

Stratford-on-Avon District Council

**Planning Obligations Templates:
Model Affordable Housing Clauses**

COVER SHEET

**Template 1/2021:
Outline Permissions: Stratford-upon-Avon**

Version 1.5
February 2022

SCOPE:

Main clauses

- (1) Outline permissions.
- (2) Assumes CIL chargeable.

Schedule 1 – Affordable Housing

- (1) Applies only to developer-led (including 'land-led') schemes.
- (2) Applies only in the following settlements: **Stratford-upon-Avon, Alveston** and **Tiddington** within the Parish of Stratford-upon-Avon.
- (3) No specific phasing provisions required.

TRACKED CHANGES OUTSTANDING: None

NOTES:

- Local connection criteria reflect the provisions of paragraph 5.36 of the Stratford-upon-Avon Neighbourhood Development Plan 2011-31.
- Priority Nomination arrangements apply.

Date

2020

[]

and

[]

and

STRATFORD-ON-AVON DISTRICT COUNCIL

and

WARWICKSHIRE COUNTY COUNCIL

DEED OF AGREEMENT

Deed of Agreement under Section 106 of the Town and Country Planning Act 1990

relating to the development of land at

[]

Warwickshire

Stratford on Avon District Council

Elizabeth House

Church Street

Stratford-upon-Avon

Warwickshire

CV37 6HX

(Ref [])

THIS DEED is made the _____ day of _____ 2020

BETWEEN:

- (1) [] of [] and [] ("**the Owner**"), and
- (2) [] whose registered office is [] ("**the Applicant**"), and
- (3) **STRATFORD-ON-AVON DISTRICT COUNCIL** of Elizabeth House, Church Street, Stratford upon Avon, Warwickshire CV37 6HX ("**the District Council**"), and
- (4) **WARWICKSHIRE COUNTY COUNCIL** of Shire Hall Warwick CV37 4RL ("**the County Council**").

WHEREAS: -

1. The **Owner** is the freehold owner of the land at [] which is registered at the Land Registry under title number [] which forms part of the **Site**, the **Site** as shown edged red on the **Plan**.
2. The **District Council** is the Local Planning Authority for the purposes of Section 106 of the Act for the area in which the **Site** is situated.
3. The **County Council** is the [] Authority for the purposes of Section 106 of the **Act** for the area in which the **Site** is situated.
4. The **Applicant**, who has the benefit of an option agreement with the **Owner** dated [] in respect of the **Site**, submitted the **Application** as hereinafter defined to the **District Council** for the development of the **Site**.
5. The **District Council** [] the **Application** on []
6. The **Owner**, the **Applicant**, the **District Council** and the **County Council** are prepared to enter this Deed to secure the planning obligations it creates in the event that the **Outline Planning Permission** is granted.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 Definitions

In this Deed the following words and expressions shall unless the context otherwise requires have the precise meaning set out below:

- "Act"** means the Town and Country Planning Act 1990 (as amended);
- "Affordable Housing Units"** means all the Dwellings to which provisions of **SCHEDULE 1** apply namely for **Affordable Housing** and Affordable Housing Unit should be construed accordingly;
- "Application"** means an application for outline planning permission submitted to the District Council for **the Development** and validated on [] and which has been allocated reference number [];
- "Commencement of Development"** means the date on which any material operation (as defined in Section 56(4) of the **Act**) forming part of the **Development** begins to be carried out other than (for the purposes of any part of this Deed other than [] and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, earthworks, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly;
- "CIL Regulations"** means the Community Infrastructure Levy Regulations 2010 (as amended);
- "Development"** means an outline planning application for [] with all matters reserved except for [] to be

	carried out pursuant to the Outline Planning Permission ;
"Dwelling"	means any residential unit to be constructed on the Development pursuant to the Outline Planning Permission and "Dwellings" shall be construed accordingly;
"Occupation"	means occupation of the Development (or relevant part thereof as the context requires) for the purposes permitted by the Outline Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy", "Occupied" and "Occupations" shall be construed accordingly;
"Open Market Units"	means a Dwelling other than an Affordable Housing Unit and constructed pursuant to the Outline Planning Permission and Open Market Unit shall be construed accordingly;
[if required] "Open Space"	[if required] means the area to be provided within the Site for recreation and amenity space purposes which are to be permanently retained and maintained as open space to serve the Development in accordance with the provisions set out in SCHEDULE 2 ;
"Outline Planning Permission"	means Outline Planning Permission for the Development to be granted pursuant to the Application ;
"Plan"	means the plan attached to this Deed;
"Practical Completion"	means the issue of a certificate of practical completion by the Owner's architect or in the event that the Development (or relevant part thereof) is constructed by a party other than

	the Owner the issue of a certificate of practical completion by that other party's architect and "Practically Complete" and "Practically Completed" shall be construed accordingly;
"Reserved Matters Application"	means any application for approval of any one or more reserved matters pursuant to the Outline Planning Permission ;
"Site"	means the area of land the subject of the Application and against which this Deed may be enforced as shown edged red on the Plan ;
"Working Day(s)"	means any day (apart from Saturday, Sunday, Christmas Eve, Christmas Day, Boxing Day, Good Friday, Easter Monday and any other statutory bank holiday) on which banks in England are open for the transaction of ordinary business.

2. Interpretation

- 2.1 The expressions "the **Owner**" "the **Applicant**" "the **District Council**" and "the **County Council**" shall include their respective successors in title and assigns and/or any successor body.
- 2.2 Where appropriate the singular includes the plural and vice versa.
- 2.3 Words importing one gender include all other genders.
- 2.4 Unless otherwise stated all references to clause numbers schedules and paragraph numbers of schedules are references to the clauses schedules and paragraphs of schedules contained within this Deed.
- 2.5 References to statutory provisions shall be construed as references to those provisions as may hereafter be amended or re-enacted.
- 2.6 The obligations herein relate to the **Site** and each and every part thereof.
- 2.7 Any matter that requires the consent or approval or agreement of any party shall be subject to the proviso that such consent or approval or agreement shall not be unreasonably withheld or delayed.

3. Liability of the Owner for the Covenants herein

The covenants and obligations on the part of the **Owner** herein shall bind the **Owner** and in respect of such part or parts of the **Site** vested in them they shall be jointly and severally liable for the breach of any covenant or obligation contained within this Deed provided that no such person shall be liable for any breach which occurs after they have parted with their entire interest in that part of the **Site** in which the breach occurs but without prejudice to any liability for any subsisting breach arising prior to parting with such interest for which they shall continue to be liable.

4 Enabling Powers

4.1 This Deed is made pursuant to the provisions of Section 106 of the **Act** and shall constitute and shall be deemed to contain planning obligations for the purposes of Section 106 of the **Act** and in the event of a breach it shall be enforceable by the **District Council** as local planning authority and the **County Council** as [] pursuant to all powers enabling and all enactments which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained and shall bind the then **Owner's** respective interest in the **Site** subject to the exceptions set out at Clause 7.

4.2 Without prejudice to the generality to clause 4.1 this Deed is further made pursuant to Sections 111 and 120 of the Local Government Act 1972 Section 2 of the Local Government Act 2000 and Section 1 Localism Act 2011 insofar as the same may be relevant to the enforcement of the obligations contained herein.

5 Conditions Precedent

5.1 This Deed is conditional and shall only have effect upon:

5.1.1 the grant of **Outline Planning Permission**

5.1.3 the **Commencement of Development**

save for the provisions of this clause 5 and clauses 19 (Jurisdiction), 23 (Legal Costs), Clause 24 (Contracts (Rights of Third Parties) Act 1999) and Clause 25 (Applicant's Consent) which shall come into effect immediately upon completion of this Deed.

5.2 For the avoidance of doubt this Deed is entered into on the understanding that in the event of the **Outline Planning Permission** being quashed as a result of any legal proceedings or pursuant to Section 97 of the Act or expires before the **Commencement of Development** or for any other reason then this Deed shall absolutely determine and shall become null and void.

6. Payment of Monies

- 6.1 The obligations herein contained to pay monies to the **District Council** or the **County Council** shall be enforceable against the **Owner** having a freehold interest in the **Site** (except those owners stipulated in Clause 7) at the date on which the obligation arises and any obligation to repay monies shall be construed as referring to a repayment to the party or parties who paid the monies in the first instance.
- 6.2 All payments to be made to the **District Council** and the **County Council** shall be increased by an amount (if any) as identified in the applicable index as set out in the **Relevant Index** in **SCHEDULE []**.
- 6.3 Where payment of any monies to the **District Council** and/or the **County Council** is required to be made on or before a specified number of **Occupations** of **Dwellings** or **Practical Completion** of **Dwellings** the **Owner** will not cause or permit that number of **Occupations** or **Practical Completion** of **Dwellings** to be exceeded until those monies have been paid.

7. Liability

- 7.1 Save for the provisions of **SCHEDULE 1** which shall apply to all **Affordable Housing Units**, the covenants contained in this Deed shall not be enforceable against:
- 7.1.1 individual purchasers or lessees of **Dwellings** (or their respective mortgagees or chargees) constructed pursuant to the **Outline Planning Permission** and any **Qualifying Developing Body** if not the **Site** owner (as defined in Schedule 1); or
- 7.1.2 utility companies in relation to any parts of the **Site** acquired by them for electricity sub-stations gas governor stations or pumping stations or any of the operational functions of such companies; or

7.1.3 anyone whose only interest in the **Site** or any part of it is in the nature of the benefit of an easement or covenant.

8. Monitoring

8.1 The **Owner** hereby agrees to notify the **District Council** (by way of the S106 Monitoring Officer of the **District Council**) of the following:

8.1.1 The **Commencement of Development**, within seven days of the same occurring PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not prevent the **Commencement of Development** or the operation of this Deed.

8.1.2 of the reaching of any of the **Occupation** or **Practical Completion** thresholds relating to **Dwellings** being **Affordable Housing Units** or **Open Market Units** (as the case may be) contained in this Deed such notification to be given within 7 days following the reaching of such threshold.

8.1.3 The date of **Practical Completion** of each Affordable Housing Unit (if any).

8.2 The **Owner** hereby agrees to notify the **County Council** (by the **County Council's** Infrastructure Delivery Manager at PO Box 43 at the address of the **County Council** aforesaid) of the **Commencement of Development** within 7 days of the occurrence of the same PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not prevent the Commencement of Development or the operation of this Deed.

8.3 The Owner shall pay () POUNDS (£) to the District Council upon completion of this Deed towards the cost of monitoring the () obligation(s).

9. The Owner's Covenants to the District Council and the County Council

9.1 The **Owner COVENANTS** with the **District Council** to fully perform and observe the covenants set out in **SCHEDULE 1**, [**SCHEDULE 2**, and **SCHEDULE 3**], and

9.2 The Owner **COVENANTS** with the **County Council** to fully perform and observe the covenants set out in [**SCHEDULE 4**].

10. The District Council's Covenants with the Owner

The **District Council COVENANTS** with the **Owner** to fully perform and observe the covenants set out in [**SCHEDULE 5**].

11. The County Council's Covenants with the Owner

The **County Council COVENANTS** with the **Owner** to fully perform and observe the covenants set out in [**SCHEDULE 6**].

12. Resolution of Disputes

12.1 In the event of any dispute or difference arising between the parties hereto touching or concerning any matter or thing arising out of this Deed such dispute or difference may be referred by any party to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of agreement) by and on behalf of the President for the time being of the professional body chiefly concerned in England with such matters as may be in dispute and such person shall act as an expert and his decision shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute in equal shares.

12.2 In the absence of agreement between the parties to the dispute or difference as to the suitability of the person to be appointed pursuant to clause 12.1 or as to the appropriateness of the professional body then such question may be referred by any party to a Solicitor appointed by or on behalf of the President for the time being of the Law Society of England and Wales and such Solicitor shall act as an expert and his decision as to the professional qualifications of such person or appropriateness of the professional body shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute in equal shares.

13. Notices

- 13.1 Any notice consent or approval required to be given under this Deed shall be in writing and shall be delivered personally or sent by prepaid first class post Recorded Delivery post or facsimile transmission
- 13.2 The address for service of any such notice consent or approval as aforesaid shall be on all of the parties at the addresses aforesaid or such other address for service as shall have been previously notified in writing by the parties to all the other parties to this Deed save that payments of any monies to the **District Council** shall be addressed specifically for the attention of the s106 Monitoring Officer of the **District Council** detailing the obligations to which the payment relates and payments of any monies to the County Council shall be addressed for the attention of the **County Council's** Infrastructure Delivery Manager at PO Box 43 at the address of the **County Council** aforesaid and shall detail the obligations to which the payment relates.
- 13.3 A notice consent or approval under this Deed shall be deemed to have been served as follows:
- 13.3.1 if personally delivered at the time of delivery
 - 13.3.2 at the expiration of forty eight hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom
 - 13.3.3 if sent by facsimile transmission at the time of successful transmission
- 13.4 In proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a prepaid first class or Recorded Delivery envelope (if appropriate) or that the facsimile was successfully transmitted as the case may be.

14. Registration of the Deed

This Deed shall be registered as a Local Land Charge in the Register of Local Land Charges maintained by the **District Council**.

15. Waiver

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

16. Change in Ownership

Save for any individual **Dwellings** erected on the **Site** (unless otherwise expressly provided for by the provisions of **SCHEDULE 1**) and any disposal to a statutory undertaker/utility company the **Owner** agrees with the **District Council** and **County Council** to give the **District Council** and **County Council** written notice as soon as is reasonably practicable of any change in ownership of any of their interests in the **Site** occurring before all the obligations under this Deed have been completed and / or satisfied such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the **Site** or unit of occupation purchased by reference to a plan.

17. Interest

If any payment due to the **District Council** or the **County Council** under this Deed is paid late, interest will be payable from the date payment is due to the date of payment at the rate of 4% above the Bank of England base lending rate prevailing at the time.

18. VAT

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

19. Jurisdiction

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

20. Variation of Deed

No variation or amendment to this Deed shall be valid unless in writing and signed by or on behalf of all the parties referred to in this Deed (save where an

obligation is not relevant to a party to this Deed) save where such party no longer has any interest in the **Site** which is the subject of the variation in which case the variation shall be signed by the owner for the time being of the **Site** but not any purchaser of an individual **Dwelling** nor by any statutory undertaker who acquires an interest in the **Site** for operational purposes.

21. Conduct and Certificate of Satisfaction

Any party to this Deed may make application to the **District Council** and/or **County Council** for written confirmation to the effect that any of the provisions of this Deed have been completed and/or satisfied.

22. Application of Deed

Nothing in this Deed shall prohibit or limit the right to develop any part of the **Site** in accordance with a planning permission (other than the **Outline Planning Permission**) granted or deemed to be granted by any order or where granted expressly by the **District Council** or on appeal.

23. Legal Costs

The **Applicant** shall pay to the **District Council** and **County Council** on completion of this Deed the reasonable legal costs of the **District Council** and **County Council** incurred in the negotiation preparation and execution of the Deed and the District Council and the **County Council** hereby acknowledges receipt of the same upon payment.

24. Contracts (Rights of Third Parties) Act 1999

The provision of the Contract (Rights of Third Parties) Act 1999 shall not apply to this Deed save successors in title to the **Owner** and the **District Council** and **County Council**.

25. Applicant's Consent

The **Applicant** acknowledges and declares that this Deed has been entered into by the **Owner** with its consent and that the **Site** shall be bound by the terms of this Deed PROVIDED THAT it shall not be bound by any of the provisions of this Deed (other than clause 23) unless or until it becomes a successor in title to the **Owner** in relation to the **Site**.

SCHEDULE 1
AFFORDABLE HOUSING

Schedule 1

PART 1: DEFINITIONS

In this Deed the following words and expressions shall unless the context requires otherwise have the meaning set out below:

"Affordable Housing" means each **Dwelling** and associated land subject to the provisions of this **SCHEDULE 1** being an **Affordable Housing Unit** and which is to be provided to a household assessed as being in need of such accommodation and comprising or including a **Qualifying Person** whose needs are not met by the market.

"Affordable Housing Specification" Means:

- (a) Plans and particulars which taken together contain detailed proposals for the provision and management of the **Affordable Housing** within the **Development**, and in particular indicating and confirming:
 - (1) Details of the development to which the **Affordable Housing Specification** relates;
 - (2) The identity of the **Qualifying Developing Body** to whom the **Affordable Housing Units** are to

be transferred in accordance with a **Contract**;

- (3) Arrangements for the local management of the **Affordable Housing** by the named **Qualifying Developing Body**;
- (4) The location, type, size and tenure of each **Dwelling** on the Site (being such as to meet the requirements of Part 2 of this **SCHEDULE 1**) including details of the gross internal floor area (in square metres) of each **Dwelling** and the total gross internal floor area of all **Affordable Housing Units** and **Open Market Units** respectively comprised within the **Development**;
- (5) Details of any other land on the **Site** (e.g. parking spaces) to be transferred to the **Qualifying Developing Body** in connection with the **Affordable Housing**;
- (6) The minimum standards to be achieved in the design, construction and layout of the **Affordable Housing** including such standards as may be required by Part 2 of this **SCHEDULE 1**;
- (7) The intended timing of construction of both the **Affordable Housing Units** and **Open Market Units** and, where the **Development** is to be

undertaken in phases the phasing timetable;

- (8) The maximum estimated total monthly housing costs to tenants or purchasers of each **Affordable Housing Unit** on first occupation.
- (b) Such amendment or variation to any of the approved plans and particulars itemised at (1) to (8) above as may subsequently be agreed in writing between the **District Council** and **Qualifying Developing Body**.

"Affordable Rent Unit"

means an **Affordable Housing Unit** to be let by the **Qualifying Developing Body** under an **Appropriate Tenancy** for a rent that does not exceed the lower of the relevant **Local Housing Allowance** or 80% of the rent (inclusive of any service charge) that would have been charged had the rent been valued on an open market basis taking into account the restrictions contained in this Deed and any relevant regulatory requirements.

"Appropriate Tenancy"

means a tenancy to any **Social Rent Unit** or **Affordable Rent Unit** as the case may be and which is granted:

- a) initially as a 12 month starter assured shorthold tenancy (within the meaning of Chapter 2 of the Housing Act 1988) and thereafter an assured shorthold tenancy for a term certain of not less than five years, OR

- b) an assured shorthold tenancy (within the meaning of Chapter 2 of the Housing Act 1988) for a term certain for not less than two or five years as the case may be, in accordance with the published policies of the **Qualifying Developing Body**, OR
- c) an assured tenancy (within the meaning of Chapter 1 of the Housing Act 1988) where no term certain is specified, OR
- d) such other form of tenancy, or a tenancy as specified at a), b) or c) above but being for any other term certain and as may be capable of being granted and which is agreed beforehand in writing between the **District Council** and the **Qualifying Developing Body**.

“Charging exercise”

means a financial exercise carried out by a **Qualifying Developing Body** in the context of borrowing against its assets and involving the creation of security in the form of a legal charge against all or part of the **Affordable Housing**.

“Civil Partner”

means a person enjoying equivalent rights to that of a wife or husband as regards assignment or succession under the provisions of the Civil Partnership Act 2004.

“Contract”

means a binding contract for the construction and sale of all the **Affordable Housing** including the

freehold title thereto OR the sale of all the **Affordable Housing** including the freehold title thereto following **Practical Completion** by the **Owner** to the **Qualifying Developing Body**.

“Head of Service”

means the **District Council’s** relevant Head of Service or any person appointed to exercise his / her functions under this Deed or any person authorised to act on his / her behalf.

“Homes England ”

means the Homes and Communities Agency (as formed by Part 1 of the Homes and Regeneration Act 2008) or any successor in function.

“Housing Related Support

means services that aim to develop or sustain an individual’s capacity to live independently in accommodation which are time limited and offer targeted intervention with the aim of preventing escalation of need, protecting and improving wellbeing and reducing dependency into the future.

“Local Connection”

means any one or more of the following residency criteria applied strictly in the following order of preference:

In the first instance (a “First Instance Area”):

- (1) A person currently living in the **Parish** of Stratford-upon-Avon and have done so for at least the past five years and/or;
- (2) A person who used to live in the **Parish** of Stratford-upon-Avon

and did so for a continuous period of not less than five years at any time during the past ten years and/or;

- (3) A person currently working in the **Parish** of Stratford-upon-Avon and have done so for at least the past five years for an average of not less than 16 hours per week and/or;
- (4) Currently has a close family member (meaning mother, father, son, or daughter) or such other relative(s) as the **District Council** may agree qualify in the particular circumstances of any given case as a close family member or has a link to a particular family which the **District Council** consider qualifies) living in the **Parish** of Stratford-upon-Avon and who have done so for a continuous period of not less than five years.

In the second instance (a "Second Instance Priority Nomination"):

If applicable, a person who benefits from a **Priority Nomination**.

In the third instance (a "Third Instance Area"):

They satisfy any one or more of the third instance criteria (1) to (5) below but in respect of any one or more of the

following **Parishes** adjacent to the **Parish** of Stratford-upon-Avon, namely:

- (1) Alderminster
- (2) Atherstone-on-Stour
- (3) Bearley
- (4) Billesley
- (5) Binton
- (6) Charlecote
- (7) Clifford Chambers and Milcote
- (8) Fulbrook
- (9) Hampton Lucy
- (10) Luddington
- (11) Loxley
- (12) Preston-on-Stour
- (13) Snitterfield
- (14) Wilmcote.

In the case of a nomination or allocation arising within a **Third Instance Area**, the following residency criteria shall apply:

- (1) A person who was born (or whose parent(s) were ordinarily resident at the time of birth) within any **Parish** listed above in the definition of **Third Instance Area** and/or;

- (2) A person currently living within any **Parish** listed above in the definition of **Third Instance Area** and who has done so continuously for at least the past twelve months and/or;
- (3) A person who used to live within any **Parish** listed above in the definition of **Third Instance Area** and who has done so for a continuous period of not less than three years at any time during the past five years and/or;
- (4) A person currently working within any **Parish** listed above in the definition of **Third Instance Area** and who has done so for at least the past twelve months for an average of not less than 16 hours per week and/or;
- (5) A person who currently has a close family member (meaning mother, father, son, or daughter) or such other relative(s) as the **District Council** may agree qualify in the particular circumstances of any given case as a close family member or has a link to a particular family which the **District Council** consider qualifies) living in any **Parish** listed above in the definition of **Third Instance Area** and who have done so for a continuous

period of not less than three years within the past five years.

In the fourth instance:

A person who satisfies any one or more of the **Third Instance Area** criteria (1) to (5) above but in respect of any other **Parish** in Stratford-on-Avon District.

In the fifth instance:

Any person who satisfies any one or more of the **Third Instance Area** criteria (1) to (5) above but in respect of an area (if any) (a "**Fifth Instance Area**") which comprises that of any one or more named local planning authorities such as may from time-to-time be designated or notified by the **Head of Service** as a relevant strategic housing market area or area of similar description in accordance with and by reference to any agreement entered into by the **District Council** pursuant to the discharge of its duty (the duty to co-operate) under section 33A of the Planning and Compulsory Purchase Act 2004 (as inserted by section 110 of the Localism Act 2010) or any equivalent subsequent enactment.

In the sixth and final instance:

Any person who satisfies any one or more of the **Third Instance Area** criteria (1) to (5) above but in respect of any other area within England outside the **First, Third, Fourth or Fifth Instance Areas**

or the **Second Instance Priority Nomination** criteria specified above.

“Local Housing Allowance”

means the maximum relevant applicable local housing allowance rate determined and in force from time to time for the purposes of housing benefit / Universal Credit administration, or any equivalent replacement scheme.

“Local Lettings Plan”

Means:

- (a) a scheme the objectives of which are to facilitate the development and maintenance of a balanced, cohesive and sustainable community, and which:
 - (i) is agreed in writing between the **Qualifying Developing Body** and the **District Council** and;
 - (ii) specifies the arrangements and criteria for the nomination by the **District Council** or allocation by the **Qualifying Developing Body** of tenants to any **Affordable Rent Unit** or **Social Rent Unit** within the **Development** subject to the restrictions and requirements of this Deed.
- (b) such amendment of variation thereto to the approved Plan as may subsequently be agreed in writing between the **District Council** and **Qualifying Developing Body**.

“Mortgagee or Chargee”

means a mortgagee or chargee (of the **Qualifying Developing Body**) or any receiver (including any receiver appointed pursuant to the Law of Property Act 1925) or 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 (howsoever appointed) including a housing administrator (each a receiver).

“National Rent Regulatory Framework”

means data set out in the Government publication ‘Guide to Social Rent Reforms’ and the former Tenant Services Authority’s Circular R2-27/01 – ‘Rent Influencing Regime – Implementing the Rent Restructuring Framework’ OR any relevant successor publication which also sets out the calculation for target rents, OR such other formula or publication as may be agreed in writing between the **Qualifying Developing Body** and the **Head of Service**.

“Parish”/“Parishes”

means the named parish as constituted at the date of this Deed or any successor parish constituted by Order.

“Priority Nomination”

means a **Second Instance Priority Nomination** made in circumstances where:

- (1) A person who may or may not have a qualifying **Local Connection** but who is assessed as statutorily homeless or subject to **Housing Related Support**

(either receiving or qualifying for)
and who has been given such
status as a consequence of any
published scheme operated by the
District Council; *and who*

- (2) Also meets the **Qualifying
Developing Body's** own
published allocation criteria;

Is so nominated by the District Council
PROVIDED that the **District Council's**
right of nomination shall not apply to
more than 20% of the total number of
rented **Affordable Housing Units** on
the **Site** to which the **District Council**
enjoys such nomination rights.

"Qualifying Developing Body"

means a body registered as a social
landlord under Part 1 of the Housing Act
1996 or a registered provider of social
housing registered under the provisions of
Part 2 of the Housing and Regeneration
Act 2008 and the identity of which (for the
avoidance of doubt) has been approved
by the **District Council** as part of the
Affordable Housing Specification.

"Qualifying Person"

means:

- (1) In the case of a **Social Rent Unit**
or **Affordable Rent Unit**,
someone who:
- a) is assessed as having a need
for **Affordable Housing**, and
 - b) is nominated to a property by
the **District Council** or

allocated a property by the **Qualifying Developing Body** strictly in accordance with the specified order of preference of a **Local Connection**, and

- c) benefits from a **Local Connection**;

OR who is legally entitled to succession to a tenancy from a **Qualifying Person**;

OR who is legally entitled to assignment or surrender and re-grant of a tenancy from a **Qualifying Person**.

- (2) In the case of an **Shared Ownership Unit** means someone who:

- a) is assessed as eligible to purchase a **Shared Ownership Unit** , and

- b) benefits from a **Local Connection**;

OR who is the wife, husband or **Civil Partner** of a **Qualifying Person**;

OR who is a resident dependent (such as a child) of a **Qualifying Person**.

“Regulator of Social Housing”

means the body established under Section 81 of the Housing and

Regeneration Act 2008 or any substituted body.

“Shared Ownership Unit”

means a dwelling sold under a shared ownership lease and complying with the provisions contained in Part 3 of this **SCHEDULE 1**;

“Social Rent Unit”

means a **Dwelling** which is to be solely occupied in accordance with this Deed and let under an **Appropriate Tenancy** and at a rent set in accordance with the **National Rent Regulatory Framework**.

Schedule 1

PART 2: REQUIREMENTS

Affordable Housing Approval

1. The **Owner** shall prepare and submit to the **District Council** an **Affordable Housing Specification** prior to or simultaneously with a **Reserved Matters Application** (or the first such application in the event of more than one application).
2. There shall be no **Commencement of Development** approved by the **Outline Planning Permission** unless and until such time as the submitted **Affordable Housing Specification** has been approved in writing by the **District Council**.

3. FOR THE AVOIDANCE OF DOUBT it is declared that nothing required to be included in the **Affordable Housing Specification** shall be construed as requiring anything that may be inconsistent with the **Outline Planning Permission**.
4. The **Affordable Housing Specification** shall provide and ensure that:
 - 4.1 35% (rounded to the nearest whole number) of the total number of **Dwellings** erected on the Site shall comprise **Affordable Housing**, and
 - 4.2 Unless otherwise agreed beforehand in writing between the **Owner** and the **District Council**, the **Affordable Housing Units** by number shall comprise 60% **Social Rent Units** (such number to be rounded up to the nearest whole number if a fractional number results), 20% **Affordable Rent Units** (such number to be rounded down to the nearest whole number if a fractional number results) and 20% **Shared Ownership Units** (such number to be rounded down to the nearest whole number if a fractional number results) and
 - 4.3 The **Affordable Housing Units** shall be located either as individual plots or as clusters evenly distributed throughout the **Development**; each cluster to comprise no more than nine **Affordable Housing Units** together unless otherwise agreed in writing between the **Owner** and the **District Council**.
5. The **District Council** shall endeavour to give notice of approval or rejection of the **Affordable Housing Specification** at the earliest possible opportunity and in any event within eight weeks of the date of full submission thereof and in the event of its rejection set out its reasons for the rejection and specify the measures required to produce an acceptable submission.
6. In the event that the **District Council** reject the **Affordable Housing Specification** the **Owner** may submit a revised **Affordable Housing Specification** to the **District Council** for approval whereupon the **District Council** shall again seek to issue its decision in respect of such **Affordable Housing Specification** at the earliest possible opportunity on the same terms as in paragraph 5 of this Part 2.
7. In the event of a further rejection of the **Affordable Housing Specification** the **Owner** may continue to make further submissions to the **District Council** in order to secure an approval to the **Affordable Housing Specification** or in the alternative the **Owner** may seek to refer any dispute or disagreement to an

independent expert in accordance with the provisions of Clause 12 of this Deed save that it is agreed that the expert shall not have power to alter the particulars specified in paragraph 4 of this Part 2.

Schedule 1

PART 3: DELIVERY

Provision of Affordable Housing

- 1.** There shall be no **Commencement of Development** approved by the **Outline Planning Permission** until such time as the **Owner** has entered into a **Contract**.
- 2.** The provisions of paragraph 1 of this Part 3 shall not apply where the **Owner** is a **Qualifying Developing Body** and proposes to carry out the **Development** itself pursuant to the **Outline Planning Permission** by building and retaining the freehold ownership of the all the **Affordable Housing Units**.
- 3.** The **Affordable Housing** shall be provided in accordance with the **Affordable Housing Specification** approved in accordance with Part 2 of this **SCHEDULE**.
- 4.** Where a **Shared Ownership Unit** is to be provided, such Unit shall only be developed and disposed of in accordance with the following provisions:
 - 4.1** The Unit shall only be disposed of in accordance with a lease taking the form of the relevant model lease published from time-to-time by **Homes England** or the **Regulator of Social Housing**.
 - 4.2** The lease shall be for an initial term of not less than 990 years.
 - 4.3** The purchaser shall be entitled to buy an initial share of not less than 10% and not more than 75% based on a percentage of the full market value of the property.
 - 4.4** The annual rent (if any) to be charged on the unsold equity of the property shall not exceed 2.75%.
- 5.** No more than fifty per cent (50%) of the **Open Market Units** to be erected on the **Site** shall be permitted to be **Occupied** sold leased transferred or otherwise

disposed of until not less than fifty per cent (50%) of the **Affordable Housing Units** have been completed and are available for **Occupation**; and

6. No more than seventy five per cent (75%) of the **Open Market Units** to be erected on the **Site** shall be permitted to be **Occupied** sold leased transferred or otherwise disposed of until:

6.1 all of the **Affordable Housing Units** have been completed and are available for **Occupation**; and

6.2 the completion and legal transfer to the **Qualifying Developing Body** of the freehold title to all of the **Affordable Housing** has occurred and written evidence of such has been submitted to the **District Council**.

Schedule 1

PART 4: OCCUPANCY

Occupancy of Affordable Housing Units

1. Unless otherwise agreed in writing beforehand between the **District Council** and the **Owner** none of the Affordable Housing Units shall be Occupied unless and until such time as the **Qualifying Developing Body** approved in accordance with Part 2 of this **SCHEDULE 1** shall have submitted for approval to the **District Council** a **Local Lettings Plan** and the same has been approved in writing by the **Head of Service**.
2. Approval of a **Local Lettings Plan** will not be given unless and until an **Affordable Housing Specification** has been submitted to and approved by the **District Council**.
3. The **Qualifying Developing Body** shall notify the **District Council** in writing of the availability of all **Social Rent Units** and **Affordable Rent Units** in respect of first and subsequent lettings prior to their occupation in order for the **District Council** to make nominations in accordance with paragraph 7 of this Part 4.
4. Unless otherwise agreed in writing between the **District Council** and the **Owner** the **Affordable Housing Units** shall not be **Occupied** at any time otherwise than strictly in accordance with the provisions of this **SCHEDULE 1**.

5. Subject to paragraphs 10 and 11 below occupancy of each **Affordable Housing Unit** shall be restricted to a single household occupying such unit as their sole or principal residence and which household shall include at least one ordinarily resident member who is a **Qualifying Person**.
6. Except in the specific circumstances prescribed in paragraph 8 of this Part 4 below the **Qualifying Developing Body** shall ensure that all the **Affordable Housing Units** are let or sold (as the case may be) in accordance with the **Local Connection** (including, for the avoidance of doubt, the order of preference therein) and, where applicable, the **Local Lettings Plan**.
7. The **District Council** shall be entitled to nominate tenants for all **Social Rent Units** and **Affordable Rent Units** to be erected on the **Site** whether in respect of first occupation of such units or any subsequent occupation. Such nomination rights are subject to the following provisions:
 - a) Such rights shall be limited to a period of no more than four weeks from the date that the **District Council** is given written notice of an available **Social Rent Unit** or **Affordable Rent Unit** as the case may be on first letting OR a period of two weeks in the case of any second or subsequent letting, and
 - b) Where the relevant period specified at 6 a) above has expired or the **District Council** has given notice beforehand that it does not wish to exercise its nomination rights on that occasion, then the **Qualifying Developing Body**, shall be entitled to allocate the **Social Rent Unit** or **Affordable Rent Unit** as the case may be to any applicant PROVIDED that (for the avoidance of doubt) the provisions of paragraphs 4 and 5 of this Part 4 shall continue to be applied and the **Qualifying Developing Body** shall give written notification to the **District Council** of the date and particulars of the letting or sale of any relevant property.
8. The **Qualifying Developing Body** shall at all times manage the **Affordable Housing** strictly in accordance with its own internal rules together with any rules or regulatory practices set down by the **Regulator of Social Housing**.
9. The **Qualifying Developing Body** (the identity of whom having been approved in accordance with Part 2 of this **SCHEDULE 1**) shall not subsequently sell, lease, transfer or otherwise dispose of the **Affordable Housing** (or any part thereof) without the written consent of the **District Council** SAVE as provided for in

paragraphs 10.1, 10.2 and 10.3 of this Part 4 and in relation to a **Charging Exercise**.

10. The covenants and restrictions contained in this **SCHEDULE 1** shall cease to apply in the event:

10.1 That the provisions contained in paragraph 11 of this Part 4 (hereinafter referred to as the "Mortgagee Protection Clause") apply; OR

10.2 A **Qualifying Person** who is a tenant of a **Social Rent Unit** or **Affordable Rent Unit** who is so entitled exercises any statutory right to purchase their property; OR

10.3 A **Qualifying Person** who is a leaseholder of a **Shared Ownership Unit** who is so entitled exercises their contractual right to acquire 100% of the equity of their property;

PROVIDED THAT in the case of the Mortgagee Protection Clause the procedures and requirement for service of notice had been followed.

11. The covenants in this **SCHEDULE 1** shall not be binding on a **Mortgagee or Chargee** of the whole or any part of the **Affordable Housing** or any persons or bodies deriving title through such **Mortgagee or Chargee** PROVIDED THAT :

11.1 such **Mortgagee or Chargee** shall first give written notice to the District Council of its intention to dispose of the Affordable Housing Units, and

11.2 shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Qualifying Developing Body or to the District Council for a consideration of 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, and

11.3 if such disposal has not completed within the three month period, the **Mortgagee or Chargee** shall be entitled to dispose of the **Affordable Housing Units** free from the covenants in this **SCHEDULE 1** which provisions shall determine absolutely.

END OF SCHEDULE 1

