

DATED 21 FEBRUARY 2018

- (1) Ian Cameron Mitchell
- (2) Lloyds Bank Plc
- (3) District Council of Sevenoaks

DEED OF PLANNING OBLIGATION by AGREEMENT

pursuant to
section 106 of the Town and Country Planning Act 1990 (as
amended)

relating to development at
Foxbury Farm, Stone Street, Seal, Sevenoaks, Kent, TN15 0LW
Planning Ref: SE/17/02596/FUL

Head of Legal and Democratic Services
Sevenoaks District Council
Council Offices
Argyle Road
Sevenoaks
Kent
TN13 1HG

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THIS AGREEMENT is made on 21st FEBRUARY

2018

BETWEEN:

- (1) **IAN CAMERON MITCHELL** of Foxbury Farm, Stone Street, Seal, Sevenoaks, Kent TN15 0LW ("**Owner**");
- (2) **LLOYDS BANK PLC** (company registration number 2065) whose registered address is at 25 Gresham Street, London EC2V 7HN and whose address for service is at Pendeford Securities Centre, Pendeford Business Park, Wobaston Road, Wolverhampton WC9 5HZ ("**Lender**"); and
- (2) **DISTRICT COUNCIL OF SEVENOAKS** OF Council Offices, Argyle Road, Sevenoaks, Kent TN13 1HG ("**Council**").

the "**Parties**"

WHEREAS:

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- (B) The Owner is the freehold owner of the Land subject to a charge to the Lender dated 15 November 2013 as described in Schedule 1 and is registered as registered proprietor with title absolute of the Land at the Land Registry under Title Number K824849.
- (C) The Owner submitted the Planning Application to the Council on 12 December 2016.
- (D) The Parties agree to enter into this Agreement in order to secure the planning obligations required by the Council so that the Planning Permission can be granted.
- (E) The Parties agree that the obligations in this Agreement are in the interests of the proper planning of the Council's administrative area. They meet the tests of planning obligations set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended), being necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

For the purposes of this Agreement the following expressions will have the following meanings:

TERM	MEANING
"Act"	means the Town and Country Planning Act 1990 (as amended);
"Affordable Housing"	means affordable housing as defined in the National Planning Policy Framework (May 2012) or any revision or extension or modification thereto provided for Eligible Persons;
"Affordable Housing Land"	means the land comprising part or parts of the Land upon which the Affordable Housing Properties are to be constructed (together with their curtilages and parking provision) and used for Affordable Housing;
"Affordable Housing	means the sum payable to the Owner by the Registered Provider for the Affordable Housing Land on the transfer of a legal estate as required by

TERM	MEANING
"Price"	<p>Schedule 2 of this planning obligation which sum shall be calculated as follows:</p> <ul style="list-style-type: none"> (a) The transfer or lease of the Affordable Housing Land at £1 (b) The Owner having at its own cost: <ul style="list-style-type: none"> (i) remediated the Affordable Housing Land in accordance with all necessary consents and statutory requirements and (ii) cleared and levelled the Affordable Housing Land and (iii) provided to each Affordable Housing Property / plot on the Affordable Housing Land with all necessary service media including conduits and other conducting media for gas (if available in the area) telecommunications water foul and surface water drainage highways and electricity to render the said land for use (once developed) for residential purposes and without requiring plant or equipment to provide services (c) the Registered Provider paying for the build costs if any Affordable Housing Properties are constructed on the Affordable Housing Land PROVIDED THAT the construction costs for the Affordable Housing Properties have been agreed in advance by the Owner and the Registered Provider
"Affordable Housing Properties"	means the 6 (six) Residential Properties to be constructed under the Planning Permission and used for Affordable Housing during the Perpetuity Period and "Affordable Housing Property" will be interpreted accordingly;
"Affordable Rented Housing"	means Affordable Housing provided by the Registered Provider that is subject to rent controls that require a rent of no more than 80% of the local Open Market Rent (including service charges, where applicable) where unless otherwise agreed by the Council the said rent shall not exceed the Local Housing Allowance applying and which is let to Eligible Persons in accordance with the Nominations Agreement attached to this Deed at Appendix 1
"Broad Rental Market Area"	is the geographical area used to determine the Local Housing Allowance rate
"Clean Condition"	means free from any contamination which would otherwise prejudice the use of the Affordable Housing Land for the provision of Affordable Housing;
"Close Family"	means adult children, brothers, sisters and parents and for the avoidance of doubt extended family will only be considered if that relative has played an important role in an applicant's upbringing
"Challenge"	means the Planning Permission being the subject of any judicial review proceedings or other legal challenge including, but not limited to, an application for permission to apply for judicial review;
"Commencement of	means the date on which a material operation (as defined in Section

TERM	MEANING
Development"	<p>56(4) of the Act) comprised in the Development begins to be carried out OTHER THAN (for the purpose of this Agreement only and for no other purpose):</p> <ul style="list-style-type: none"> (a) site clearance; (b) demolition; (c) site level re-modelling; (d) archaeological investigations or excavation works; (e) site preparation, including (but not limited to) preparatory engineering works designed to lay foundations for the Development; (f) investigations for the purpose of assessing ground conditions, including (but not limited to) exploratory boreholes, site or soil investigations; (g) remediation works in respect of any contamination or other adverse ground conditions; (h) diversion, laying, construction, enlargement, repair, maintenance or cleansing of services to serve the Land; (i) erection of fences or hoardings or other temporary means of enclosure; (j) temporary display of site notices or advertisements; (k) construction of temporary access and service roads (l) pegging out of roads or paths; or (m) security works; <p>and "Commence" and "Commenced" will be interpreted accordingly;</p>
"Development"	<p>means the development of the Land permitted by the Planning Permission comprising demolition of existing agricultural buildings, erection of 15 (fifteen) dwellings, including 6 (six) affordable units, with change of use and conversion of existing Cart Shed and Boulton & Paul agricultural building to office accommodation with associated parking, landscaping scheme and alterations to existing vehicular access;</p>
"District"	<p>means the administrative area of Sevenoaks District Council;</p>
"Dwelling"	<p>a residential dwelling (including flats or maisonettes) to be constructed pursuant to the Planning Permission</p>
"Eligible Persons"	<p>means persons who are unable to afford suitable housing accommodation on the open market (whether by renting or purchasing) within the District and who:</p> <ul style="list-style-type: none"> (a) are on those registered retained or referred to by the Council from time to time in the discharge of the Council's housing function including the register administered by the Zone Agent; or (b) are otherwise certified by the Council (at all times acting without

TERM	MEANING
	delay and reasonably consistently with the discharge of its housing function) as being eligible to reside in the Affordable Housing Properties
"Homes and Communities Agency" or "HCA"	means the organisation known as the Homes and Communities Agency which is empowered to regulate Registered Providers under the Housing and Regeneration Act 2008 or any legislation replacing or amending the same or any successor body from time to time having functions currently exercised by the Homes and Communities Agency and where appropriate the expression "HCA" will include reference to its predecessor namely the Housing Corporation;
"Land"	means the land shown edged red on the Land Plan and known as Foxbury Farm Stone Street Seal Sevenoaks Kent TN15 0LW
"Land Plan"	means the plan of the Land (drawing number 21817A/1000) attached at Appendix 2;
"Local Housing Allowance"	is the allowance paid to housing benefit claimants and is set by the Valuation Office Agency and takes into account the size and make up of a claimant's household and the Broad Rental Market Area that the Residential Property falls in (such allowances are published on the central government's website www.direct.gov.uk) (or any substitution or replacement thereof)
"National Rent Regime"	means the regime under which the social rents of tenants of social housing are set, with particular reference to the Guide to Social Rent Reforms (March 2001) and the Rent Influencing Regime Guidance (October 2001)
"Neighbouring Parishes"	means the civil parishes of Kemsing, Otford and Sevenoaks Weald.
"Nominations Agreement"	means the nominations agreement to be entered into pursuant to paragraph 5 of Schedule 2 substantially in the form of the draft attached at Appendix 1;
"Occupation"	<p>means the earliest date when any part of the Development is occupied for the purposes permitted by the Planning Permission OTHER THAN (for the purpose of this Agreement only and for no other purpose) occupation by personnel engaged in:</p> <ul style="list-style-type: none"> (a) demolition; (b) construction; (c) decoration and/or fit out; (d) marketing; (e) display; or (f) security <p>and "Occupied" and "Occupy" will be interpreted accordingly;</p>

TERM	MEANING
"Open Market Properties"	means the Residential Properties to be constructed on the Land for private sale which are not Affordable Housing Properties and "Open Market Property" will be interpreted accordingly;
"Open Market Rent"	means the rent as determined by an independent professionally qualified valuer (whose fees shall be paid by the Owner) whose identity shall be first approved in writing by the Council such approval not to be unreasonably withheld or delayed such valuation to be current at the date of Occupation of the Residential Properties
"Parish"	means the civil parish of Seal,
"Parties"	means the Owner, and the Council and their successors in title or function (as appropriate) and "Party" will be interpreted accordingly;
"Perpetuity Period"	means a minimum period of 125 (one hundred and twenty five) years from the date of this Agreement;
"Planning Application"	means the application for planning permission for the Development with reference SE/17/02596/FUL
"Planning Permission"	means planning permission to be granted by the Council pursuant to the Planning Application in the form attached at Appendix 1 (or by the Secretary of State following the exercise of his call-in powers) unless otherwise agreed in writing by the Parties;
"Practical Completion"	means the issue of a certificate of practical completion of the Development by the Owner's architect, engineer, project manager or other suitably qualified professional and "Practically Complete" will be interpreted accordingly;
"Registered Provider"	means English Rural Housing Association or any of the bodies which are from time to time included in the Council's list of Registered Providers with which the Council has a partnership agreement and/or any other body registered by the HCA under the provisions of Chapter 3 of Part 2 of the Housing Regeneration Act 2008 and approved by the Council (such approval not to be unreasonably withheld or delayed);
"Residential Properties"	means the 15 (fifteen) Dwellings to be constructed pursuant to the Planning Permission, which includes the Open Market Properties and the Affordable Housing Properties, and "Residential Property" will be interpreted accordingly;
"Secretary of State"	means the Secretary of State for Communities and Local Government (or any successor in function);
"Services"	means electricity, telephone, gas (if available in the area), water, foul drainage, surface water drainage, cable television (if available in the area), telecommunications and other services running through the Service Installations;
"Service Charge"	Means a charge payable under the lease which is no more than a fair and reasonable proportion of the following costs (where applicable): <ul style="list-style-type: none"> • repair maintenance and decoration of the structure the exterior

TERM	MEANING
	<p>or the internal common parts of the building in which the Affordable Housing Properties are situate (including any equipment within the communal parts such as fire and safety equipment)</p> <ul style="list-style-type: none"> • insurance of the building in which the Affordable Housing Properties are situate • the reasonable maintenance of any garden roads access ways footpaths car parks bins stores fences gates and other boundary structures serving the relevant Affordable Housing Properties in common with other properties in the vicinity of the relevant Affordable Housing Properties
"Service Installations"	means sewers, drains, culverts, channels, outlets, mains, wires, cables, ducts, flues, soakaways and other conducting media for the supply of Services, substations, regulator valves and all other infrastructure whatsoever for Services all of which will be laid by the Owner in or over or under the Land;
"Sevenoaks District Housing Register Allocation Policy"	means the policy applying to the allocation of Affordable Rented Housing within the District
"Social Rented Housing"	means Affordable Housing which is available to rent from a Registered Provider on an assured tenancy at no more than the HCA's target rent as determined by the National Rent Regime and which is let to Eligible Persons in accordance with the Nominations Agreement
"Undertaker"	means any provider of gas, electricity, energy water, sewage, heating, cooling or telecommunications services occupying premises within the Land for the purposes of supplying any one or more of those services to any member of the public or any occupier of premises within the Land; and
"Working Day"	means a day other than a Saturday or Sunday or public holiday in England.

1.2 Interpretation

Save as expressly provided otherwise by this Agreement, the following principles of interpretation will apply to this Agreement:

- 1.2.1 Words importing the masculine gender include the feminine and vice versa.
- 1.2.2 Words importing the singular include the plural and vice versa.
- 1.2.3 Words importing persons include firms, companies, corporations, other corporate bodies and legal entities, and vice versa.
- 1.2.4 Any reference to a clause, Schedule, paragraph or plan is to one in or attached to this Agreement.
- 1.2.5 Any reference to a colour or letter is to the colour or letter on the plans attached to this Agreement.

- 1.2.6 In the absence of contrary provision in this Agreement any reference to a statute includes any statutory modification, amendment, extension, re-enactment or replacement of it and every statutory instrument, regulation, order, direction or specification made or issued under such statute or deriving validity from it.
- 1.2.7 Where any party consists of two or more persons companies or corporations the Deed expressed to be made by the party and the conditions and provisions contained in this Deed shall be deemed to have been made jointly and severally by the persons named as that party.
- 1.2.8 Any reference to the "**Owner**" includes any successors in title to the Owner.
- 1.2.9 Any reference to the "**Lender**" includes any successors in title to the Lender.
- 1.2.10 Any reference to the "**Council**" includes any successor in function to the Council.
- 1.2.11 Agreed or approved means agreed or approved in writing and given for the purposes of this Agreement.
- 1.2.12 Any covenants and obligations given by the Owner will attach to the Land and each and every part of it and will bind the Owner's successors in title and assignees or any persons claiming by, under or through them.
- 1.2.13 The word "**including**" will be construed without prejudice to the generality of the words preceding it.
- 1.2.14 The Interpretation Act 1978 will apply to this Agreement.

2. **STATUTORY PROVISIONS**

2.1 **Statutory Powers**

This Agreement is entered into pursuant to:

- 2.1.1 Section 106 of the Act (as amended);
- 2.1.2 Section 111 of the Local Government Act 1972 (as amended);
- 2.1.3 Section 1 of the Localism Act 2011 (as amended); and
- 2.1.4 all other powers so enabling.

2.2 **Enforceability of Planning Obligations**

The planning obligations created in this Agreement are planning obligations for the purpose of Section 106 of the Act and are enforceable by the Council against the Owner as further set out in the Schedules.

2.3 **Extent of the Land Bound by the Agreement**

- 2.3.1 The provisions of the Schedules to this Agreement bind the whole of the Land unless otherwise specified in a Schedule to this Agreement.
- 2.3.2 Save where expressly provided otherwise in this Agreement, nothing in this Agreement will require the Owner to perform any obligation whatsoever in upon or under land outside the ownership of the Owner.

2.4 **Parties Bound by the Agreement**

Subject to clause 2.5, the obligations and covenants in this Agreement will be binding upon and enforceable against the Owner and their successors in title to the Land as if that person has also been an original covenanting party in respect of that interest or estate for the time being held by them PROVIDED THAT no person will be liable for any breach of the covenants or undertakings contained in this Agreement which occurs after the relevant person has parted with his interest in the Land or the part in respect of which such breach occurs but without prejudice to the rights of the Council in relation to any antecedent breach of those covenants or undertakings.

2.5 Parties Not Bound by the Agreement

Unless otherwise expressly provided in this Agreement the provisions of this Agreement will not be enforceable by or against:

- 2.5.1 In relation to the obligations contained in Schedule 2 of this Agreement, they shall not bind or be enforceable, subject to clause 2.6 below, against any mortgagee or chargee including their successors in title from such bodies (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each "a Receiver") of the whole or any part of the Affordable Housing Properties or any persons or bodies deriving title through such mortgagee, chargee or Receiver;
- 2.5.2 a mortgagee of an occupant or lessee of an Affordable Housing Property if such a mortgagee disposes of an Affordable Housing Property pursuant to its powers to do so following default of the terms of the mortgage;
- 2.5.3 any purchaser of an Open Market Property and his successors in title and his mortgagees; or
- 2.5.4 any Undertaker occupying the Land or any part of the Land for the purposes of their undertaking.

2.6 Conditions for Compliance by Mortgagees of a Registered Provider

- 2.6.1 The mortgagee will have given to the Council notice of its intention to dispose of the Affordable Housing Properties or any of them.
- 2.6.2 The mortgagee, chargee or Receiver will have used its reasonable endeavours to dispose of the Affordable Housing Properties or any of them to a Registered Provider or to the Council for a consideration which is 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.
- 2.6.3 If a disposal pursuant to clause 2.6.2 has not completed within a period of 12 (twelve) weeks from the date of service of the notice upon the Council pursuant to clause 2.6.1, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Properties (or any of them) free from the provisions of this Agreement relating to the Affordable Housing Properties which provisions shall determine absolutely
- 2.6.4 If any mortgagee has followed the procedures in this clause 2.6 and no sale has been achieved not only will the provisions of this Agreement not affect the mortgagee but they will also cease to apply to the Affordable Housing Properties or any of them sold by such mortgagee to the intent that it will not bind any successors in title.

3. CONDITIONALITY

3.1 Immediate Effect

Subject to clause 3.2, all clauses and Schedules will take effect upon the completion of this Agreement.

3.2 Deferred Effect

Clause 4.1 and Schedule 2 are conditional upon the grant of the Planning Permission and the Commencement of Development.

4. OWNER'S COVENANTS

4.1 Compliance with Planning Obligations

The Owner will:

- 4.1.1 not use the Land OTHERWISE THAN in accordance with the provisions, restrictions and requirements specified in this Agreement;
- 4.1.2 fully comply with and perform the planning obligations as specified in this Agreement in accordance with the requirements and timescales contained therein; and
- 4.1.3 keep the Council reasonably informed of the progress of any negotiations to dispose of the Affordable Housing Properties pursuant to Schedule 2.

4.2 Payment of the Council's Costs

On completion of this Agreement the Owner will pay to the Council £1,000.00 (one thousand pounds) in respect of the Council's reasonable legal costs incurred in the negotiation, preparation and completion of this Agreement.

4.3 Service of Notices on the Council

- 4.3.1 The Owner will notify the Council in writing of the date of the Commencement of Development no later than 10 (ten) Working Days after Commencement of Development.
- 4.3.2 The Owner will notify the Council in writing of the date of the Occupation of the final Residential Property to be Occupied on the Land no later than 10 (ten) Working Days after such Occupation.

5. COUNCIL'S COVENANTS

The Council will fully comply with and perform the obligations as specified in Schedule 3.

6. GENERAL PROVISIONS

6.1 Planning Obligations Bind the Land

This Agreement will run with the Land and, subject to the exceptions set out in clause 2.5, will bind the Owner and its successors in title and assigns including any persons who purchase howsoever (including by way of lease).

6.2 Cessation of Liability

No person will be liable for any breach of the covenants or undertakings contained in this Agreement which occurs after the relevant person has parted with his interest in the Land or the part in respect of which such breach occurs but without prejudice to the rights of the Council in relation to any antecedent breach of those covenants or undertakings.

6.3 Termination

This Agreement will cease to have effect and will be extinguished automatically if:

- 6.3.1 the Planning Permission expires before the Commencement of Development;
- 6.3.2 the Planning Permission is revoked, withdrawn or modified by any statutory procedure without the consent of the Owner; or
- 6.3.3 the Planning Permission is quashed following the final determination of a Challenge.

6.4 No Third Party Rights

None of the provisions of this Agreement are intended to operate so as to confer a benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on any person who is not named as a party to this Agreement.

6.5 Local Land Charge

This Agreement is a local land charge and will be registered as such by the Council.

6.6 Waiver

No waiver (whether express or implied) by the Council of any breach of default in performing or observing any of the obligations, covenants or provisions of this Agreement will constitute a continuing waiver and no such waiver will prevent the Council from enforcing any of the said obligations, covenants or provisions of this Agreement or from acting upon any subsequent breach or default.

6.7 No Fettering of the Council's Discretion

Nothing contained or implied in this Agreement will fetter or prejudice or otherwise affect the rights powers duties and obligations of the Council in its exercise of its functions either as local planning authority or in any other capacity and that all rights powers duties and obligations under any public and private statutes bylaws and regulations may be as fully and effectively exercised as if the Council was not a party to this Agreement.

6.8 No Restriction on Further Development

Nothing in this Agreement will be construed as prohibiting or limiting any right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted by the Council or by the Secretary of State on appeal or reference to him before or after the date of this Agreement.

6.9 S73 Application

- 6.9.1 In the event that any new planning applications are made in respect of the Development pursuant to section 73 of the 1990 Act then, subject to agreement between the Parties (or their successors) with effect from the date that the new planning permission is granted pursuant to section 73 of the 1990 Act:
 - (a) The obligations in this Agreement shall (in addition to continuing to bind the Land in respect of the Planning Permission) relate to and bind the Land in respect of any planning permission granted pursuant to section 73 of the 1990 Act; and
 - (b) the definitions of Application, Development and Planning Permission in this Agreement shall be construed to include references to any applications under section 73 of the 1990 Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s)
- 6.9.2 PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application(s) under section 73 of the 1990 Act or the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this

Agreement and required pursuant to a determination under section 73 of the 1990 Act whether by way of a new deed or supplemental deed pursuant to section 106 of the 1990 Act or a modification agreement pursuant to section 106A of the 1990 Act

7. NOTICES

7.1 Address for Service

All notices, requests, demands or other written communication to or upon the Parties will be deemed to have been properly given or made if despatched (in addition to any other effective mode of service) by registered post or recorded delivery post and addressed to the address given on page 2 of this Agreement or such other address as the Owner or the Lender or the Council may notify the other Parties in writing from time to time.

7.2 Deemed Service

Any notice or written communication to be served by one party upon the other party pursuant to the terms of this Agreement will be deemed to have been validly served if delivered in accordance with clause 7.1.

8. JURISDICTION

8.1 Governing Law

The construction, validity and performance of this Agreement will be governed by the laws of England and Wales.

8.2 Exclusive Jurisdiction

The Parties agree to irrevocably submit to the exclusive jurisdiction of the English courts.

9. DISPUTE RESOLUTION

9.1 Attempts to Resolve Disputes Amicably

If any dispute or difference arises between the Parties touching or concerning any matter or thing arising out of this Agreement the Parties will attempt to resolve that dispute amicably including holding a meeting attended by at least one representative from each Party.

9.2 Right to Refer a Dispute to the Expert

If the Parties are unable to resolve the dispute amicably pursuant to clause 9.1 any party can refer such dispute or difference to an independent and fit person of at least 10 (ten) years professional experience of the matter in issue holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person will act as an expert and his decision will be final and binding on the parties to the dispute or difference and his costs will be payable by the parties to the dispute in such proportion as he will determine and failing such determination will be borne by the parties to the dispute or difference in equal shares.

9.3 Appointment of the Expert

In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the person to be appointed pursuant to clause 9.2 or as to the appropriate professional body within 10 (ten) Working Days after either party has given to the other written request to concur in the professional qualifications of the person to be appointed pursuant to clause 9.2 hereof then the question of the appropriate qualifications or professional body will be referred to a solicitor to be appointed by the president for the time being of the Law Society of England and Wales on the application of any party to the

dispute or difference and such solicitor will act as an expert and his decision as to the professional qualifications of such person or as to the appropriate professional body will be final and binding on the parties to the dispute or difference and his costs will be payable by the parties to the dispute in such proportion as he will determine and failing such determination will be borne by the parties to the dispute or difference in equal shares.

9.4 Terms of Reference of the Expert

The terms of reference of any expert appointed to determine a dispute or difference pursuant to this clause 9 will include the following:

- 9.4.1 he will call for and consider any written representations made by or on behalf of the parties to the dispute which are received by him within 15 (fifteen) Working Days of his calling for such representations and at the expiry of this period will give the parties a further period of 10 (ten) Working Days to make counter-representations;
- 9.4.2 he will provide the parties to the dispute with a written decision (including his reasons) within 20 (twenty) Working Days of the last date for receipt of counter-representations under clause 9.4.1;
- 9.4.3 he will be entitled to call for such independent expert advice as he will think fit; and
- 9.4.4 his costs and the costs of any independent expert advice called for by the expert will be included in his award.

10. LENDER'S CONSENT

- 10.1 The Lender acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Agreement and that the security of its charge over the Land shall take effect subject to this Agreement PROVIDED THAT the Lender shall have no liability under this Agreement unless it takes possession of the Land or any part of the Land in which case the Lender will be bound by the provisions of this Agreement as a person deriving title from the Owner.

11. DELIVERY

The provisions of this Agreement (other than this clause which will be of immediate effect) will be of no effect until this Agreement has been dated.

SCHEDULE 1

DESCRIPTION OF THE LAND

Land at Foxbury Farm Stone Street Seal Sevenoaks Kent TN15 0LW shown edged red on the Land Plan and within title number K824849.

SCHEDULE 2

AFFORDABLE HOUSING

The Owner covenants with and undertakes to the Council as follows:

1. AMOUNT

No less than 6 (six) of the Residential Properties will be Affordable Housing Properties.

2. MIX AND TENURE

2.1 The Affordable Housing Properties will be provided in accordance with the mix, dwelling type and size identified in the table below unless otherwise agreed in writing by the Parties.

SIZE / DWELLING TYPE (e.g. flat or house)	NUMBER OF AFFORDABLE PROPERTIES (AFFORDABLE RENTED HOUSING OR SOCIAL RENTED HOUSING)
1-bedroom flat (2 persons only)	2
2-bedroom house (4 persons only)	3
3-bedroom house (5 persons minimum)	1
TOTAL	6

2.2 The tenure mix of the Affordable Housing Properties will be agreed by the Council in consultation with the Registered Provider

3. DELIVERY

3.1 Not to commence the Development until the following occurs:

3.1.1 the legal interest in the Affordable Housing Land has been transferred into the ownership of a Registered Provider for the Affordable Housing Price; and

3.1.2 the Owner and the Registered Provider have entered into a binding contract for the construction and provision of the Affordable Housing Properties.

3.2 No more than 50% (fifty percent) of the Open Market Properties shall be Occupied until the Affordable Housing Properties have been constructed in accordance with the Planning Permission and in compliance with the HCA's Design and Quality Standards April 2007 (or any successor standards) and the Registered Provider confirms said Affordable Housing Properties are ready for residential occupation

4. TRANSFER

4.1 Arrangements for the Affordable Housing Land

The Owner will not transfer a freehold or leasehold interest in the Affordable Housing Land to a Registered Provider until the Owner has at its own cost made arrangements for:

4.1.1 remediating the Affordable Housing Land in accordance with all necessary consents and statutory requirements;

- 4.1.2 clearing and levelling the Affordable Housing Land; and
- 4.1.3 undertaking all necessary works to ensure that the Affordable Housing Land is in a Clean Condition with all necessary Services and Service Installations put in place.

4.2 **Transfer of Affordable Housing**

The Owner shall transfer the Affordable Housing Land at the Affordable Housing Price with full title guarantee to the Registered Provider free from encumbrances WITH the benefit of full and free rights of access both pedestrian and vehicular over any relevant access road to be built to a standard capable of adoption by the relevant highway authority from the boundary of each of the Affordable Housing Properties to any relevant adopted highway (and vice versa) and full and free unrestricted rights for all services and conducting media and drains or sewers to be laid and constructed to each of the Affordable Housing Properties to a standard capable of adoption by the respective service providers and upon further terms as may be agreed with the Registered Provider

4.3 **Form of Transfer**

The Owner will transfer the Affordable Housing Land to a Registered Provider by way of:

- 4.3.1 a freehold transfer; or
- 4.3.2 the grant of a lease for a minimum of 125 (one hundred and twenty five) years at a nominal ground rent with Service Charge provisions as set out in this planning obligation.

5. **Nominations**

- 5.1 The Owner will not transfer the Affordable Housing Land to a Registered Provider without first procuring an agreement with the Registered Provider that it will comply with the following provisions during the Perpetuity Period and uses best endeavours to secure said Registered Provider enters into a Nominations Agreement with the Council (substantially in the form of that in Appendix 2)
 - 5.1.1 Not to permit the occupation of any of the Affordable Housing Properties otherwise than in accordance with the Sevenoaks District Housing Register Allocation Policy for the time being in force and with the procedures set out in the following paragraphs
 - 5.1.2 Upon Practical Completion of the Development and at all times subsequently allocate each of the Affordable Housing Properties to an Eligible Person who
 - 5.1.2.1 lives in the Parish and has done so continuously for the last three years to date or
 - 5.1.2.2 has lived in the Parish for at least five out of the last ten years to date or
 - 5.1.2.3 has been a member of a household currently living in the Parish and has Close Family resident in the Parish for a minimum of 10 years continuously or
 - 5.1.2.4 those employed full time in the Parish on a permanent basis or those who will be taking up such employment and whose main place of work is within the Parish or those who provide an important service in the Parish requiring them to live locally
 - 5.1.3 The above provisions will affect any mutual exchanges that are agreed by the Registered Provider and that the restrictions herein contained shall be inserted in any occupational agreements to be granted by the Registered Provider

- 5.1.4 If there are no persons who qualify under clause 5.1.2 above upon Practical Completion of the Development and at all times subsequently to allocate each of the Affordable Housing Properties to an Eligible Person in one of the Neighbouring Parishes who
- 5.1.4.1 lives in one of the Neighbouring Parishes and has done so continuously for the last three years to date; or
 - 5.1.4.2 has lived in one of the Neighbouring Parishes for at least five out of the last ten years to date; or
 - 5.1.4.3 has been a member of a household currently living in one of the Neighbouring Parishes and has Close Family resident in one of the Neighbouring Parishes for a minimum of 10 years; or
 - 5.1.4.4 those employed full time in one of the Neighbouring Parishes on a permanent basis or those who will be taking up employment in one of the Neighbouring Parishes and whose main place of work is within a Neighbouring Parish or those who provide an important service in the Neighbouring Parish requiring them to live locally
- 5.1.5 If within 16 weeks of any of the Affordable Housing Properties becoming available for letting (whether on Practical Completion of the Development or at any time subsequently) the Registered Provider is unable to fill any vacancy arising in accordance with the foregoing provisions then the Council and Registered Provider may allocate such Dwelling to any Eligible Persons who are considered by the Council and the Registered Provider to be in need of such accommodation.
- 5.1.6 Not to dispose of any Affordable Housing Properties - Affordable Rented Housing or Social Rented Housing comprised in the Development by way of the preserved right to buy under the Housing Act 1985 (as amended) or the right to acquire under the Housing Act 1996 or the voluntary right to buy
- 5.1.7 Not to dispose of any interest in the Affordable Housing Properties – Affordable Rented Housing or Social Rented Housing comprised in the Development other than by way of an assured tenancy or an assured shorthold tenancy under the Housing Act 1988 or by way of such other tenancy agreement that the Council may first approve

6 Restriction on use

The Affordable Housing Properties will not be used or Occupied for any purpose other than for Affordable Housing during the Perpetuity Period.

SCHEDULE 3
COUNCIL'S COVENANTS

The Council covenants with and undertakes to the Owner as follows:

1. ISSUING THE PLANNING PERMISSION

The Council will issue the Planning Permission within 10 (ten) Working Days of the date of this Agreement.

2. NO UNREASONABLENESS

Where the approval, satisfaction, agreement, confirmation or consent of the Council or any officer of the Council is required for any purpose under or in connection with the terms of this Agreement such approval, satisfaction, agreement, confirmation or consent will be applied for in writing and will be given in writing and will not be unreasonably withheld or delayed.

3. CONFIRMATION OF SATISFACTION OF OBLIGATIONS

Where in the opinion of the Owner any provisions (including, without limitation, payment obligations) of this Agreement have been satisfied the Owner will be entitled to apply to the Council for written confirmation to that effect and upon the Council being satisfied that the relevant agreement, obligation and covenant as the case may be has been satisfied the Council will as soon as reasonably practicable issue to the Owner written confirmation to such effect.

4. REMOVAL OF REGISTRATIONS

Upon any of the Owner's covenants and undertakings herein being satisfied and upon receipt of a written request to confirm the same, the Council will remove all relevant entries relating to such obligations and covenants from the Council's local land charges register.

APPENDIX 1

**FORM OF NOMINATIONS AGREEMENT FOR AFFORDABLE RENTED HOUSING AND SOCIAL RENTED
HOUSING**



NOMINATIONS AGREEMENT

BETWEEN

Sevenoaks District Council

and

xxxx Housing Association Ltd

**Produced by Sevenoaks District Council
Housing Policy Team
February 2017**

INDEX

- 1) INTRODUCTION AND OBJECTIVES**
- 2) PURPOSE OF THIS AGREEMENT**
- 3) RECITALS**
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- 7) GROUNDS FOR REFERRING A NOMINATION BACK TO THE COUNCIL**
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- 9) MONITORING AND REVIEWING**
- 10) DETERMINATION OF DISPUTES**
- 11) THIRD PARTY RIGHTS**

Schedule 1 – The Property

Schedule 2 – Voids and Lettings Return

1) INTRODUCTION AND OBJECTIVES

Sevenoaks District Council (hereinafter referred to as “**the Council**”) is committed to ensuring that void affordable housing stock owned and/or managed by housing associations within the District of Sevenoaks (“the District”) is to let to applicants in housing need. The Council aims to create balanced communities by making the best use of stock in the District, having regard to the needs of the community.

The Housing Options Team at West Kent Housing Association (hereinafter referred to as “**the SDHR Manager**”) administers the Sevenoaks District Housing Register on behalf of the Council (which incorporates any appropriate statutory requirements) from which nominations will be sought.

xxxx Housing Association Ltd (hereinafter referred to as “**the Association**”) is a member of the Kent Homechoice Scheme and allocates vacancies that arise within its housing stock via Choice Based Lettings.

2) PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to establish procedures that will enable the Council and the Association to: -

- a) Provide a single access route into social housing in the District,
- b) Ensure that the Association supports the Council in meeting its responsibilities towards the homeless and assisting those in Housing Need;
- c) Target housing resources most effectively and appropriately to meet the housing needs of the District;
- d) Ensure effective liaison and free-flow of information between the Association, the SDHR Manager and the Council;

- e) Ensure that properties are let without unreasonable delay;
- f) Continue to maintain a high standard of services and information provided to people seeking housing in the District;
- g) To allocate sensitively to seek to achieve balanced communities;
- h) Identify appropriate support needs for vulnerable people to ensure that an offer of suitable accommodation is made and appropriate lettings take place;

3) RECITALS

1. The Association is [registered/entitled or expects to be entitled to be registered] at the Land Registry as the proprietor of the Property
2. This Agreement is entered into pursuant to the Local Government (Miscellaneous Provisions) Act 1982 section 33
3. The Association will manage the Property in accordance with this Agreement
4. The parties hereto have entered into this Agreement to regulate the occupation of the Property

4) DEFINITIONS

xxx Allocations Policy - shall mean the xxx HA Letting of Homes Policy.

Housing Need – shall relate to those persons who are unable to afford appropriate housing accommodation generally available on the open market (whether by renting or purchasing) within the District

Kent Homechoice – shall mean the Choice Based Lettings scheme operated within the District in respect of vacancies in the social housing stock

Nomination – shall mean a person (a **Nominee**) who is registered on the SDHR who is nominated by the SDHR Manager through the SDHR to a vacant unit of housing accommodation in accordance with this Agreement

Perpetuity Period – shall mean a period of 125 (one hundred and twenty five) years from the date of this Agreement.

Planning Agreement – shall mean the section 106 Agreement pursuant to the Town and Country Planning Act 1990 (as amended) and entered into between the Council, Ian Cameron Mitchell and Lloyds Bank Plc on [] in relation to planning application reference 17/02596/FUL

Property – shall mean those units of accommodation owned and/or managed by the Association as listed in Schedule 1.

Sevenoaks District Housing Register Allocation Policy - shall mean the Council's Allocations Policy, which is administered by the SDHR Manager on behalf of the Council.

Sevenoaks District Housing Register (SDHR) – shall mean the register of those households in Housing Need, as administered by the SDHR Manager on behalf of the Council

Void Unit - shall mean those vacant units of housing accommodation

Working Day – shall mean a day other than a Saturday or Sunday or public holiday in England and Wales

5) NOMINATION PROCEDURE

This procedure is for the nomination arrangements between the Council and the Association in relation to the Property. The nominations process will be vacancy (void unit) led.

The obligations shall apply to Void Units arising in the Property during the Perpetuity Period:

- On first and subsequent lettings, the Council (via the SDHR Manager) will have 100% nomination rights to the Void Units and these will be allocated to Nominees in compliance with the Planning Agreement (S106), the Sevenoaks District Housing Register Allocations Policy and the xx HA Allocations Policy
- All units shall be allocated in compliance with the various protocols adopted by the Kent Joint Planning & Policy Board (Housing) and Kent Housing Group (or their successors or equivalent in function) including but not limited to the Young Persons Homelessness Protocol, Intentionally Homeless Families with Children Protocol, Ex Offenders Protocol and Hospital Discharge Protocol.
- In the event of a known *serious offender** being nominated, a full risk assessment will be provided by the Police and the Probation Service, via the SDHR Manager, at the point of nomination. (** refers to offenders who are subject to Multi-Agency Public Protection Arrangements (MAPPA), arrangements under the Multi-Agency Risk Assessment Conference (MARAC), registered on the Violent and Sex Offenders' Register (VISOR), violent offenders and ex offenders) (all subject to the provisions of the Rehabilitation of Offenders' Act 1974)*)
- For all Nominations, it is recommended that the Association verifies all details provided by the Nominee and carries out further investigations, as deemed reasonably necessary.
- The Association shall not sell or part possession with the Property (or any part thereof) without procuring that the successors in title (transferee) has entered into a nominations agreement on terms equivalent to this Agreement with the Council

6) INFORMATION

On request by the Association, the SDHR Manager will provide copies of any other information that is relevant to the Nominee's application.

The Association will update the SDHR within 5 (five) Working Days of a Nominee commencing their tenancy (name of tenant, tenancy start date and the address of the dwelling). This will enable the SDHR Manager to run all relevant reports.

7) GROUNDS FOR REFERRING A NOMINATION BACK TO THE COUNCIL

The Association may refer an application back to the Council, via the SDHR Manager, where the Nominee's SDHR application cannot be verified in accordance with the Sevenoaks District Housing Allocation Policy.

8) GROUNDS FOR REFUSING A NOMINATION

If it can be demonstrated by the Association that the Nominee would be an unsuitable tenant for the particular unit of accommodation they have been nominated to, the Association maintains the right to refuse a Nomination on one of the following grounds:

- a) The SDHR Manager has provided incorrect information about the Nominee significant enough to make the Nominee unsuitable as a tenant
- b) The Association has uncovered additional undeclared information about the Nominee significant enough to make the Nominee unsuitable as a tenant
- c) There is an agreed lettings plan and the Nominee does not meet the criteria
- d) The Nominee does not fulfill the terms of the xx HA Allocations Policy

Where applicable, if the Association does not allocate the Void Unit to the Nominee with the highest priority in accordance with the Sevenoaks District Housing Register Allocations Policy (hereinafter referred to as "Nominee Bypassing") , the Association shall provide a full explanation to the SDHR Manager as per the Determination of Disputes clause below. The unit of accommodation should not be re-allocated by the Association until the Nominee Bypassing dispute is resolved. When any Nominee is bypassed, the Association should provide the bypassed Nominee with a detailed explanation, as recommended by the Kent Homechoice Good Practice Guide.

For all lettings, the Association must have in place a clear exclusion policy that they have consulted on and which meets relevant statutory guidance, which gives any Nominee or applicant a clear right of appeal on their rejection by the Association.

9) MONITORING AND REVIEWING

- a) Both the Association and the SDHR Manager will maintain records to monitor the effectiveness of this Agreement;
- b) The Association will provide to the Council a full breakdown of all Void Units and lettings arising within the District in a form as per Schedule 2. The breakdown shall be provided annually on 31 March.
- c) This Agreement will be reviewed in 12 (twelve) months from the date of signing and thereafter on an annual basis by all parties;
- d) Any amendments to this Agreement should be made in writing and agreed by all parties;
- e) Should either party wish to terminate this Agreement on reasonable grounds to be agreed between the parties they must give six months written notice to the other party;

10) DETERMINATION OF DISPUTES

Where there is any difference or question arising out of this Agreement between the parties that has not been resolved to the reasonable satisfaction of either party, it shall be determined by the following procedure:

1. Within 2 (two) Working Days of instigating a Nominations Bypass, the Association shall provide written justification, via e-mail to the SDHR Manager at Allocations@wkha.org.uk, receipt of such to be confirmed by the SDHR Manager within two Working Days, delivery of which is otherwise deemed to have failed, of its reasons for Nominee Bypassing. If the SDHR Manager, on behalf of the Council, accepts the submitted reasons within 2 (two) Working Days of acknowledgement of receipt of the email, the Association may proceed to offer the Void Unit to another Nominee.

2. If the SDHR Manager does not accept the Association's submitted reasons for Nominee Bypassing within 2(two) Working Days of acknowledgement of receipt of the email, the dispute will be referred to the Chief Officer for Communities and Economic Development (or such other appointed person with the equivalent responsibilities and functions) for decision. The decision of the Chief Officer for Communities and Economic Development will be final and binding on all parties.

11) THIRD PARTY RIGHTS

None of the provisions of this Agreement are intended to operate to confer any benefit under the Contracts (Rights of Third Parties) Act 1999 on a person or body who is not named as a party to this Agreement.

Schedule 1 – The Property

Six Affordable Properties at land at Foxbury Farm, Stone Street, Seal, Sevenoaks

Schedule 2 – Voids and Lettings Return

Void Unit address	Unit size	Nominee name, previous address, household composition and type of nomination

Date.....

Signed by.....

NAME:

Chief Officer for Communities and Economic Development

For and on behalf of the Council

Date.....

Signed by.....

Designation.....

For and on behalf of the SDHR Manager

Date.....

Signed by.....

Designation.....

For and on behalf of xx Housing Association Ltd

APPENDIX 2

LAND PLAN



SR 12 9 67
Richard
Authorised Signatory

APM
Authorised Signatory



Ordnance Survey, (c) Crown Copyright 2014. All rights reserved. Licence number 100022432



NOTES:

- Do Not Scale.
- Report all discrepancies, errors and omissions.
- Verify all dimensions on site before commencing any work on site or preparing shop drawings.
- All materials, components and workmanship are to comply with the relevant British Standards, Codes of Practice, and appropriate manufacturers recommendations that from time to time shall apply.
- For all specialist work, see relevant drawings.
- This drawing and design are copyright of Clague LLP
- Registration number 00335948

Rev	Date	Description
A	01/06/15	Red and blue lines amended in line with title
B	27/10/15	Red and blue lines amended to omit road and farmhouse.

Project Title
**Proposed Redevelopment of
Foxbury Farm
Stone Street Road
Sevenoaks
Kent**

Drawing Description
Site Location Plan

Scale
1:1250 @ A3

Date
October 2016

Drawn by

Checked by

CLAGUE ARCHITECTS

63 Buxton, Canterbury
Kent CT1 2BH
01227 763292

1 Ximelton Court, Luton Road
Hemel Hempstead, Hertfordshire AL9 7BA
01582 766192

40 Fosse, St Clements Green
London EC4M 6PL
0203 197 6112

CANTERBURY LONDON HAMPDEN

EXECUTED AS A DEED by the Parties on the date which first appears in this Deed.

SIGNED AS A DEED

by IAN CAMERON MITCHELL
in the presence of:

Ian Cameron Mitchell

Ian Cameron Mitchell

Witness Signature

Witness Name: PETER JAMES CLARK

Witness Address: 5, SHRUBSHALL MEADOW, LONG MILL LANE, PLAXTOL,
SEVENOAKS, KENT, TN15 0GR

Witness Occupation: TREE SURGEON

SIGNED AS A DEED

by
at the attorney and on behalf
of LLOYDS BANK PLC in the presence of:

Director

SIGNED AS A DEED

BY ADAM PETER ROSE
as authorised signatory for
Lloyds Bank
in the presence of (signature of witness)

Per Pro
Lloyds Bank

Wobaston Rd, Wolverhampton WV9 5HZ

Bank official

THE COMMON SEAL of THE DISTRICT)
COUNCIL OF SEVENOAKS was)
affixed hereunto in the presence of:)

Richard M...

Authorised Signatory

A.P.H.

Authorised Signatory



SK 12, 967