>"Occupation"</b></p>	<p>means occupation by a resident of any of the Dwellings within the Development but not including occupation by personnel engaged in demolition, construction, fitting out, decoration or marketing or security or display and the word <b>"Occupy"</b> or <b>"Occupied"</b> shall be construed accordingly</p>
<p><b>"Open Space Land"</b></p>	<p>means the Public Open Space and Amenity Land which together are to be provided and laid out as open space for public use in accordance with the provisions set out in the Fourth Schedule of this Deed</p>
<p><b>"Open Space Land Maintenance Period"</b></p>	<p>means a period of twelve months from the date of issue of the Provisional Certificate for the Open Space Land or such longer period of time as may be agreed by the Parties</p>
<p><b>"Open Space Land Scheme"</b></p>	<p>means a scheme:</p> <ul style="list-style-type: none"> <li>(a) showing the location and full details of the Open Space Land and Amenity Land within the Development;</li> <li>(b) detailing how the Open Space Land and LEAP will be laid out constructed and maintained; and</li> <li>(c) which complies with the advice set out in the Good Practice Guide (from which an extract which details a list of the minimum requirements to be included in the scheme is annexed as Appendix A to this</li> </ul>

	<p>Deed); and</p> <p>(d) is substantially in accordance with the detailed technical specification of all the works to be carried out on the Open Space Land as annexed to this Deed at Appendix C;</p> <p>which scheme is to be approved in writing by the Council</p>
<b>"Parish Council"</b>	means Great Horwood Parish Council
<b>"Parties"</b>	means the District Council and the Owner
<b>"Plan"</b>	means the red line application boundary plan showing for identification purposes only the Land and which is annexed to this Deed at the Fifth Schedule
<b>"Planning Application"</b>	means the application for outline planning permission with all matters reserved for the Development submitted to the District Council and given the reference 16/01664/AOP
<b>"Planning Manager"</b>	means the District Council's Development Management Manager (or such other successor)
<b>"Planning Permission"</b>	means the planning permission for the Development to be granted by the District Council pursuant to the Planning Application
<b>"Preferred Partners List"</b>	<p>means a list of Associations who are members of the Aylesbury Vale Affordable Housing Partnership which currently are:</p> <ul style="list-style-type: none"> <li>• bpha Ltd,</li> </ul>



	<ul style="list-style-type: none"> <li>• Catalyst Housing Group,</li> <li>• the Vale of Aylesbury Housing Trust,</li> <li>• Hightown Housing Association,</li> <li>• Paradigm Housing,</li> <li>• Thames Valley Housing Association,</li> <li>• Thrive Homes,</li> <li>• Housing Solutions and</li> <li>• the Bromford Group and</li> <li>• any other Association or registered provider selected by the District Council to be a preferred partner</li> </ul>
<b>“Provisional Certificate”</b>	means a certificate which is issued by the District Council when it is satisfied that the Open Space Land has been provided laid out and landscaped in accordance with the Open Space Land Scheme and in general compliance with the requirements of the Good Practice Guide;
<b>“Public Open Space”</b>	means 0.99 acres of open space to be located in the western part of the Land as required by the Great Horwood Neighbourhood Plan
<b>“Reserved Matters Application”</b>	an application to be made to the District Council as local planning authority for approval of the matters set out in the Planning Application and the appropriate conditions of the Planning Permission including landscaping, LEAP, street furniture details, car park and fencing details as being reserved for

	subsequent approval by the District Council (and "Reserved Matters" shall be construed accordingly.
<b>"RoSPA Play Value Assessment"</b>	means a fixed scoring assessment carried out by the Royal Society for the Prevention of Accidents to determine the quality of a play area
<b>"Shared Ownership Dwellings"</b>	means the dwellings forming part of the Affordable Dwellings which are to be Occupied by Eligible Households by way of a Shared Ownership Lease
<b>"Shared Ownership Lease"</b>	means a lease as defined by section 622 of the Housing Act 1985 and substantially in the form of the Homes England model lease from time to time or such other form as shall be approved in writing by the District Council
<b>"SDLT"</b>	means stamp duty land tax
<b>"Tenure Mix"</b>	<p>a tenure mix for the Affordable Dwellings to be provided on the following basis</p> <p>(a) 2 x 1 bedroom maisonettes provided as Affordable Dwellings for Rent unless otherwise agreed with the District Council; and</p> <p>(b) 3 x 2 bedroom houses provided as Shared Ownership Dwellings unless otherwise agreed with the District Council;</p> <p>or such other tenure mix as shall be approved</p>

	in writing by the District Council and which for the avoidance of doubt may include any of the affordable housing tenures specified in Annex 2 to the National Planning Policy Framework 2018
<b>"Transfer Form"</b>	means the TP1 form substantially in the form at Appendix B to this Deed for the transfer of the Open Space Land to the Parish Council or the Management Company (or such other Land Registry updated version in use at the time of the relevant transfer and upon such terms as may be agreed between the Parish Council and the Owner
<b>"Working Day"</b>	means any day excluding Saturday, Sunday or a bank holiday in England and the expression <b>"Working Days"</b> shall be construed accordingly

- 2.1 Words in this Deed importing the singular meaning shall where the context so admits include the plural meaning and vice-versa
- 2.2 Words in this Deed of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa
- 2.3 The headings in this Deed are for convenience only and shall not be deemed to be part of, or taken into consideration in the interpretation of this Deed
- 2.4 References in this Deed to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force
- 2.5 References to any clause sub-clause paragraph or schedule are references to

clauses sub-clauses paragraphs or schedules in this Deed

- 2.6 Where there is a requirement in this Deed that works are to be carried out and completed to the satisfaction of the District Council or any officer of the District Council then this means carried out in accordance with the reasonable satisfaction of the District Council or the officer of the District Council at all times acting reasonably
- 2.7 Where the agreement consent approval or satisfaction of the District Council or an officer of the District Council is required under the terms of this Deed such agreement consent approval or satisfaction shall not be unreasonably withheld or delayed
- 2.8 For the avoidance of doubt references to "this Deed" shall include the Schedules and Appendices to this Deed
- 2.9 The payment to the District Council of any sum of money due under the terms of this Deed shall only be considered to have been properly paid if the following details accompany the payment namely "TC000Y32 – Planning Obligation Payment – *and relevant planning application number*" and also in the case of a payment by cheque (as opposed to a BACS transfer) a covering letter which makes it clear what the payment is for including the location of the application site and description of the Development

### **3. COVENANTS MADE IN THIS DEED**

- 3.1 If made by more than one person are made jointly and severally unless otherwise stated in this Deed and
- 3.2 Are made to the intent that the same shall bind whomsoever shall become a successor or successors in title to the Land and
- 3.3 Are made to the intent that the same shall operate as a land charge on the Land and shall be registered in the Register of Local Land Charges and
- 3.4 Are made to the intent that each of the same shall be a planning obligation for the purposes of Section 106 of the 1990 Act

### **4. STATUTORY AUTHORITY AND ENFORCEABILITY**

- 4.1 This Deed is entered into and completed pursuant to Section 106 of the 1990 Act and the obligations entered into by the Owner under this Deed shall be ones to which the provisions of Section 106 of the 1990 Act shall apply and shall be binding and enforceable against the Owner and any person deriving title from the Owner
- 4.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into by the Council pursuant to the powers contained in section 111 of the 1972 Act and Section 1 of the 2011 Act
- 4.3 Each of the obligations created by this Deed constitutes a planning obligation for the purposes of Section 106 of the 1990 Act.

## **5. EFFECT AND CONDITIONALITY OF THIS DEED**

- 5.1 The provisions of this Deed shall become binding on the Owner on the grant of the Planning Permission and the Commencement of the Development save for the provisions of clause 6.3 (costs) and clause 19 (jurisdiction) which shall come into effect immediately upon completion of this Deed

## **6. THE OWNER'S COVENANTS**

- 6.1 The Owner hereby for themselves and for any person deriving title from them undertake agree declare and covenant with the District Council that they shall carry out perform and be bound by the obligations set out in this Deed and that the Land shall be subject to the obligations as to the manner of carrying out the Development set out in this Deed
- 6.2. The Owner covenants with the District Council that if any payment due to the District Council under this Deed is paid late, interest at a rate of 2% above the Bank of England Base Rate prevailing with annual compounding at 31 March each calendar year shall be payable from the date that the payment became due to the date of actual payment
- 6.3 The Owner covenants to pay on the execution of this Deed:



- (a) the District Council's reasonable legal costs incurred in the preparation and settlement of this Deed; and
- (b) the Monitoring Contribution

**IT IS HEREBY AGREED AND DECLARED** between the Parties that:-

7. If the District Council shall after the date of completion of this Deed grant a planning permission pursuant to an application made under Section 73 of the 1990 Act in respect of the conditions in the Planning Permission (and for no other purpose whatsoever) references in this Deed to the Planning Application and the Planning Permission shall be deemed to include any such subsequent section 73 planning applications and the planning permissions granted by the District Council pursuant to the section 73 planning applications and this Deed shall apply and take effect and be read and construed accordingly
8. Nothing contained or implied in this Deed shall prejudice or affect the rights powers and duties of the District Council in the exercise of its functions as the local planning authority and its rights powers and duties under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the District Council were not a party to this Deed
9. If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed to be affected or impaired
10. No waiver (whether express or implied) by the District Council of any breach or default by the Owner in performing or observing any of the terms or conditions of this Deed which is for the benefit of the District Council 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 by the Owner

11. The obligations set out in this Deed shall not be enforceable against the individual freeholders or leaseholders or occupiers of the Market Housing Dwellings comprised within the Development (or their mortgagees or any person deriving title from them)
12. Subject to clause 13 and the exclusions set out in Part II of the Third Schedule of this Deed the Association and leaseholders purchasers and occupiers of the Affordable Dwellings shall only be bound by the obligations and covenants in this Deed which affect the Affordable Dwellings in which they have a legal interest (or in the case of the Association which it manages)
13. The Association and leaseholder's purchasers and occupiers of the Affordable Dwellings (or their mortgagees or any person deriving title from them) shall not be responsible for payment of any financial obligations in this Deed
14. The obligations set out in this Deed will not be enforceable against any statutory undertaker with an interest in any part of the Land for the purpose of the supply of electricity gas water drainage or telecommunication services (or their mortgagees or any person deriving title from them)
15. No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after such person has parted with their entire interest in the Land or any part of it but without prejudice to liability for any subsisting breach arising prior to parting with such interest
16. The provisions of the Contracts (Rights of Third Parties) Act 1999 ("the 1999 Act") shall not apply to this Deed and as such a person who is not named in this Deed shall not have a right to enforce any of its terms PROVIDED ALWAYS that the exclusion contained in this clause 16 shall not prevent all or any future successors in title to any

of the Parties to this Deed from being able to benefit or to enforce any of the provisions of this Deed

17. Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission granted (whether or not an appeal) before or after the date of this Deed
18. This Deed shall cease to have effect (only insofar as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or if without the Owner's consent the Planning Permission is modified by any statutory procedure or it expires prior to the Commencement of the Development
19. This Deed shall be governed by and interpreted in accordance with the law of England and the Parties hereby agree to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising under this Deed
20. The Parties agree to act reasonably, properly and diligently in exercising their discretion and discharging their functions under this Deed and where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Deed, the Parties will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation.
21. If any dispute arises relating to or arising out of the terms of this Deed, either party may give to the other written notice requiring the dispute to be determined under this clause 21 and the notice shall propose an appropriate expert and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
  - 21.1 For the purposes of this clause 21 an "Expert" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development.

- 21.2 Any dispute over the type of Expert appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Royal Institute of Chartered Surveyors who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Expert and to arrange his nomination under clause 21.3
- 21.3 Any dispute over the identity of the Expert shall be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Expert who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Expert or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Expert shall be nominated by the President or next most senior available officer of the Law Society of England.
- 21.4 The Expert shall act as an independent expert and:
- 21.4.1 each party may make written representations within 20 working days of his appointment and will copy the written representations to the other party;
- 21.4.2 each party shall have a further 20 working days to make written comments on the other's representations and will copy the written comments to the other party;
- 21.4.3 the Expert shall be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
- 21.4.4 the Expert shall not take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;
- 21.4.5 the Expert shall have regard to all representations and evidence before him when making his decision, which shall be in writing, and shall give reasons for his decision; and
- 21.4.6 the Expert shall use all reasonable endeavours to publish his decision within 30 working days of his appointment.
- 21.5 Responsibility for the costs of referring a dispute to an Expert under this clause 21,

including costs connected with the appointment of the Expert and the Expert's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Expert.

21.6 The findings of the Expert shall save in the case of manifest material error be final and binding on the Owner the District Council save that the parties retain the right to refer to the court on a matter of law.

22. Any notice, demand or any other communication served under this Deed will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.

22.1 Any notice, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.

22.2 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:

22.2.1 if delivered by hand, at the time of delivery;

22.2.2 if sent by post, on the second working day after posting; or

22.2.3 if sent by recorded delivery, at the time delivery was signed for.

22.3 If a notice, demand or any other communication is served after 4.00pm on a working day, or on a day that is not a working day, it shall be treated as having been served on the next working day.

22.4 For the avoidance of doubt, where proceedings have been issued in the Courts of England, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

23. Each amount stated to be payable by the District Council or the Owner to the other under or pursuant to this Deed is exclusive of VAT (if any).

**IN WITNESS** of which this Deed has been executed by the Parties as a deed and delivered



on the day and year first above written

**THE FIRST SCHEDULE**

**Draft Planning Permission**

**Application 16/01664/AOP - Land north of Little Horwood Road, Great Horwood**  
**Draft Conditions - 07/12/18**

- 1 Approval of the details of the means of access, layout, scale and external appearance of the building(s), and the landscaping of the site (hereafter called 'the reserved matters') shall be obtained in writing from the Local Planning Authority before the development is commenced.

Reason: The application is for outline planning permission

- 2 Application for approval of reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

Reason: To prevent the accumulation of planning permissions: to enable the Council to review the suitability of the development in the light of altered circumstances and to comply with the provisions of Section 92(2) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 3 The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters.

Reason: To prevent the accumulation of planning permissions: to enable the Council to review the suitability of the development in the light of altered circumstances and to comply with the provisions of Section 92(2) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 4 The development shall relate to the following approved plans: 4015\_022/001Rev.C (Site Location Plan).

- 5 No development above slab level shall take place until samples/details of the materials proposed to be used on the external surfaces of the development and on the surfaces of the roads, footpaths and driveways, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out using the approved materials unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure a satisfactory appearance to the development and to comply with policy GP35 of the Aylesbury Vale District Local Plan and the National Planning Policy Framework.

- 6 Any tree or shrub which forms part of the approved landscaping scheme which within a period of five years from planting fails to become established, becomes seriously damaged or diseased, dies or for any reason is removed shall be replaced in the next planting season by a tree or shrub of a species, size and maturity to be approved by the Local Planning Authority.

Reason: In the interests of the visual amenities of the locality and to comply with policy GP38 of the Aylesbury Vale District Local Plan and the National Planning Policy Framework.

- 7 The details to be submitted for approval in writing by the Local Planning Authority in accordance with Condition 1 above shall include details of the proposed slab levels of the building(s) in relation to the existing and proposed levels of the site and the surrounding land, with reference to fixed datum point. The building(s) shall be constructed with slabs at levels that have been approved in writing by the Local Planning Authority.

Reason: For the avoidance of doubt and to ensure a satisfactory form of development and to comply with policy GP8 and GP35 of the Aylesbury Vale District Local Plan and the National Planning Policy Framework.

- 8 The details to be submitted in accordance with condition 1 above shall include a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development. The scheme shall also include:
- Existing and proposed discharge rates and volumes;
  - Infiltration rate testing to BRE 365 (together with groundwater level monitoring).
  - Full construction details of all SUDS and drainage components;
  - A detailed drainage layout with pipe numbers, gradients and pipe sizes complete, together with storage volumes of all SuDS components.
  - Calculations to demonstrate the proposed drainage system can contain up to the 1 in 30 storm event without flooding. Any onsite flooding between the 1 in 30 and the 1 in 100 plus climate change storm event should be safely contained on site;
  - Details of proposed overland flood flow routes in the event of system exceedance or failure, with demonstration that such flows can be appropriately managed on site without increasing flood risk to occupants, or to adjacent or downstream sites;
  - Flow depth and flow direction;

The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

Reason: In order to ensure that the development is adequately drained and to comply with the National Planning Policy Framework to ensure that there is a satisfactory solution to managing flood risk.

- 9 The details required by condition 8 above shall be accompanied by a whole life maintenance plan for the site's drainage system. The plan should set out how and when to maintain the full drainage system (e.g. a maintenance schedule for each drainage/SuDS component) during and following construction with details of who is to be responsible for the maintenance. No dwelling shall be occupied until the works have been carried out in accordance with the approved details.

Reason: In order to ensure that the development is adequately drained and to comply with the National Planning Policy Framework.



- 10 Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved in writing by the Local Planning Authority to demonstrate that the SUDS has been constructed as per the approved scheme.

Reason: To ensure that the sustainable drainage system is designed and constructed to the technical standards.

- 11 No development shall take place until an Ecological Mitigation and Enhancement Plan, has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason: To address the impact of the development on biodiversity and provide net gains where possible in accordance with the National Planning Policy Framework and with regard to article 10 of the Habitats Directive.

- 12 No development shall take place until, the developer the agent or successors in title, have secured the implementation of a programme of archaeological work in accordance with the approved 'Written scheme of investigation for geophysical survey and archaeological trench evaluation' by MOLA, dated 25/06/18 as updated / superseded by the Archaeological Geophysical Survey, July 2018 by MOLA and accompanying proposed trenches plan.

Reason: To secure the expert evaluation, further investigation of archaeological remains, and the mitigation of the effects of development upon them including preservation in situ, post excavation analysis and an appropriate level of publication and to accord with policy GP59 of the Aylesbury Vale District Local Plan and the National Planning Policy Framework.

*Pre-commencement justification: All these works need to be carried out in advance of any construction work on site.*

- 13 The development shall be served by means of adoptable estate roads and appropriately located access points which shall be laid out in accordance with details to be submitted to and approved in writing by the Local Planning Authority in accordance with condition 1. No dwelling shall be occupied until the estate roads which provide access to it have been laid out in accordance with the approved details.

Reason: In order to minimise danger, obstruction and inconvenience towers of the highway and of the development.

- 14 No part of the development hereby permitted shall be occupied until the existing Traffic Regulation Order enforcing the existing 30mph speed limit has been revoked and amended to permit the location of a new terminal point to the east of the site access from Little Horwood Road. These amendments and new signage will be in accordance with details which shall have first been submitted to and approved in writing by the Local Planning Authority.

Reason: In order to minimise danger, obstruction and inconvenience towers of the highway and of the development.

- 15 No part of the development hereby permitted shall be occupied until visibility splays have been provided on both sides of all access points between a point 2.4 metres along the centre line of the access measured from the edge of the carriageway and a point 43 metres along the edge of the carriageway measured from the intersection of the centre line of the access. The area contained within the splays shall be kept free of any obstruction exceeding 0.6 metres in height above the nearside channel level of the carriageway.

Reason: To provide adequate inter-visibility between the access and the exiting public highway for the safety and convenience of users of the highway and of the access.

- 16 The details to be submitted for the approval in writing of the Local Planning Authority in accordance with Condition 1 above shall include a scheme for parking, garaging and manoeuvring in accordance with the Local Planning Authority's "Car Parking Standards". The approved scheme shall be implemented and made available for use before the development hereby permitted is occupied and that area shall not thereafter be used for any other purpose.

Reason: To enable vehicles to draw off, park and turn clear of the highway to minimise danger, obstruction and inconvenience to users of the adjoining highway and to comply with the National Planning Policy Framework.

- 22 The details required to be submitted for approval pursuant to condition 1 above shall include details of measures to facilitate the provision of high speed broadband for the dwellings hereby permitted. The development shall be carried out in accordance with the approved details.

- 23 Before the development hereby permitted is commenced a Construction Management Plan (CMP) shall have been submitted to and approved in writing by the Local Planning Authority. Construction of the development shall not be carried out otherwise than in accordance with the approved CMP which shall include the following:

- a) parking and turning for vehicles of site personnel, operative and visitors;
- b) loading and unloading of plant and materials
- c) piling techniques if necessary
- d) erection and maintenance of any security hoarding and lighting
- e) measures to prevent mud from vehicles being deposited on the highway
- f) measures to control the emission of dust, noise and dirt during construction
- g) a scheme for recycling / disposing of waste resulting from demolition and construction works
- h) hours of construction and demolition

Reason: To minimise the impact of construction related activities on the local highway network and on the amenities of the occupiers of nearby properties.

*Pre-commencement justification: The details to be approved will require to be complied with during construction so necessarily must be approved in advance of that.*

## INFORMATIVES

1. This permission is in outline only with all matters reserved for subsequent approval and no work can commence until all reserved matters have been approved and the requirements of any pre-commencement conditions satisfied. The indicative plans submitted in support of it (which for the avoidance of doubt are the drainage strategy (23969\_01\_230\_01), feasibility layout (1246-003), planting plan (6635.PP.ASP02), hard works plan (6635.PP.ASP01A) and related specification, play items, site furniture and surfacing) are for illustrative purposes only and form no part of this approval, nor do they necessarily give an indication of what might be acceptable to the Local Planning Authority.
2. Ordinary Watercourse Informative: Under the terms of the Land Drainage Act 1991 and the Floods and Water Management Act 2010, the prior consent of the Buckingham and River Ouzel Internal Drainage Board (IDB) is required for any proposed works or structures in the watercourse. After planning permission has been granted by the LPA, the applicant must apply for Land Drainage Consent from the IDB.

DRAFT



## THE SECOND SCHEDULE

### Obligations relating to notification

The Owner covenants as follows:

1. To give the District Council not less than ten (10) Working Days prior written notice of the anticipated date of Commencement of the Development
2. To enable the District Council to accurately monitor compliance with the obligations in this Deed to provide the details set out in paragraphs 2.1 to 2.6 of this Schedule to the District Council in writing every three calendar months from the date of Commencement of the Development with the first figures falling due on the first day of the calendar month after the expiry of three full calendar months from the Commencement of the Development and subsequent figures will be due every three calendar months thereafter on the first day of the appropriate month:-
  - 2.1 The total number of Affordable Dwellings which the Owner has started construction works on and as a separate figure the number which construction were started on during the preceding three calendar months; and
  - 2.2 The total number of Market Housing Dwellings which the Owner has started construction works on and as a separate figure the number which construction works were started on during the preceding three calendar months; and
  - 2.3 The total number of Affordable Dwellings which have been Completed and as a separate figure the number that were Completed during the preceding three calendar months; and
  - 2.4 The total number of Market Housing Dwellings which have been Completed and as a separate figure the number that have been Completed during the preceding three calendar months; and
  - 2.5 The total number of Affordable Dwellings that are Occupied and as a separate figure the number that have been Occupied during the preceding three calendar months; and
  - 2.6 The total number of Market Housing Dwellings on the Land that are Occupied and as a separate figure the number that have been Occupied during the preceding three calendar months

## **THE THIRD SCHEDULE**

### **Affordable Housing Obligations**

The Owner covenants with the District Council as follows:

#### **Part I**

##### **Affordable Housing Plan**

1. Prior to the Commencement of the Development or at the time of submission of the First Reserved Matters Application to submit the Affordable Housing Plan to the District Council for approval in writing (such approval not to be unreasonably withheld) FOR THE AVOIDANCE OF DOUBT it is declared that nothing required to be included in the Affordable Housing Plan shall be construed as requiring anything that may be inconsistent with the Planning Permission.
  
2. The Affordable Dwellings shall be constructed in accordance with:-
  - 2.1 the approved Affordable Housing Plan; and
  - 2.2 the minimum requirements of the Building Regulations applicable at the time the Affordable Dwellings are being constructed

##### **Transfer of Affordable Dwellings**

3. Not to cause or permit the Occupation of more than 50% of the Market Housing Dwellings until:
  - 3.1 the Affordable Dwellings have been Completed as Fully Serviced and Constructed Affordable Dwellings; and
  - 3.2 the Affordable Dwellings have been disposed of to the Association free from financial charges (other than service charges and subject to paragraph 5 of this Schedule) and encumbrances which would prevent or materially impede their use as Affordable Dwellings
  
4. Any service charge to be charged for the Affordable Dwellings shall be an annual service charge which shall initially be set at a fair and reasonable proportion of the

costs relating to the services provided and any subsequent revision to the said service charge shall also be set at a fair and reasonable proportion of the costs relating to the services provided

5. To give the District Council a written update every three months of the progress made to dispose of the Affordable Dwellings to the Association commencing three months from the date of Commencement of the Development until a binding contract for the disposal of the Affordable Dwellings has been entered into with the Association
6. To notify the District Council in writing of the date of completion of a binding contract with the Association for the disposal of the Affordable Dwellings within 10 Working Days of the date of completion of the contract
7. To permit and allow the Association its contractors agents and the occupiers of the Affordable Dwellings vehicular and pedestrian access at all times over the footpaths footways and roadways on the Land which are necessary for access to and from the Affordable Dwellings

## **Part II**

### **Occupation of Affordable Dwellings**

8. Unless otherwise stated in this Deed the following Occupation criteria, restrictions and exclusions shall apply to the Affordable Dwellings:
  - 8.1 The Affordable Dwellings shall not be Occupied other than by Eligible Households in accordance with the Nominations Agreement ( or such other agreement which may supersede the Nominations Agreement including any Common Housing Register Agreement entered into between the Council and the Association);
  - 8.2 The Affordable Dwellings shall not be Occupied and managed other than in accordance with the objects of the Association and subject to paragraph 8.1 of this Part II of this Schedule in accordance with such published lettings policy and allocation system as may be adopted by the Association from time to time;

- 8.3 The Affordable Dwellings for Rent shall not be let and Occupied other than at an Affordable Rent and shall not be Occupied other than on the basis of assured tenancies or assured shorthold tenancies or such other form of statutory tenancy which may be available.
9. The provisions of this Schedule which relate to the Occupation of the Affordable Dwellings shall cease to apply to:-
- 9.1 a tenant of an Affordable Dwelling for Rent who exercises the right to acquire and has acquired the Affordable Dwelling (including a mortgagee and successors in title and assigns of such a tenant);
- 9.2 a leaseholder of a Shared Ownership Dwelling who has staircased up to 100% of the equity in the Shared Ownership Dwelling (including a mortgagee and successors in title and assigns of such a leaseholder);
10. In the event that a tenant of an Affordable Dwelling for Rent exercises the right to acquire or a leaseholder of a Shared Ownership Dwelling staircases to 100% of the equity in the Shared Ownership Dwelling, then the Association shall (unless the law otherwise requires) use or procure the use of an amount equal to the grant received by the Association in relation to the relevant Dwelling minus all interest costs and expenses to fund the provision of further Affordable Housing in the District of Aylesbury Vale.
11. To notify the District Council in writing of any acquisition or staircasing that takes place under paragraphs 9.1 and 9.2 of this Part II of this Schedule within 20 Working Days of the acquisition or staircasing taking place
12. A Chargee of an Association or of any of the Affordable Dwellings who is in possession or who wishes to exercise its power of sale shall for a period of three months ("the Relevant Period") use reasonable endeavours to secure the continued availability of

those Affordable Dwellings through the transfer of those Affordable Dwellings to a registered provider of social housing (as defined under the provisions of sections 144 to 159 of the Housing and Regeneration Act 2008) for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses

13. In the event that the Chargee has not been able to dispose of the Affordable Dwelling(s) to an Association within the Relevant Period pursuant to paragraph 12 of this Schedule the Chargee of the Affordable Dwellings shall be entitled to dispose of the relevant Affordable Dwelling(s) and shall be automatically released from the terms of this Schedule

## **THE FOURTH SCHEDULE**

### **The Open Space Obligations**

1. The Owner covenants with the District Council:
  - 1.1 To provide:

0.99 acres of Public Open Space

And obtain:

approval of the Reserved Matters Open Space Land Scheme to include all landscaping, footpaths, street furniture, car park and LEAP
  - 1.2 Not to cause or permit the Commencement of the Development until the Open Space Land Scheme has been submitted to and approved in writing by the District Council ("the Approved Open Space Land Scheme")
  - 1.3 Not to cause or permit Commencement of Development until either:
    - 1.3.1 an in principle offer has been made to the Parish Council to Transfer the Open Space Land to the Parish Council in accordance with the terms of this Deed;  
or
    - 1.3.2 the Owner has confirmed (in writing) to the District Council that no such offer is to be made to the Parish Council in accordance with paragraph 1.3.1 above and instead the Open Space Land is to be transferred to a Management Company in accordance with the terms of this Deed
  - 1.4 that the Owner will lay out and maintain all elements of the Approved Open Space Land Scheme as per approved Reserved Matters application save for the Street Furniture and LEAP which are to be provided by the Parish Council

### **Provisional Certificate**

- 1.5. After the Open Space Land has been provided laid out and landscaped in accordance with the Approved Open Space Land Scheme to apply to the District Council in writing requesting issue of the Provisional Certificate
- 1.6. Within 10 Working Days of receipt of the written request referred to in paragraph 1.5 of this Schedule the District Council shall carry out an inspection of the Open Space Land and if after inspection of the Open Space Land the District Council considers acting reasonably that the Open Space Land has been satisfactorily provided laid out and landscaped in accordance with the Approved Open Space Land Scheme Save For the Street Furniture and LEAP the District Council shall issue the Provisional Certificate within 10 Working Days of carrying out the inspection
- 1.7. If after inspection of the Open Space Land, the District Council considers that the Open Space Land has not been provided laid out and landscaped satisfactorily in accordance with the Approved Open Space Land Scheme Save For the Street Furniture and LEAP the District Council shall notify the Owner of the outcome of the inspection within 10 Working Days of carrying out the inspection and the Owner shall at their own expense rectify any deficiencies and carry out such works or operations as may reasonably be required by the District Council to bring the Open Space Land up to the standard required by the Approved Open Space Land Scheme and the procedures referred to in paragraphs 1.5, 1.6 and 1.7 of this Schedule shall be repeated as often as necessary until the Provisional Certificate is issued
- 1.8. From the date of issue of the Final Certificate for the Open Space Land the Owner shall make the Open Space Land and all the facilities on the Open Space Land available for use by the public as an open amenity or recreation area in perpetuity and shall allow the public to have unrestricted access at all times to the Open Space Land including the right to gain access to the Open Space Land over any roads and associated footways and footpaths on the Land even if such roads footways and



footpaths are in (or remain in) private ownership after the Development has been Completed

1.9. From the date of issue of the Provisional Certificate for the Open Space Land the Owner covenants:-

1.9.1 not to use or permit the use of the Open Space Land for any purpose other than as a public recreation or amenity area; and

1.9.2 to manage and maintain the Open Space Land during the Open Space Land Maintenance Period (including maintenance of all soft and hard landscaping built features lighting drainage and any other features on the Open Space Land) and to make good to the reasonable satisfaction of the District Council any damage or defects in the Open Space Land arising during the Open Space Land Maintenance Period Save That the Open Space Land may be temporarily closed whilst the Parish Council or the contractors on behalf of the Parish Council install the Street Furniture and, LEAP

#### **Final Certificate**

1.10. At the expiration of the Open Space Land Maintenance Period to apply to the District Council for the issue of the Final Certificate for the Open Space Land

#### **Transfer of the Open Space Land**

1.11. SUBJECT TO paragraph 1.3.2 of this Schedule after the District Council has issued the Provisional Certificate for the Open Space Land to make a formal offer in writing to transfer the Open Space Land to the Parish Council and if the Parish Council accepts the offer of transfer of the Open Space Land within 28 Working Days of the offer being made the Owner shall transfer the Open Space Land to the Parish Council:

1.11.1 for nil consideration;

1.11.2 free of all financial charges and other encumbrances that may materially affect use of the Open Space Land by the public; and

1.11.3 with vacant possession

within 6 months of the issue of the Final Certificate by the District Council PROVIDED ALWAYS THAT the Owner shall continue to maintain the Open Space Land in a clean and tidy condition until the transfer to the Parish Council has been completed

- 1.12. Any transfer of the Open Space Land to the Parish Council in accordance with paragraph 1.11 of this Schedule of this Deed shall be substantially in accordance with the Transfer Form subject to negotiation between the Parish Council and the Owner and the Owner shall submit an executed copy of the Transfer Form to the District Council within 7 Working Days of completion of the transfer of the Open Space Land to the Parish Council and on completion of the Transfer play equipment will be installed on the Public Open Space by the Parish Council funded by the Parish Council
- 1.13. If the Open Space Land is to be transferred to the Parish Council, the Owner shall pay:
- 1.13.1 any SDLT associated with that transfer (including the reasonable costs and disbursements of the transferee) on execution of the Transfer Form; and
  - 1.13.2 the Commuted Sum and the relevant part of the Inspection Fee for the Open Space Land to the District Council on or before the date of completion of the transfer of the Open Space Land to the Parish Council
- 1.14. In the event that the Parish Council does not accept the offer of the transfer of the Open Space Land as provided for under Paragraph 1.11 of this Schedule the Owner covenants not to cause or permit Occupation of more than 14 Dwellings until:
- 1.14.1 a Management Company has been appointed to manage and maintain the Open Space Land in perpetuity; and
  - 1.14.2 the Open Space Land has been transferred or otherwise disposed of to that Management Company; and
  - 1.14.3 details of the appointed Management Company have been notified to the District Council in writing and a copy of the executed Transfer Form for the transfer of the Open Space Land to the Management Company has been submitted to the District Council

**THE FIFTH SCHEDULE**

**LOCATION PLAN**



B 22.11.18  
Boundary line updated. NEW  
21/01/2018  
Revised drawing name

Rev. Date. Detail

**NOTE:**

Do not scale from drawing - all dimensions to be confirmed on site.  
Drawings to be used in conjunction with other drawings and documents published on  
rCOH Ltd Project web pages or RFI.

Resist all enquiries to rCOH Ltd.

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rights are granted in writing to rCOH Ltd and no use direct or otherwise permitted  
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**PROJECT >** Land to the North of Ulme Horwood Road

**DRAWING >** Location plan: Bulbdrive

DWG No.	418_02/201	Drawn By:	REL
Rev.	B	QA Check:	---
Scale >	1:1250 @ A3	Date:	31/03/2018

**DWG STATUS**

Sketch	.....
Submission	.....
Tender	.....
Contract	.....
Construction	.....



## APPENDIX A

### Minimum Requirements for the Open Space Scheme

- An accurate Tree Survey (to BS5837) and tree protection plan (to BS5837).
- Details of all landscaping (including planting arrangements/regimes to include full botanical plant names, plant sizes, plant varieties and planting densities).
- Details of all existing and proposed levels on the site.
- Details of any earthworks proposed (including gradients, materials or construction, and drainage).
- Details of all roadways, paths, areas of hard landscaping etc.
- Details of all equipment/seating/bins etc.
- Details of any walls (including any retaining walls) and fences or similar features.
- Details of any buildings to be provided.
- Details of all existing and proposed drainage arrangements (including ditches) – relevant levels should be shown with the other levels details mentioned above.
- Details (including levels) of all existing and proposed services (including all manhole covers, service boxes and underground plant) on, under, over or through the site.
- Details of the ownership of boundaries and any associated maintenance requirements or works to those boundaries (e.g. cutting back hedges or repairing fences or maintaining ditches).
- Details of the phasing of provision (where relevant).
- Details of the maintenance regime to be followed during the establishment period.
- Where applicable details of the areas to be made available for adoption after the scheme has been completed.

**APPENDIX B**

DATE \_\_\_\_\_ 201[]

(1)

and

(2)

**TRANSFER**  
[of part]

Land at  
in the County of Buckinghamshire





Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 12.

Place 'X' in any box that applies.

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

Use this panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- any required or permitted statements
- other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

	<p>For overseas companies</p> <p>(a) Territory of incorporation:</p> <p>(b) Registered number in England and Wales including any prefix:</p>
7	<p>Transferee's intended address(es) for service for entry in the register:</p> <p>[ ]</p>
8	<p>The transferor transfers the property to the transferee</p>
9	<p>Consideration</p> <p><input type="checkbox"/> The transferor has received from the transferee for the property the following sum (in words and figures):</p> <p><input checked="" type="checkbox"/> The transfer is not for money or anything that has a monetary value</p> <p><input type="checkbox"/> Insert other receipt as appropriate:</p>
10	<p>The transferor transfers with</p> <p><input checked="" type="checkbox"/> full title guarantee</p> <p><input type="checkbox"/> limited title guarantee</p>
11	<p>Declaration of trust. The transferee is more than one person and</p> <p><input type="checkbox"/> they are to hold the property on trust for themselves as joint tenants</p> <p><input type="checkbox"/> they are to hold the property on trust for themselves as tenants in common in equal shares</p> <p><input type="checkbox"/> they are to hold the property on trust:</p>
12	<p>Additional provisions</p> <p>Definitions</p> <p>[The Transferee acts in pursuance of its powers under Section 139 of the Local Government Act 1972 [and Open Spaces Act 1906] and [Section 164 Public Health Act 1875] and [Section 19 Local Government (Miscellaneous Provisions) Act 1976] and all other powers enabling it in this behalf]</p> <p>"Estate" means such part of the development area at</p>

Any other land affected by rights granted or reserved or by restrictive covenants should be defined by reference to a plan.

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

Any other land affected should be defined by reference to a plan and the title numbers referred to in

.....  
which is on the date of this Transfer in the ownership of the Transferor which is land comprised in title numbers "the Section 106 Agreement" means a Deed of Agreement made the day of 20 and any subsequent Deeds of Variation or other supplemental Deeds pursuant to the Town and Country Planning Act 1990 and made between  
"the Service Media" means such drains pipes wires cables and other associated apparatus.

12.1 Rights granted for the benefit of the property  
The Transferor grant for the benefit of the property.

- (a) A right at all times in common with all others similarly entitled of entry onto the unbuilt upon parts of the Estate for the purposes of maintaining repairing and reinstating any [structures] boundary walls fences [roofs gutters] and pipes on the Property such right only to be exercised on reasonable notice in writing being given (except in the case of emergencies) and subject to the minimum of inconvenience being caused and to all damage thereby occasioned being made good forthwith or as soon as reasonably practicable or monetary payment being made for any damage not capable of being made good
- (b) A right at all times for the Transferee and its employees contractors and agents to have access to and egress from the Property with or without vehicles plant and machinery over any roadway laid upon the Estate for the purpose only of maintaining the Property as amenity or recreational land and for the general public a right of way on foot only over and along the said roadway for the purpose of access to and egress from the Property for the proper use of the same as recreational and open amenity land or open space until such time (if ever) as the roads and footways shall be adopted and become highways maintainable at the public expense

12.2 Rights reserved for the benefit of other land

Exceptions and Reservations

panel 2.

The Property is transferred subject to the following exceptions and reservations which are excepted and reserved for the benefit of each and every part of the Estate and for the statutory authorities and utility companies providing gas water electricity communications and other services to adjoining or neighbouring properties.

- (a) A right in common with all others similarly entitled to use and where necessary and expedient to install renew and remove such Service Media as may now or in the future serve the Estate but pass in on over or under the Property together with a right of entry exercisable on reasonable notice in writing (except in the case of emergencies) onto the Property for the purposes of inspection renewal maintenance repair and reinstatement of the Service Media and for moving installing laying and connecting to the Service Media subject to the minimum of inconvenience being caused and to all damage occasioned thereby being made good forthwith or as soon as reasonably practicable or monetary payment being made for any damage not capable of being made good
- (b) A right in common with all others similarly entitled of entry onto the Property for the purposes of maintaining repairing and reinstating any structures boundary walls fences roofs gutters and pipes on the Estate but which pass in on over or under the Property such right only to be exercised on reasonable notice in writing being given (except in the case of emergencies) and subject to the minimum of inconvenience being caused and to all damage thereby occasioned being made good forthwith to the satisfaction of the Transferee or as soon as reasonably practicable or monetary payment being made for any damage not capable of being made good

Include words of covenant.

### 12.3 Restrictive covenants by the transferee

THE Transferee HEREBY COVENANTS with the Transferor for the benefit of the Estate and for the benefit of the land now or formerly

comprised in the Title above mentioned not henceforth to use the Property other than as for open space land which expression shall mean amenity or recreational land to be made available for the use of the public PROVIDED THAT nothing herein contained shall be construed to mean "open space land" within the meaning of the Open Spaces Act 1906 and PROVIDED FURTHER that the Transferee may at any time and from time to time:-

- (1) exercise in respect of the Property permitted development rights pursuant to the Town and Country Planning (General Permitted Development) Order 1995 or
- (2) provide erect or construct on the Property such ancillary features and ancillary structures as are normally associated with open space amenity and recreational use
- (3) Use parts of the Property for the purposes of road widening whether or not a grant of planning permission is required for such purpose

Include words of covenant.

12.4 Restrictive covenants by the transferor

NONE

Insert here any required or permitted statements, certificates or applications and any agreed declarations and so on.

12.5 Other

Indemnity covenant by Transferee

WITH the object of affording to the Transferor a full and sufficient indemnity in respect of a breach of the covenants and stipulations referred to in the Property and Charges Registers of the title number set out in panel 1 of this Transfer (but not further or otherwise) the Transferee hereby covenants with the Transferor that the Transferee and its successors in title will indemnify and keep indemnified the Transferor and his/their respective estates from and against all claims actions demands and liability in respect of any non-observance or non-performance of the said covenants and stipulations insofar as the same

are still subsisting and capable of taking effect and being enforced and affect the Property

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

13 Execution

**EXECUTED as a DEED by affixing** )  
**The COMMON SEAL of** )

in the presence of:- )

Director

Director/Secretary

**[EXECUTED as a DEED by** )

**[** )

in the presence of:- )

**WARNING**

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

## APPENDIX C

### AYLESBURY VALE DISTRICT COUNCIL Equipped Play Facilities

#### 1.0 Provision

- 1.1 Aylesbury Vale District Council acknowledges the importance of providing children and young people with safe, interesting and accessible outdoor play areas. Equipped play facilities should provide a variety of safe and challenging play opportunities for all ages and abilities.
- 1.2 The Council has used the Fields in Trust's (FIT) publication 'Planning and Design for Outdoor Sport and Play' (2008) as the basis for calculating the size of areas required. The extent and location of these areas may be adapted to fit within site or design restrictions.
- 1.3 Developers should consider all provision at an early stage as it may be appropriate to integrate smaller areas into a single large space with no detriment to the overall size of play area provided.
- 1.4 No Local Areas for Play (LAPs) should be included in any development due to the limited age range and play value these areas provide. LAP's should be included within Local Equipped Areas for Play (LEAPs) that are designed for 2 to 12 year olds.
- 1.5 Where more than one play area is required by the FIT standard then different equipment and features should be provided in each area to increase the play value across a development.

#### 2.0 Standards

- 2.1 Developers should refer to and comply with the following standards<sup>1</sup> in order to ensure play areas are of sufficient quality, accessibility, and safety:
  - BS EN 1176 Playground Equipment Standard
  - BS EN 1177 Impact Absorbing Playground Surfacing: Safety Requirements and Test Methods
  - Disability Discrimination Act 1995
  - Environmental Protection Act 1996
- 2.2 Developers should obtain written confirmation of compliance from the supplier or manufacturer of the play equipment and/or surfacing along with copies of test results, (note that BSI kite mark or a TuV mark does not guarantee compliance with EN1176).
- 2.3 The Disability Discrimination Act 1995 requires access to public play areas not to discriminate against disabled people. The developer should ensure that play area designs take into consideration the needs of the disabled, both as users and carers/guardians who may themselves be disabled although their children are not.
- 2.4 The Environmental Protection Act 1996 relates in this context to the control and removal of litter (including dog fouling). The developer shall ensure that provision of bins is adequate with reasonable access for maintenance.

<sup>1</sup> See <http://www.rospa.com/leisure/safety/adviceandinformation/playsafety/en1176-playground-equipment-standard.aspx>



### **3.0 Design principles**

3.1 The following publications/requirements should be adhered to:

- Open Space Provision 'saved' policies of the Aylesbury Vale District Local Plan<sup>2</sup>.
- FIT publication 'Planning and Design for Outdoor Sport and Play'<sup>3</sup>
- Play England publication 'Design for Play: A guide to creating successful play spaces'<sup>4</sup>

3.2 Developers should ensure that designs and the actual built play spaces achieve a minimum rating of 'Good' against all criteria measured in RoSPA's 'Play Value Assessment'. This includes both Local and Neighbourhood Equipped Areas for Play.

3.3 The developer should obtain a copy of the RoSPA 'Plan Check/Design Review' report which demonstrates that designs meets the above requirements. Contact RoSPA's Liz Cheshire (Director RoSPA Play safety Ltd. Tel: 01367 244 600 Email: [echeshire@rospaplaysafety.co.uk](mailto:echeshire@rospaplaysafety.co.uk)).

### **4.0 Location & siting**

4.1 The play area(s) should be integral to the housing development so the importance of play in community life is acknowledged and informal supervision is allowed for.

4.2 Easy walking routes for a child living within the housing development and with no intervening major roads on route should be provided.

4.3 Footpaths should be integral of any network of footpaths and constructed to adoptable standard, this includes pathways within the play area itself.

4.4 Careful consideration should be given to play area location and design so any risk of nuisance (perceived or other wise) is not experienced by residents and/or users of other facilities.

4.5 Location under or near electrical transmission lines should be avoided.

4.6 Sites should be easily accessible for maintenance and emergency vehicles.

### **5.0 Enclosures**

5.1 Play areas should not be fenced unless there is a hazard such as a busy main road or deep water course nearby or if recommended by RoSPA. This current stance is taken from Play England and noted in their publications 'Design for Play: A guide to creating successful play spaces' & 'Managing Risk in Play Provision: Implementation guide'.

5.2 If an area is to be fenced then sufficiently robust systems meeting BS EN1176 shall be used. The details of which should be included on designs that are RoSPA assessed, see paragraph 3.3.

5.3 Gates of any fenced areas should also meet BS EN 1176 and a minimum of 2 DDA compliant pedestrian gates should be provided as well as a minimum of 1 gate (vehicle width) for maintenance access.

<sup>2</sup> See <http://www.aylesburyvaledc.gov.uk/planning-policy/adopted-aylesbury-vale-district-local-plan/>

<sup>3</sup> See [http://www.fieldsintrust.org/Product\\_Detail.aspx?productid=dc291578-50c5-49c5-b0d7-3c376db6b801](http://www.fieldsintrust.org/Product_Detail.aspx?productid=dc291578-50c5-49c5-b0d7-3c376db6b801)

<sup>4</sup> See <http://www.playengland.org.uk/resources/design-for-play.aspx>



**APPENDIX D**

**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**

**HB Public Law  
PO Box 2  
Civic Centre  
Station Road  
Harrow  
Middlesex  
HA1 2UH**



- 1.6 "Available" means where:
- (a) 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
  - (b) the Shared Ownership Lease has expired or been determined and the Dwelling can be re-let by the Association
- 1.7 "the Council" for the avoidance of doubt includes its successors in title
- 1.8 "Council's Allocation Criteria" means the criteria contained in the Council's shared ownership policy that may available for inspection in force from time to time
- 1.9 "Deed" means this deed granted on the date hereof and any document which is supplemental hereto or which is expressed to be collateral herewith
- 1.10 "Dwelling" 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
- 1.11 "Exempt Assignment" means an assignment pursuant to the terms of a Shared Ownership Lease:
- (a) where the assignment is by operation of law and the Lessee is not obliged to notify the Association to nominate an Assignee; or
  - (b) where the Lessee may notify the Association to nominate an Assignee but elects not to do so;
- 1.12 "Exempt Dwelling" means each or any Dwelling:
- (a) subject to a Shared Ownership Lease that where the Lessee has staircased their ownership to 100%; or

(b) 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

1.13 "Help to Buy Affordable Home Ownership List" 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)

1.14 "Help to Buy Agent" means an agent appointed by the government's Homes & Communities Agency to administer the government's home ownership schemes

1.15 "Homes England" means the government body responsible for grant funding of Affordable Housing (including its statutory successors in title or agent)

1.16 "Initial Lettings" means the initial grant of a Shared Ownership Lease of each and every Dwelling

1.17 "the Land" 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]

1.18 "Lessee" means the lessee of a Shared Ownership Lease situated on the Land

1.19 "Nomination Notice" 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

- 1.20 "Nomination Period" 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
- 1.21 "the Nominee" or "the Nominees" means the person or persons who:
- (a) are approved as meeting the Council's Allocation Criteria;
  - (b) are recorded on the Help to Buy Affordable Home Ownership List held by the Help to Buy Agents; or
  - (c) 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
- 1.22 "Registered Provider" means a non-profit registered provider of social housing as defined in the Housing and Regeneration Act 2008.
- 1.23 "S106 Agreement" 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.
- 1.24 "Shared Ownership Lease" 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
- 1.25 "Subsequent Assignment" means an assignment of a Shared Ownership Lease that is not an Exempt Assignment or an assignment of an Exempt Dwelling

- 1.26 "Working day" means any day Monday to Friday but excluding Bank and Public Holidays
- 1.27 "Chargee" 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
- 1.28 The Interpretation Act 1978 shall apply to this Deed as it applies to an act of parliament
- 1.29 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
- 1.30 the clause headings do not form part of this Deed and shall not be taken into account in its constructions or interpretation
- 1.31 reference to a clause without further designation is to be construed as a reference to the clause of this Deed so numbered

## **2. Recitals**

- 2.1 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
- 2.2 The Association agrees to grant to the Council the nomination rights contained in this Deed over the Land pursuant to the s106 Agreement
- 2.3 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:



### **3. Enforceability of Covenants**

3.1 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

3.2 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

3.3 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

3.4 The provisions of this Deed shall not apply to Exempt Dwellings

3.5 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

3.6 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:

3.6.1 notify the Council in writing of the date that the Relevant Period commenced; and

3.6.2 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

3.7 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

#### **4. The Association's Undertakings**

4.1 the Association undertakes with the Council to grant to the Council the nomination rights contained herein pursuant to the s106 Agreement

4.2 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.

#### **5. Nomination Rights**

The Association grants to the Council the right to:

(a) nominate Lessees for 100% of Initial Lettings pursuant to the provisions of this Deed; and

(b) 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**

#### **6. 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

#### **7. The Council's Nominations**

7.1 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:

7.1.1 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

7.1.2 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

7.2 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.

## **8. Further Nominations**

8.1 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

8.2 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**

#### **9. 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

#### **10. Council's Notice to the Association**

10.1 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;

10.2 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];

10.3 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 lieu of clause [10.1] above

10.4 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 notifying 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.

**11. 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



**12. The Association's Choice of Nominees**

12.1 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)

12.2 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

**13. 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:

(a) a Nominee or such remaining Nominees have not met the Association's Qualifying Criteria; or

(b) 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

(c) 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

**14. 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

**15. 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

**16. Disputes**

16.1 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

- 16.2 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

**17. 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

**18. Severance**

- 18.1 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.

- 18.2 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.

**19. Governing Law**

19.1 This Deed 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

**SCHEDULE 1**

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]
-----------	-----------------------------	--------------

## SCHEDULE 2

THIS DEED OF COVENANT is made on

201

### 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

- (A) 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")
- (B) 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
- (C) 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
- (D) The Covenantor is required to enter into this deed of covenant in accordance with [clause] of the Deed

### Agreed Terms

#### 1. Interpretation

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

##### 1.1 Definitions:

**Association:** [INSERT NAME OF ORIGINAL ASSOCIATION] and its successors in title where the provisions of the Deed apply.

**Deed:** a deed of nomination rights for the Property dated [DATE] and made between [PARTIES], and all documents supplemental to that Deed.

**Property:** [ADDRESS OR DESCRIPTION OF THE PROPERTY] as [more particularly described in and] the Deed.

- 1.2 References to the Council include statutory successors in title
- 1.3 Clause headings shall not affect the interpretation of this deed.
- 1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to writing or written includes fax but not e-mail.
- 1.9 Except where a contrary intention appears, references to clauses are to the clauses of this deed.
- 1.10 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

**2. Covenantor's Covenants**

- 2.1 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]
- 2.2 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
- 2.3 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

**3. Third party rights**

- 3.1 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.

**EXECUTION**

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

EXECUTED as a DEED by affixing )  
THE COMMON SEAL of )  
)  
hereunto in the presence )  
of :- )

EXECUTED as a DEED by affixing )  
THE COMMON SEAL of )  
AYLESBURY VALE DISTRICT )  
COUNCIL hereunto in the presence )  
of :- )

EXECUTED as a DEED by affixing the )  
Common Seal of )  
[HOUSING ASSOCIATION LIMITED] )  
hereunto in the presence of :- )

Authorised Signatory

Authorised Signatory

EXECUTED as a DEED by affixing the )  
Common Seal of AYLESBURY VALE )  
DISTRICT COUNCIL hereunto in the )  
presence of :- )

Chairman

Solicitor

**APPENDIX E**

**Nomination Deed for Rented Units**

**DATED** \_\_\_\_\_ **20**

**[Registered Provider]**

**and**

**AYLESBURY VALE DISTRICT COUNCIL**

**DEED OF NOMINATION  
RIGHTS**

**Rented Units**

**at**

**[Site Address]**

**Buckinghamshire**

**HB Public Law  
PO Box 2  
Civic Centre  
Station Road  
Harrow  
Middlesex  
HA1 2UH**

**Ref: EAVC/AV001/**



- (a) 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
- (b) the Shared Ownership Lease has expired or been determined and the Dwelling can be re-let by the Association

- 1.7 "the Council" for the avoidance of doubt includes its successors in title
- 1.8 "Council's Allocation Criteria" means the criteria contained in the Council's shared ownership policy that may available for inspection in force from time to time
- 1.9 "Deed" means this deed granted on the date hereof and any document which is supplemental hereto or which is expressed to be collateral herewith
- 1.10 "Dwelling" 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
- 1.11 "Exempt Assignment" means an assignment pursuant to the terms of a Shared Ownership Lease:
- (a) where the assignment is by operation of law and the Lessee is not obliged to notify the Association to nominate an Assignee; or
  - (b) where the Lessee may notify the Association to nominate an Assignee but elects not to do so;
- 1.12 "Exempt Dwelling" means each or any Dwelling:
- (a) subject to a Shared Ownership Lease that where the Lessee has staircased their ownership to 100%; or
  - (b) 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

- 1.13 "Help to Buy Affordable Home Ownership List" 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)
- 1.14 "Help to Buy Agent" means an agent appointed by the government's Homes & Communities Agency to administer the government's home ownership schemes
- 1.15 "Homes and Community Agency" means the government body responsible for grant funding of Affordable Housing (including its statutory successors in title or agent)
- 1.16 "Initial Lettings" means the initial grant of a Shared Ownership Lease of each and every Dwelling
- 1.17 "the Land" 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]
- 1.18 "Lessee" means the lessee of a Shared Ownership Lease situated on the Land
- 1.19 "Nomination Notice" 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 absolute discretion sees fit to include to be served in such a manner agreed by the Council and the Association
- 1.20 "Nomination Period" 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
- 1.21 "the Nominee" or "the Nominees" means the person or persons who:



- (a) are approved as meeting the Council's Allocation Criteria;
  - (b) are recorded on the Help to Buy Affordable Home Ownership List held by the Help to Buy Agents; or
  - (c) 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

1.22 "Registered Provider" means a non-profit registered provider of social housing as defined in the Housing and Regeneration Act 2008.

1.23 "S106 Agreement" means the s106 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.

1.24 "Shared Ownership Lease" 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

1.25 "Subsequent Assignment" means an assignment of a Shared Ownership Lease that is not an Exempt Assignment or an assignment of an Exempt Dwelling

1.26 "Working day" means any day Monday to Friday but excluding Bank and Public Holidays

1.27 "Chargee" 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

- 1.28 The Interpretation Act 1978 shall apply to this Deed as it applies to an act of parliament
- 1.29 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
- 1.30 the clause headings do not form part of this Deed and shall not be taken into account in its constructions or interpretation
- 1.31 reference to a clause without further designation is to be construed as a reference to the clause of this Deed so numbered

## **2. Recitals**

- 2.1 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
- 2.2 The Association agrees to grant to the Council the nomination rights contained in this Deed over the Land pursuant to the s106 Agreement
- 2.3 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:

## **3. Enforceability of Covenants**

- 3.1 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

- 3.2 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
- 3.3 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
- 3.4 The provisions of this Deed shall not apply to Exempt Dwellings
- 3.5 A Chargee who is in possession or who wishes to exercise its power of sale shall 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
- 3.6 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:

3.6.1 notify the Council in writing of the date that the Relevant Period commenced; and

3.6.2 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

3.7 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

#### **4. The Association's Undertakings**

4.1 the Association undertakes with the Council to grant to the Council the nomination rights contained herein pursuant to the s106 Agreement

4.2 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.

#### **5. Nomination Rights**

The Association grants to the Council the right to:

(b) nominate Lessees for 100% of Initial Lettings pursuant to the provisions of this Deed; and

(b) 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**

#### **6. 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

#### **7. The Council's Nominations**

7.1 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:

7.1.1 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

7.1.2 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

- 7.2 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.

**8. Further Nominations**

- 8.1 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
- 8.2 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**

#### **9. 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

#### **10. Council's Notice to the Association**

10.1 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;

10.2 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];

10.3 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 lieu of clause [10.1] above

10.4 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 notifying 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.

**11. 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

**12. The Association's Choice of Nominees**

12.1 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)

12.2 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

**13. 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:

- (a) a Nominee or such remaining Nominees have not met the Association's Qualifying Criteria; or
- (b) 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
- (c) 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

**14. 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

## **15. 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

## **16. Disputes**

- 16.3 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
- 16.4 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

**17. 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

**18. Severance**

18.1 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.

18.2 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.

**19. Governing Law**

19.1 This Deed 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

## SCHEDULE 1

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]

## SCHEDULE 2

THIS DEED OF COVENANT is made on 201

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

- (A) 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")
- (B) 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
- (C) 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
- (D) The Covenantor is required to enter into this deed of covenant in accordance with [clause] of the Deed

Agreed Terms

### 2. Interpretation

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

#### 1.1 Definitions:

**Association:** [INSERT NAME OF ORIGINAL ASSOCIATION] and its successors in title where the provisions of the Deed apply.

**Deed:** a deed of nomination rights for the Property dated [DATE] and made between [PARTIES], and all documents supplemental to that Deed.

**Property:** [ADDRESS OR DESCRIPTION OF THE PROPERTY] as [more particularly described in and] the Deed.

#### 1.2 References to the Council include statutory successors in title



- 1.3 Clause headings shall not affect the interpretation of this deed.
- 1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to writing or written includes fax but not e-mail.
- 1.9 Except where a contrary intention appears, references to clauses are to the clauses of this deed.
- 1.10 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

#### **2. Covenantor's Covenants**

- 2.1 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]
- 2.2 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
- 2.3 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

#### **3. Third party rights**

- 3.1 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.

**EXECUTION**

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

EXECUTED as a DEED by affixing )  
THE COMMON SEAL of )  
 )  
hereunto in the presence )  
of :- )

EXECUTED as a DEED by affixing )  
THE COMMON SEAL of )  
AYLESBURY VALE DISTRICT )  
COUNCIL hereunto in the presence )  
of :- )

**IN WITNESS** whereof the District Council has executed this instrument as a Deed in the presence of the person(s) mentioned below and the Owner has signed this instrument as a Deed in the presence of the person(s) mentioned below the day and year first before written

EXECUTED as a Deed by affixing the )  
Common Seal of **AYLESBURY VALE** )  
**DISTRICT COUNCIL** hereunto in the )  
presence of:-



Chairman



Monitoring Officer



18/137

SIGNED as a Deed by )  
**JOHN GERARD STACEY GRAINGE** )  
in the presence of:- )



Signature of Witness:

Print Name:



Address:

Mount Pleasant Farm  
Stewkley  
Chartered Surveyor

Occupation: