

Dated 29 AUGUST 2017

**AYLESBURY VALE DISTRICT COUNCIL (1)**

-and-

**BUCKINGHAMSHIRE COUNTY COUNCIL (2)**

-and-

**THOMAS EDWIN WATTS (3)**

---

**DEED OF PLANNING OBLIGATION**

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

---

**HB Public Law**

PO Box 2  
Civic Centre  
Harrow  
Middlesex  
HA1 2UII

DX 30450 HARROW 3  
Ref: AH/AVDC-PL999-030049

THIS DEED is made the 29<sup>th</sup> day of August 2017

**BETWEEN:**

- (1) **AYLESBURY VALE DISTRICT COUNCIL** of The Gateway, Gatehouse Road Aylesbury, Buckinghamshire HP19 8FF ("**the District Council**")
- (2) **BUCKINGHAMSHIRE COUNTY COUNCIL** of County Hall Aylesbury, Walton Street, Aylesbury, Buckinghamshire HP20 1UA ("**the County Council**")
- (3) **THOMAS EDWIN WATTS** of Oak Tree Farm, Thornborough Road, Nash, Milton Keynes MK17 0HN. ("**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 County Council is the local education authority for the County of Buckinghamshire and is responsible for the provision of facilities for the education of children within the District of Aylesbury Vale and is also the highway and planning authority for the area in which the Land is situated
- (3) The Owner is the freehold owner of the Land registered at HM Land Registry under BM169230.
- (4) The Parties are satisfied 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)
- (5) The Planning Application has been submitted to the District Council to carry out the

Development

- (6) The District Council resolved by its Planning Manager's delegated powers to grant the Planning Application subject to the completion of this Deed
- (7) The Parties are satisfied 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)
- (8) 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

## **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>"Accessible and Adaptable Dwelling Standard"</b>	means constructed as a category 2- accessible and adaptable dwelling as described in

Approved Document M of the Building Regulations 2010 – ‘Access to and use of buildings’

**“Affordable Dwellings”**

means 10 (ten) 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

**“Affordable Dwellings for Rent”**

means the dwellings forming part of the Affordable Dwellings which are to be made available for letting at an Affordable Rent to Eligible Households

**“Affordable Housing”**

means housing to be provided in accordance with the NPPF to specified Eligible Households whose incomes are insufficient to enable them to buy or rent housing available locally on the open market and which:-

- (1) 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

- (2) 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

**“Affordable Housing Plan”**

means a drawing to be submitted to the District Council for approval and which identifies the locations the distribution and agreed mix of all the Affordable Dwellings together with the principal vehicular and cycleway accesses to the Affordable Housing

**“Affordable Rent”**

means rent charged by the Association to Eligible 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:

- (a) inclusive of service charge; and
- (b) capped for 12 months at a level equal to or below that of the Local Housing Allowance Rate

**“Amenity Land”**

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 indicative position of which is identified and delineated on the 'Plan showing Amenity Land' Drawing No. 3071.104, the exact position of which is to be agreed by the District Council as part of the Amenity Land Scheme as set out in the Seventh Schedule hereto and which shall not be or construed to be open space within the meaning of the Open Spaces Act 1906

**"Amenity Land Scheme"**

means a scheme to be submitted to and approved by the Council in accordance with this Deed detailing the areas of Amenity Land to be provided within the Development and the arrangements to be put in place for the future maintenance and management of the Amenity Land by a Management Company

**"Broad Rental Market Area"**

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:

- (a) residential premises of a variety of types including such premises held on a variety of tenures; and
- (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

**“Chargee”**

means a mortgagee or chargee of the Association or any receiver or manager (including an administrative receiver or manager ) appointed pursuant to the Law of Property Act 1925

**“Common Housing Register Agreement”**

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

**“Community Transport”**

means the provision of community transport services where commercial or conventional bus routes are not viable, these are either demand-responsive or fixed route transport services, available to the public, operating and run under

section 22 permits. These are generally used in areas that are geographically isolated such as rural villages to improve the transport sustainability and accessibility of a development.

**“Community Transport Contribution”**

means the sum of £20,000.00 (TWENTY THOUSAND POUNDS AND ZERO PENCE) to be used by the Council for the purpose of Community Transport

**“Completion”**

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) 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

**“Councils”**

means the District Council and the County Council and the expression **“Council”** shall mean either the District Council or the County Council as appropriate in the context

**“Development”**

means the residential development of up to 30 dwellings with associated amenity green space



and sustainable drainage.

**“Dwellings”**

means the Affordable Dwellings and the Market Housing Dwellings and the expression **“Dwelling”** shall be construed accordingly

**“Education Contribution”**

means a sum calculated in accordance with the formula contained in the Fifth Schedule hereto and with the details to be submitted as part of the reserved matters application approved pursuant to the Planning Permission such sum to be increased by the amount (if any) equal to the rise in the Index from the date hereof to the date the payment is due which is to be paid by the Owner to the County Council to be spent towards the expansion of Buckingham School through the provision of additional dining facilities or such other identified education project (in accordance with reg 123(3) as identified by the County Council and notified to the Owner)

**“Eligible Households”**

means those persons who are assessed by the District Council and/or the Association as being unable to meet their housing needs requirements in the private sector market because of the relationship between housing costs and incomes

**“First Reserved Matters Application”**

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

**“Fully Serviced and Constructed”**

means that each of the Affordable Dwelling has been completely constructed and connected to mains services including gas (if 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:-

- (1) to base course during the construction of the Development; and
- (2) upon Completion of the Development to the full specification required to enable adoption to take place

**“Index”**

means the Buildings Costs Information Service All-in Tender Price Index

**“Land”**

means the land against which the obligations in

this Deed may be enforced known as Land South Of Little Horwood Road Great Horwood Buckinghamshire and registered at the Land Registry under title number BM169230 and is shown for identification purposes edged red on the Plan

**"Local Housing Allowance Rate"**

means the local housing allowance rate from year to year applicable in the Broad Rental Market Area in which the Land is situated

**"Local Plan"**

means the Aylesbury Vale District Local Plan adopted by the District Council on 15 January 2004

**"Management Company"**

means a company (or companies) to be appointed by the Owner for the purpose of managing and maintaining the SUDS

**"Market Housing Dwellings"**

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

**"Monitoring Contribution"**



means the sum of £600.00 (SIX HUNDRED POUNDS AND ZERO PENCE) to be paid by

*Handwritten initials: J.F.W. and a signature.*

the Owner towards the District Council's costs *and the sum of £800.00 (EIGHT HUNDRED POUNDS) to be paid by the Owner towards the County Council's costs of monitoring the obligations in this Deed*

**"Nomination Agreement"**

means an agreement substantially in the form of the District Council's standard nomination

agreements annexed at Appendices A and B 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

**“Occupation”**

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 **“Occupy”** or **“Occupied”** shall be means a sum to be calculated in accordance with the Ready Reckoner on the basis of the details to be submitted as part of the First Reserved Matters Application such sum to be increased by the amount (if any) equal to the rise in the Index from the date of this Deed to the date of actual payment of the sum and which is to be paid by the Owner to the Council to be spent by the Council on the Open Space and Sport and Leisure Project construed accordingly

**“Open Space and Sport and Leisure**

means a sum to be calculated in accordance

<b>Contribution”</b>	with the Ready Reckoner on the basis of the details to be submitted as part of the First Reserved Matters Application such sum to be increased by the amount (if any) equal to the rise in the Index from the date of this Deed to the date of actual payment of the sum and which is to be paid by the Owner to the Council to be spent by the Council on the Open Space and Sport and Leisure Project
<b>“Open Space and Sport and Leisure Project”</b>	means the improvement, refurbishment or rebuild of Great Horwood Village Hall, High Street, Great Horwood, MK17 0QL and/or the provision of equipped play facilities at Land North of Little Horwood Road, Great Horwood
<b>“Parties”</b>	means the District Council, the County Council and the Owner
<b>“Plan”</b>	means the red line application boundary plan of the Land annexed to this Deed in the Eighth Schedule titled ‘Planning obligation Agreement Land South of Little Horwood Road Great Horwood, APP REF: 16/03538/AOP’
<b>“Planning Application”</b>	means the application for outline planning permission for the Development submitted to the District Council and given the reference

16/03538/AOP

**“Planning Manager”**

means the District Council's Planning Manager (Development Management)

**"Planning Permission"**

means the planning permission for the Development to be granted by the District Council pursuant to the Planning Application

**“Preferred Partners List”**

means a list of Associations who are members of the Aylesbury Vale Affordable Housing Partnership which currently are :

- bpha Ltd,
- Catalyst Housing Group,
- the Vale of Aylesbury Housing Trust,
- Hightown Housing Association,
- Paradigm Housing,
- Thames Valley Housing Association,
- Thrive Homes,
- Housing Solutions and
- the Bromford Group and any other Association or registered provider selected by the District Council to be a preferred partner

**“Ready Reckoner”**

means the document entitled “Sport and Leisure Facilities SPG Companion Document: Ready Reckoner” published by the Council and dated August 2005

<b>“RoSPA Play Value Assesment”</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 in the form or substantially in the form of the Homes and Communities Agency model lease from time to time or such other form as shall be approved in writing by the District Council
<b>TRO Contribution</b>	means the sum of £10,000.00 (TEN THOUSAND POUNDS AND ZERO PENCE) to be used by the Council for the purpose of amending the Traffic Regulation Order to extend the 30mph speed limit
<b>“SDLT”</b>	means stamp duty land tax
<b>“SUDS”</b>	means sustainable urban drainage systems that: <ul style="list-style-type: none"> <li>i. provide an alternative to the direct channelling of surface water through networks of pipes and sewers to nearby watercourses; and</li> </ul>

- ii. aim to reduce surface water flooding, improve water quality; and
- iii. enhance the amenity and biodiversity value of the environment; and
- iv. store or re-using surface water at source; and
- v. decrease flow rates to watercourses; and
- vi. reduce the transport of pollution to the water environment;

and which shall not be or construed to be open space within the meaning of the Open Spaces Act 1906

**“SUDS Scheme”**

means a sustainable urban drainage systems scheme for the Development which is to be submitted to and approved in writing by the District Council prior to the Commencement of the Development and which includes:-

- (a) details of all the works features and measures that are proposed to be carried out constructed and implemented on the Land during the Development;
- (b) timescales for when the said works features and measures are to be carried



out; and

- (c) on-going maintenance measures as more particularly set out in the Fifth Schedule of this Deed

**“Tenure Mix”**

a tenure mix for the Affordable Dwellings to be provided on the following basis

- (a) seven of the total number of dwellings to be provided as part of the Development shall be Affordable Dwellings for Rent; and
- (b) three of the total number of dwellings to be provided as part of the Development shall be Shared Ownership Dwellings

or such other tenure mix as shall be approved in writing by the District Council

**“Working Day”**

means any day excluding Saturday, Sunday or a bank holiday in England and the expression **“Working Days”** 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 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.
- 2.4 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.
- 2.5 Where the agreement consent approval or satisfaction of the Councils or an officer of the Councils is required under the terms of this Deed such agreement consent approval or satisfaction shall not be unreasonably withheld or delayed.
- 2.6 For the avoidance of doubt references to "this Deed" shall include the Schedules and Appendices to this Deed.
- 2.7 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; 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.

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

1. This Deed is entered into and completed pursuant to:-
  - 1.1 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 as provided by Section 106 of the 1990 Act;
  - 1.2 Section 111 of the 1972 Act to the extent that it contains provisions relating to covenants of the Councils; and
  - 1.3 Section 1 of the 2011 Act in relation to any covenants in this Deed which fall outside the scope of section 106 of the 1990 Act
  - 1.4 Section 19 of the 1976 Act.
2. Each of the obligations created by this Deed constitutes a planning obligation for the purposes of Section 106 of the 1990 Act and shall be enforceable by the Councils in their capacity as the relevant local planning authority for the relevant obligation.
3. 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 clauses 6 (costs) and clause 19 (jurisdiction) which shall come into effect immediately upon completion of this Deed.
4. Subject as provided in this Deed the Owner hereby for themselves and for any person deriving title from them undertake agree declare and covenant with the Councils 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.

5. The Owner covenants with each of the Councils that if any payment due to each of the Councils 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. 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;
  - (b) the County Council's reasonable legal costs incurred in the preparation and settlement of this Deed; and
  - (c) 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 Councils in the exercise of their functions as local planning authorities and their rights powers and duties under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Councils 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 any of the Councils 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 relevant Council shall constitute a continuing waiver and no such waiver shall prevent the relevant 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 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 paragraph 9.5 of Part II of the Second Schedule of this Deed the Association and leaseholders 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) SAVE THAT the Association shall continue to be bound by the obligations in paragraphs 10.6 and 10.7 of Part II of the Second Schedule of this Deed notwithstanding that it no longer has a legal interest or

manages the Affordable Dwelling in question.

13. The Association and leaseholders and occupiers of the Affordable Dwellings shall not be responsible for payment of any financial obligations in this Deed or for constructing the Affordable Dwellings or for any obligations to provide or maintain the Amenity Land.
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.
15. 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 15 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.
16. 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 but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
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 Wales 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.

## **THE FIRST SCHEDULE**

### **Obligations relating to notification**

The Owner covenants as follows:

1. To give each of the Councils not less than ten 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 Owners have 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 Owners have 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 SECOND SCHEDULE

### Affordable Housing Obligations

The Owner covenants with the District Council as follows:-

#### Part 1

1. Not to cause or permit the Commencement of the Development until the Affordable Housing Plan has been submitted to and approved by the District Council in writing (**"The Approved Affordable Housing Plan"**)

The Approved Affordable Dwellings shall be constructed in accordance with:-

- 2.1 the Approved Affordable Housing Plan; and
  - 2.2 any national standards applicable at the time the Affordable Dwellings are being constructed;
  - 2.3 the details set out below in respect of the quantity of each type and form of tenure of each Affordable Dwelling (unless otherwise agreed in writing by the District Council);  
and
  - 2.4 The Accessible Dwelling Standard
- 3 To provide 10 (ten) of the total number of Dwellings as Affordable Housing of which 7 (seven) shall be Affordable Rent and 3 (three) shall be Shared Ownership and the dwelling sizes as follows:
    - 3.1 2 x 1 bed 2 person flats
    - 3.2 3 x 2 bed 4 person houses
    - 3.3 4 x 3 bed 5/6 person houses; and
    - 3.4 1 x 4 bed 6/7/8 person house

of which at least two of the shared ownership Dwellings shall be 2 bed houses.

4. To ensure that the Affordable Dwellings are located in groups of not more than:  
15 dwellings for those Affordable Dwellings which are to be provided as houses or 18 dwellings for those Affordable Dwellings which are to be provided as flats and that each group shall not be situated adjacent to any other group of Affordable Dwellings (and in the case of the Affordable Dwellings to be provided as flats this means that within the same block of flats a group of Affordable Dwellings shall not be either on the same floor or immediately above or below another group of Affordable Dwellings) PROVIDED ALWAYS THAT:
  - 4.1 if only a road separates one group of Affordable Dwellings from another group of Affordable Dwellings; and/or
  - 4.2 Affordable Housing has already been provided in an earlier phase or on an adjacent or adjoining site;this shall be construed as a contiguous boundary unless otherwise agreed in writing by the Council;
  
5. Not to cause or permit the Occupation of more than 50% of the Market Housing Dwellings until:
  - 5.1 the Affordable Dwellings have been Completed as Fully Serviced and Constructed Affordable Dwellings; and
  - 5.2 the Affordable Dwellings have been transferred 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;

6. 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;
7. To give the District Council a written update every three months of the progress made to transfer the Affordable Dwellings to the Association commencing three months from the date of Commencement of the Development until a binding contract for the transfer of the Affordable Dwellings has been entered into with the Association;
8. To notify the District Council in writing of the date of completion of a binding contract with the Association for the transfer of the Affordable Dwellings within 10 Working Days of the date of completion of the contract;
9. 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

10. The following Occupation criteria, restrictions and exclusions shall apply to the Affordable Dwellings:
  - 10.1 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);

- 10.2. The Affordable Dwellings shall not be Occupied and managed other than in accordance with the objects of the Association and subject to paragraph 10.1 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;
- 10.3. 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;
- 10.4 The provisions of this Schedule which relate to the Occupation of the Affordable Dwellings shall cease to apply to:-
  - 10.4.1 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);
  - 10.4.2 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);
- 10.5 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 to fund the provision of further Affordable Housing in the District of Aylesbury Vale;

- 10.6 To notify the District Council in writing of any acquisition or staircasing that takes place under paragraphs 10.4.1 and 10.4.2 of this Part II of this Schedule within 20 Working Days of the acquisition or staircasing taking place;
- 10.7 A Chargee of more than one of the Affordable Dwellings (and FOR THE AVOIDANCE OF DOUBT this clause shall not apply to a mortgagee who has a charge on an individual Affordable Dwelling) 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) at a price sufficient to repay the mortgage or charge and all interest and reasonable costs accrued;
- 10.8 In the event that despite using reasonable endeavours the Chargee is unsuccessful in disposing of the Affordable Dwellings to a registered provider within the Relevant Period as required under paragraph 10.7 of this Part II of this Schedule, the Chargee shall supply the following information to the District 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 Schedule:-
- 10.8.1 notify the District Council in writing of the date that the Relevant Period commenced;

and

- 10.8.2 produce written confirmation to the District Council of the approaches that have taken place during the Relevant Period with at least three registered providers of social housing (whose names shall be given in the said written confirmation) to secure the transfer of the Affordable Dwellings to them ; and
- 10.8.3 provide written confirmation that the Homes and Communities Agency or its successor has been approached during the Relevant Period and detail what proposals were made to secure the transfer of the Affordable Dwellings to another registered provider of social housing together with a written explanation of why those proposals were unsuccessful;
- 10.9 In the event that the steps referred to in paragraphs 10.8 1 to 10.8.3 of this Schedule have all been taken the Chargee of the Affordable Dwellings shall be automatically released from the terms of this Schedule.

## **THE THIRD SCHEDULE**

### **The SUDS Obligations**

1. **The Owner covenants with the District Council:**
  - 1.1 Not to cause or permit the Commencement of the Development until the SUDS Scheme has been submitted to and approved in writing by the District Council.
  - 1.2. Not to cause or permit Occupation of any of the Dwellings until the works for the SUDS have been fully carried out and satisfactorily implemented in accordance with the SUDS Scheme approved by the District Council under paragraph 1.1 of this Schedule.
2. Following the completion of the works for the provision of the SUDS in accordance with the SUDS Scheme the Owner covenant to maintain and manage or to procure that the Management Company manages and maintains the SUDS in perpetuity.
3. In the event that the maintenance of the SUDS is to be carried out by a Management Company the Owner covenant to submit details of the appointed Management Company to the District Council in writing within 7 Working Days of the appointment of the Management Company.



## THE FOURTH SCHEDULE

### The Open Space and Sport and Leisure Contributions Obligations

#### Part I

1. The Owner covenants with the District Council as follows:
2. To pay the Open Space and Sport and Leisure Contribution to the District Council prior to the Commencement of the Development.
3. Not to cause or permit the Commencement of the Development until the Open Space and Sport and Leisure Contribution has been paid to the District Council.
4. Not to use or occupy or cause or permit the use or occupation of Dwellings until such time as the Open Space and Sport and Leisure Contribution has been paid to the District Council

#### Part II

### The District Council's Covenants in respect of the Open Space and Sport and Leisure Contribution

The District Council covenants with the Owner as follows:-

1. To use the Open Space and Sport and Leisure Contribution solely for the Open Space Sport and Leisure Project.
2. If after ten years from the date that the Open Space and Sport and Leisure Contribution is paid to the District Council any part of the Open Space and Sport and Leisure Contribution has not been spent or committed for expenditure for the Open Space and Sport and Leisure Project then the District Council shall refund such unspent part of the Open Space and Sport and Leisure Contribution to the party who paid the Open Space and Sport and Leisure Contribution together with interest at a rate of 2% below the Bank of England Base Rate prevailing with annual compounding at 31 March each calendar year from the date of payment to the date of the refund PROVIDED ALWAYS THAT

if this should ever result in a negative rate of interest then no interest shall be payable.

3. The Open Space and Sport and Leisure Contribution (or any part of it) shall for the purpose of paragraph 2 be deemed to have been committed if any contract has been entered into or any undertaking given (whether enforceable at law or otherwise) the performance or fulfilment of which will require the expenditure of any part of the Open Space and Sport and Leisure Contribution for the Open Space and Sport and Leisure Project (or any part of the Open Space and Sport and Leisure Project).

## THE FIFTH SCHEDULE

### Part I

#### The Education Obligations

The Owner covenants with the District Council and the County Council to pay the Education Contribution to the County Council prior to the Occupation of the Development and not to cause or permit the Occupation of the Development until the Education Contribution has been paid to the County Council

2. To calculate the Education Contribution in accordance with Table 1 below:

Table 1: Education Contribution Calculation

Provision Type	Education Contributions per dwelling				
	Flats		Houses		
	1 Bed	2 Bed	2 Bed	3 Bed	4+ Bed
Secondary	£364	£1,116	£3,393	£7,514	£9,928

### Part II

#### The County Council's Covenants in respect of the Education Contribution

The County Council hereby covenants with the District Council and the Owners as follows:-

1. To use the Education Contribution solely for education purposes in accordance with policy GP94 of the Local Plan provided that the County Council may reimburse itself out of the Education Contribution if the County Council has in anticipation of receipt of the relevant contribution incurred expenditure for the purpose specified.
2. If after ten years from the date that the Education Contribution is paid to the County Council any part of the Education Contribution has not been spent or committed for expenditure for education purposes then the County Council shall refund such unspent part of the Education Contribution to the party who paid the Education Contribution together with interest at a rate of 2% below the Bank of England Base Rate prevailing

with annual compounding at 31 March each calendar year from the date of payment to the date of the refund PROVIDED ALWAYS THAT

if this should ever result in a negative rate of interest then no interest shall be payable.

AND FOR THE AVOIDANCE OF DOUBT the Education Contribution or any part of it shall for the purpose of this paragraph be deemed to have been committed if any contract has been entered into or any undertaking given (whether enforceable at law or otherwise) the performance or fulfilment of which will require the expenditure of funds within 12 calendar months in respect of the purposes referred to in paragraph one of this Schedule or any part thereof or if the County Council has allocated or provisionally allocated such monies to any scheme or schemes which are proposed by it and which accord with the provisions of this Deed.

## **THE SIXTH SCHEDULE**

### **The Community Transport Obligations**

#### **Part I**

The Owner covenants with the County Council as follows:

1. To pay the Community Transport Contribution and the TRO Contribution to the County Council prior to the Commencement of the Development.
2. Not to cause or permit the Commencement of the Development until the Community Transport Contribution and the TRO Contribution has been paid to the County Council.
3. Not to use or occupy or cause or permit the use or occupation of Dwellings until such time as the Community Transport Contribution and the TRO Contribution has been paid to the County Council

#### **Part II**

### **The County Council's Covenants in respect of the Community Transport and the TRO Contribution Obligations**

The County Council covenants with the Owner as follows:-

1. To use the Community Transport Contribution solely for the provision of Community Transport.
2. To use the TRO Contribution for the purpose of amending the Traffic Regulation Order.

## **THE SEVENTH SCHEDULE**

### **The Amenity Land Obligations**

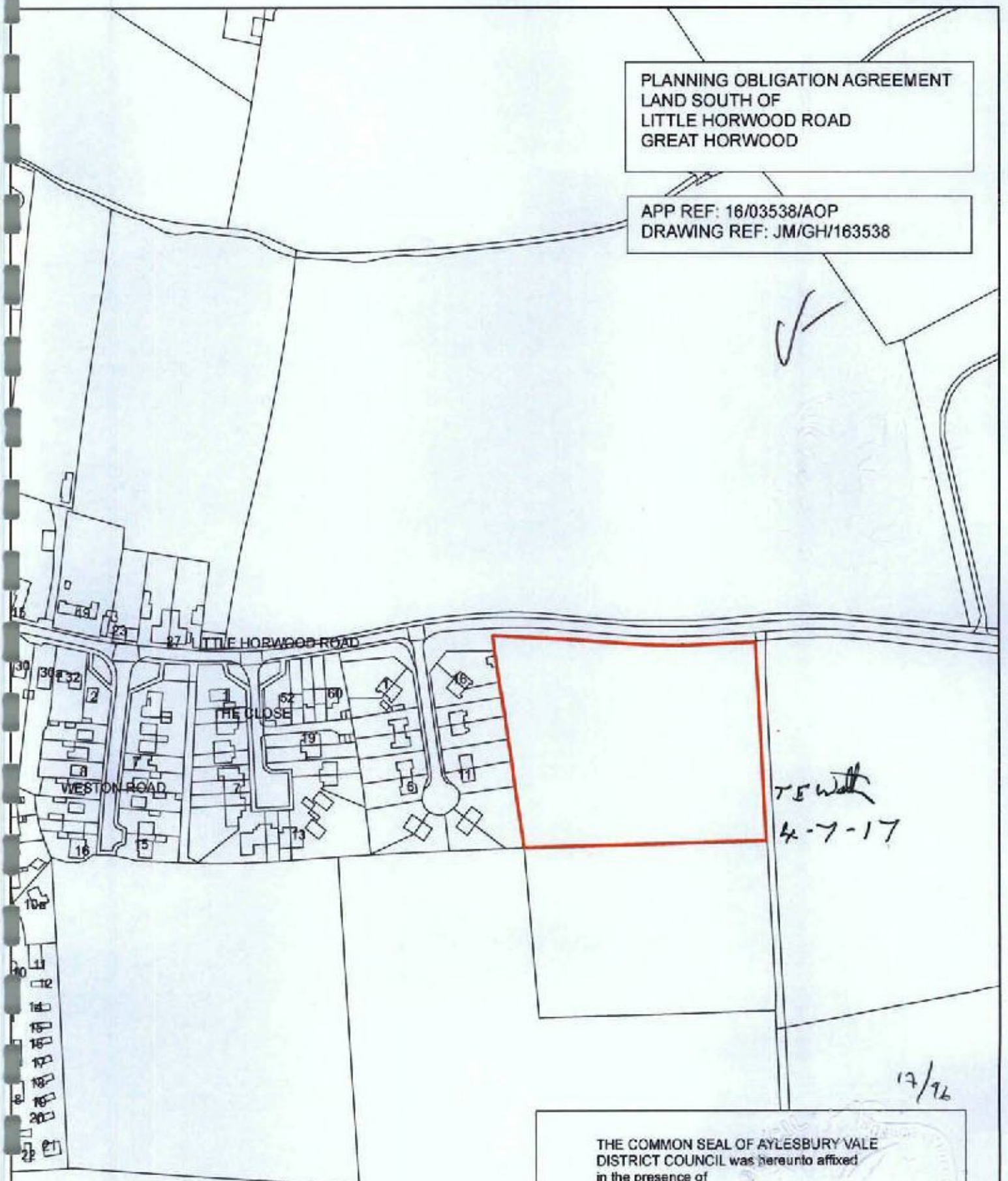
1. The Owners covenant with the District Council:
  - 1.1 To submit the Amenity Land Scheme to the District Council for approval at the time of submission of the Reserved Matters;
  - 1.2 To manage and maintain the Amenity Land in perpetuity in accordance with the approved Amenity Land Scheme.

**THE EIGHTH SCHEDULE**

**PLAN**

PLANNING OBLIGATION AGREEMENT  
LAND SOUTH OF  
LITTLE HORWOOD ROAD  
GREAT HORWOOD

APP REF: 16/03538/AOP  
DRAWING REF: JM/GH/163538



*T E with*  
*4-7-17*

*17/16*

THE COMMON SEAL OF AYLESBURY VALE  
DISTRICT COUNCIL was hereunto affixed  
in the presence of

Chairman

Monitoring Officer

Scale 1:2,500

© Crown Copyright and database right 2017.  
Ordnance Survey 100019797.



**APPENDIX A**

Nomination Deed for Shared Ownership Units

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

[Registered Provider]

and

**AYLESBURY VALE DISTRICT COUNCIL**

**DEED OF NOMINATION  
RIGHTS**

Shared Ownership Units

at

[Site Address]

Buckinghamshire

THIS DEED is made the \_\_\_\_\_ day of \_\_\_\_\_ 20 BETWEEN

(1) "the Association" being [ \_\_\_\_\_ ] [Company or Mutual  
NUMBER] of [ \_\_\_\_\_ ] of the one part; and

(2) "the Council" being **AYLESBURY VALE DISTRICT COUNCIL** of The  
Gateway, Gatehouse Road, Aylesbury, Buckinghamshire HP19 8FF  
of the other part

## WHEREAS

### 1. Definitions and Interpretation

- 1 In this Deed words and phrases shall where the context so admits have the following meanings
- 1.1 "the Act "means the Housing Act 1985 or (where appropriate) any statutory extension or modification amendment or re-enactment thereof and any regulations or orders made thereunder
- 1.2 "Affordable Housing" means a Dwelling or Dwellings already let or to be let on the basis of a Shared Ownership Lease by the Association being a Registered Provider, another similar social housing body or their successors in title so far as this Deed applies
- 1.3 "Assignee" means an assignee of the Lessee of a Shared Ownership Lease to which this deed applies
- 1.4 "the Association" for the avoidance of doubt includes its successors in title
- 1.5 "Association's Qualifying Criteria" means the written statement prepared by the Association and submitted to and agreed by the Council (whose agreement shall not be unreasonably withheld or delayed) for the purpose of assessing the eligibility of person(s) nominated for a Dwelling the terms of which shall not be changed without the prior written approval of the Council
- 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 “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
- 1.8 “Deed” means this deed granted on the date hereof and any document which is supplemental hereto or which is expressed to be collateral herewith
- 1.9 “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 One 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
- 1.10 “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;
- 1.11 “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
- 1.12 “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)

- 1.13 “Help to Buy Agent” means an agent appointed by the government’s Homes & Communities Agency to administer the government’s home ownership schemes
- 1.14 “Homes and Community Agency” means the government body responsible for grant funding of Affordable Housing (including its statutory successors in title or agent)
- 1.15 “Initial Lettings” means the initial grant of a Shared Ownership Lease of each and every Dwelling
- 1.16 “the Land” means the land which is for the purpose of identification edged in red on the plan annexed hereto which includes the Dwellings described in Schedule One [and specified in the S106 Agreement]
- 1.17 “Lessee” means the lessee of a Shared Ownership Lease situated on the Land
- 1.18 “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
- 1.19 “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
- 1.20 “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

- 1.21 “Registered Provider” means a non-profit registered provider of social housing as defined in the Housing and Regeneration Act 2008.
- 1.22 “S106 Agreement” means the s106 agreement dated [ ] entered into by the Council and [other parties] pursuant to which this Deed has been entered into
- 1.23 “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
- 1.24 “Subsequent Assignment” means an assignment of a Shared Ownership Lease that is not an Exempt Assignment or an assignment of an Exempt Dwelling
- 1.25 “Working day” means any day Monday to Friday but excluding Bank and Public Holidays
- 1.26 The Interpretation Act 1978 shall apply to this Deed as it applies to an act of parliament
- 1.27 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
- 1.28 the clause headings do not form part of this Deed and shall not be taken into account in its constructions or interpretation
- 1.29 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 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

3.2 The Association for itself and its successors in title covenants with the Council that the Association will not (subject to clause 3.4 of this Deed) transfer the Land or any part thereof without first obtaining a deed of covenant (in the form attached hereto in Schedule Two) 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

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

3.4 The obligations of this Deed shall not be binding on a mortgagee chargee or receiver in possession [or who exercises their power of sale] of the Land or any person deriving title from or by the mortgagee chargee or receiver PROVIDED THAT such mortgagee chargee or receiver acts at arm's length and agrees to normal commercial terms who shall notify the Council in writing of their intention to sell the Land to a

Registered Social Landlord and provides further written notification that despite using all reasonable endeavours they have been unable to enter into a binding contract with a Registered Provider

**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**

Notwithstanding any other provisions of this Deed, 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:

7.2 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

7.3 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

7.4 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



7.3 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 and Communities Agency, 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 Where a Nominee acceptable to the Association in accordance with the provisions of Clause 7 either rejects or does not exchange binding contracts for a Shared

Ownership Lease of the Dwelling offered within six (6) weeks of draft documentation being submitted, the Council reserves the right to continue to nominate a Nominee or Nominees and the Association shall make further offers of a Shared Ownership Lease of the Dwelling to subsequent Nominees until the Dwelling is subject to a binding contract for a Shared Ownership Lease unless or until the Nomination Period expires PROVIDED THAT in calculating the aforementioned six (6) week period, 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

**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.

**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.

#### 1.2 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.

#### 1.3 References to the **Council** include statutory successors in title

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

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 B**

**Nomination Rights Deed for Rented Units**

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

(1)

and

AYLESBURY VALE DISTRICT COUNCIL (2)

**DEED OF NOMINATION RIGHTS**

For Rented Units

at

Aylesbury

Buckinghamshire

**THIS DEED OF NOMINATION RIGHTS** is made the                      day of                      Two thousand and                      **BETWEEN**

(1)                      \_\_\_\_\_ "The Association" (and its successors in title) of

(2)                      **AYLESBURY VALE DISTRICT COUNCIL** "The Council" (and its successors in title) of The Gateway Gatehouse Road Aylesbury Buckinghamshire HP19 8FF

**WHEREAS**

(A)                      The Association has acquired or intends to acquire the freehold title to the Property referred to in Clause 1.5 hereof for the purposes of development of residential accommodation

(B)                      The Association has agreed to allow the Council to nominate tenants for the residential units at the Property upon the following terms: -

(i)                      The Council shall nominate tenants for 100% of the Initial lettings in accordance with Clauses 3 & 4 of this Agreement

(ii)                      Thereafter and for the Nomination Period the Council shall be entitled to nominate 75% of the tenants of Rented Units falling Void from time to time in accordance with Clause 6 of this Agreement

**IT IS HEREBY AGREED** as follows:

**Definitions**

1.                      In this Deed the following words shall have the following meanings: -

1.1                      "Initial Lettings" means the first letting of any Rented Unit

1.2                      "Nominee" means a person or persons named in a Nomination Notice as a prospective tenant

1.3                      "Nomination Notice" means a written notice given by the Council to The Association in respect of each Void from time to time in such form as may be reasonably determined by the Council. The Nomination Notice for each one of the Rented Units shall contain

up to two prospective Nominees (and for the avoidance of doubt it is agreed that a Nominee may be two or more persons) comprising one household

- 1.4 "Nomination Period" means 80 years from the date of practical completion of the Rented Units
- 1.5 "Property" means the parcel of land situated at and formerly known as Aylesbury in the County of Buckinghamshire shown edged red on the Plan annexed hereto
- 1.6 "Registered Provider" means a non-profit registered provider of social housing as defined in the Housing and Regeneration Act 2008.
- 1.7 "Rented Units" means the .....dwellings to be constructed on the Property by The Association and more specifically described in the First Schedule
- 1.8 "Tenancy Agreement" means standard form of tenancy agreement with such amendments thereto as The Association shall from time to time consider necessary or desirable provided always that an amended version of the tenancy agreement shall be sent to the Council by The Association as soon as reasonably practicable
- 1.9 "Vacancy Notice" means a written notice given by The Association to the Council in such form as may be reasonably determined by the Council or the parties hereto from time to time
- 1.10 "Void" means a Rented Unit which is vacant as a result of:
  - 1.10.1 the Tenant having moved to other accommodation provided by a landlord who does not require a right to nominate a tenant to The Association's housing stock in return; or
  - 1.10.2 the tenant having died and there being no right of succession to the tenancy whether under the terms of the tenancy agreement or other statute; or
  - 1.10.3 the tenant having purchased a property in the private sector; or
  - 1.10.4 the tenant having been evicted or having abandoned the Rented Unit; or

- 1.10.5 the tenant having been moved to alternative accommodation; or
- 1.10.6 the tenant having moved to accommodation provided by a housing authority (as that expression is defined in Section 4 of the Housing Act 1985) other than the Council; or
- 1.10.7 the tenant having moved to accommodation provided by the Council or The Association

**AND IT IS HEREBY AGREED AND DECLARED** that a Rented Unit shall not be Void when vacant as a result of:

- 1.10.8 the tenant having been rehoused via any mobility scheme where a right to nominate a tenant to The Association's housing stock is required in return; or
  - 1.10.9 the tenant having been moved to alternative accommodation temporarily but with the intention of returning to the Rented Unit; or
  - 1.10.10 the tenant having assigned the tenancy of the Rented Unit on a mutual exchange;
- 1.11 "Working Day" means any day Monday to Friday but excluding Bank and Public Holidays

NOW IT IS AGREED as follows:-

## **2 Enforceability of Covenants**

- 2.1 This Deed is made pursuant to Section 609 of the Housing Act 1985 but the covenants rights and obligations on the part of the Association shall be enforceable without any limit of time (subject to the provisions hereof) only against a body or person directly deriving title from the original covenantor in respect of its interest in the Property where the body or person so deriving title is a Registered Provider
- 2.2 The Association for itself and its successors in title and assigns covenant with the Council that the Association will not transfer (subject to clause 2.3) the Property or any part thereof without first obtaining a Deed of Covenant (in the form attached at the

Second Schedule) 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 of Nomination Rights

2.3 Any mortgagee chargee or receiver shall not be bound by the provisions of this Deed

### 3 **Nomination Rights**

The Association grants to the Council the nomination rights hereinafter provided

3.1 As regards Initial Lettings The Association shall serve a Vacancy Notice in respect of the Rented Units at least two calendar months prior to the date on which such newly constructed or previously unoccupied Rented Units are expected to become available for occupation

3.2 Within ten working days of receipt of a Vacancy Notice in respect of a Rented Unit the Council shall serve a Nomination Notice upon The Association and The Association shall as soon as reasonably practicable thereafter (subject to satisfying itself regarding whether or not any Nominee falls within the category of persons for which The Association may lawfully provide housing) offer and invite the Nominee named in such Nomination Notice in such priority as the Council may specify to enter into its Tenancy Agreement

### 4. **Second Nomination Notice**

4.1 If all of the Nominees named in the first Nomination Notice reject The Association's offer of a Tenancy Agreement or fail to sign a Tenancy Agreement within 7 working days of offer The Association shall as soon as reasonably practicable serve a Second Vacancy Notice whereupon the procedure set out in Clause 3.2 shall be repeated except that the Council shall serve a Nomination Notice within 7 working days of receipt of the second Vacancy Notice



- 4.2 If a Nominee fails to sign a Tenancy Agreement within seven working days of the offer by The Association pursuant to the second Nomination Notice such Nominee shall be deemed to have rejected The Association's offer of a Tenancy Agreement
- 4.3 If all the Nominees named in the Nomination Notices given by the Council in response to The Association's first and second Vacancy Notices in respect of a Rented Unit reject The Association's offer of a Tenancy Agreement or fails to sign a Tenancy Agreement then The Association shall consult with the Council and may request written consent to grant a Tenancy Agreement to a person who is not a nominee of the Council
- 4.4 The Association's obligations under this Clauses 3 & 4 shall cease when all Rented Units have been let to Nominees or to others to whom The Association shall be permitted to let them pursuant to this Agreement except that the Council shall continue to have nomination rights in respect of 75% of Voids thereafter
5. Subject to the provisions of Clauses 3 & 4 The Association will ensure that 100% of the Initial Lettings shall be to Nominees of the Council and thereafter for the Nomination Period subject to the provisions of clause 6 The Association will ensure 75% of lettings of each type of Void shall be to Nominees of the Council
- 6.1 Upon receiving notice of or becoming aware of a Void The Association shall determine whether a Tenancy Agreement of the relevant Rented Unit should be offered to a Nominee having regard to The Association's obligations under Clause 5
- 6.2 If The Association determines that a Tenancy Agreement of such Rented Unit should be offered to a Nominee The Association shall serve a Vacancy Notice within two working days of knowledge of the Void
- 6.3 As soon as possible but in any event within ten working days of receipt of a Vacancy Notice the Council shall serve a Nomination Notice and The Association shall as soon as reasonably practicable thereafter (subject to satisfying itself as to whether or not any Nominee falls within the category of persons for which The Association may lawfully

provide housing) offer a Tenancy Agreement to the Nominees named in such Nomination Notice in such priority order as the Council may specify

- 6.4 If all of the Nominees named in the first Nomination Notice reject The Association's offer of a Tenancy Agreement The Association shall serve a second Vacancy Notice whereupon the procedure set out in Clause 6.3 shall be repeated except that the Council shall serve a Nomination Notice within seven working days of receipt of the second Vacancy Notice
- 6.5 If a Nominee fails to sign a Tenancy Agreement within seven working days of offer of the relevant Rented Unit and being offered a Tenancy Agreement such Nominee shall be deemed to have rejected The Association's offer
- 6.6 If all of the Nominees named in the Nomination Notices given by the Council in response to The Association's first and second Vacancy Notices pursuant to clause 6.2 and 6.4 reject The Association's offer of a Tenancy Agreement The Association shall upon giving the Council 48 hours notice be free to let such Rented Unit as it wishes
7. The Association shall supply to the Council in writing:
  - 7.1 Details of any offer of a Tenancy Agreement made by The Association to a Nominee;
  - 7.2 Details of the reason for not making any offer if The Association makes no offer of a Tenancy Agreement to any Nominee specified in the Nomination Notices served by the Council under Clauses 3.2 and 4.1 or 6.3 and 6.4; and
  - 7.3 The Association and the Council will record the outcome of each offer of a tenancy in a form to be approved by the Council (such approval not to be unreasonably withheld or delayed) and in addition The Association will provide to the Council once in every year a summary of the way in which the nomination rights have operated during the twelve months immediately preceding the date of the report showing how it has complied with the requirements of this Deed

8. The Association shall supply to the Council full details of its Rules and a copy of its Lettings Policy at least one month prior to the service of the first Vacancy Notice and shall notify the Council of any changes in such Rules and Lettings Policy from time to time
9. The Council agrees with The Association that unless The Association shall have agreed in writing to the contrary the Council shall not offer any tenancy to a Nominee or arrange for any other prospective landlord to offer any tenancy to a Nominee until such time as the Nominee has rejected The Association's offer of a Tenancy Agreement
10. The Council shall use reasonable endeavours to provide details of the ethnic origin of Nominees to enable The Association effectively to monitor whether or not it is housing an appropriate percentage of ethnic minority households in accordance with the Communities and Local Government classification
11. The Association may assign its obligations hereunder to a Registered Provider or its successors and subject to the Council's written consent being obtained (such consent not to be unreasonably withheld) and provided that prior written notice of assignment has been given to the Council at least twenty one working days prior to such assignment and the assignee has entered into a direct covenant with the Council to comply with the provisions of this Agreement then the Association shall be released from its obligations and have no further liability to the Council hereunder with effect from the date of such assignment except for breaches of its obligations under this Agreement occurring prior to that assignment
12. Any Notice required to be served hereunder shall be sufficiently served on the parties if sent by pre-paid first class post to the address of the parties indicated above or such other address notified by one party to the other and any notice shall have been deemed to have been served two working days after posting

13. In the case of dispute or difference on any matter under this Deed or as to the construction of this Deed any such dispute or difference shall be referred to a single arbitrator to be agreed between the parties or in default of agreement to be nominated by the President for the time being of the Chartered Institute of Housing in accordance with and subject to the provisions of the Arbitration Act 1996 or any statutory re-enactment or modification for the time being in force
14. Should the Association charge the Property or any part of it it is hereby agreed that any Mortgagee exercising a power of sale may sell the Property or any part of it free of the provisions of this Deed and any Purchaser from the Mortgagee shall obtain a title free of the provisions of this Deed
15. The provisions of this Deed shall not be binding on an individual occupier or tenant of a Rented Unit in respect of which a right to acquire or any similar statutory entitlement has been exercised nor shall it be binding on their mortgages or charges from time to time

**IN WITNESS** whereof the parties hereto have executed this instrument as their Deed in the presence of the persons named below the day and year first before written

THE FIRST SCHEDULE

RENTED UNITS

THE SECOND SCHEDULE

THE DEED OF COVENANT

THIS DEED OF COVENANT is made on

201

BETWEEN

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

BACKGROUND

- (E) By a Deed of Nomination Rights dated [ ] 201 (“the Deed”) the Council was granted rights by the Association to nominate tenants to properties at (“the Property”)
- (F) 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
- (G) 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
- (H) The Covenantor has agreed to enter into this Deed of Covenant in accordance with the requirements of the Deed

NOW THIS DEED WITNESSES

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]

2.2 The Covenantor hereby covenants with the Council that it will at all times from the date hereof allow the Council to nominate tenants to [the Property] [the Transferred Property] in accordance with the provisions 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

EXECUTION

3. 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 )  
hereunto in the )  
presence of:- )

Authorised Signatory

Authorised Signatory

Secretary

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

Chairman

Monitoring Officer



IN WITNESS whereof the District Council and the County Council have executed this instrument as a Deed in the presence of the person(s) mentioned below and the Owners have 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 :- )



[Redacted signature]  
Chairman

[Redacted signature]  
Monitoring Officer

EXECUTED as a Deed by affixing the )  
Common Seal of **BUCKINGHAMSHIRE** )  
**COUNTY COUNCIL** )  
hereunto in the presence of :- )



[Redacted signature]  
Authorised Signatory

SIGNED as a Deed by )

THOMAS EDWIN WATTS )

4-7-17

in the presence of :- )

Signature of Witness:

Print Name: SARAH FENTON

Address:

Occupation: DEVELOPMENT SURVEYOR