

DATED

2024

IAN DAVID CHESHIRE

-AND-

PETER MICHAEL RUSSELL and SHINAIKE KATHLEEN WYKES and IAN RUSSELL and HUGH RUSSELL

-AND-

RAYMOND NORMAN SHAW and KAREN PATRICIA SHAW

-AND-

T A FISHER & SONS LIMITED

-TO-

WEST BERKSHIRE DISTRICT COUNCIL

DEED PURSUANT TO SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO
LAND TO THE REAR OF THE HOLLIES, READING ROAD, BURGHFIELD COMMON, BERKSHIRE

PLANNING APPLICATION NO: 22/00244/FULEXT
PLANNING APPEAL REFERENCE: APP/W0340/W/22/3312261

Phillips Law

TOWN GATE
38 LONDON STREET
BASINGSTOKE
HAMPSHIRE
RG21 7NY
Tel: 01256 460830
Fax: 01256 854638
www.phillips-law.co.uk

This Deed is made this day of 2024

BETWEEN

1. **IAN DAVID CHESHIRE** of Stable Cottage, Reading Road, Burghfield Common, Reading, Berkshire RG7 3BH (“the First Owner”); and
2. **PETER MICHAEL RUSSELL** of Black Barn, Goodworth Clatford, Andover, Hampshire SP11 7RN and **SHINAINE KATHLEEN WYKES** of 34 Chesterton Hall Crescent, West Chesterton, Cambridgeshire CB4 1AP and **IAN RUSSELL** of 4 Glendower Street, Monmouth NP25 3DG and **HUGH RUSSELL** of Hesworth Cottage, Hesworth Common, Fittleworth, Pulborough, West Sussex RH20 1EW (“the Second Owner”)
3. **RAYMOND NORMAN SHAW** and **KAREN PATRICIA SHAW** of 44 Lamden Way, Burghfield Common, Reading, Berkshire RG7 3LZ (“the Third Owner”)

(collectively being “the Owner”)

4. **T A FISHER & SONS LIMITED (CRN 02582252)** whose registered office is at Theale Court, 11-13 High Street, Theale, Reading, Berkshire RG7 5AH (“the Developer”)

TO:

WEST BERKSHIRE DISTRICT COUNCIL of Council Offices, Market Street, Newbury, Berkshire RG14 5LD (“the District Council”)

1. RECITALS

- 1.1. The District Council is the local planning authority for the purposes of the Act for the area within which the Application Site is situated.
- 1.2. The First Owner is the freehold owner of that part of the Obligation Land with title registered at the Land Registry with title number BK268769.
- 1.3. The Second Owner is the freeholder owner of that part of the Obligation Land with registered at the Land Registry with title number BK412104.
- 1.4. The Third Owner is the freehold owner of that part of the Obligation Land with title registered at the Land Registry with title numbers BK324735 and BK480212.

- 1.5. The Developer has the benefit of an Option Agreement dated 2 July 2021 in respect of the Obligation Land made between the First Owner (1) the Second Owner (2) and the Third Owner (3) and the Developer (4).
- 1.6. The Owner and the Developer submitted the Application for Planning Permission to the District Council which was validated on 18 February 2022 and registered under reference 22/00244/FULEXT.
- 1.7. By notice of refusal dated the 1 June 2022 the District Council refused to grant the Planning Permission for the reasons set out in the notice.
- 1.8. The Owner and the Developer lodged the Planning Appeal with the Secretary of State following the District Council's decision to refuse. This appeal was allowed.
- 1.9. The Planning Appeal was subject to judicial review resulting in a Consent Order dated 12th January 2024 quashing the decision that is now being redetermined under reference APP/W0340/W/22/3312261.
- 1.10. The Owner has entered into this Deed with the intent to bind the Obligation Land and overcome the reasons for refusing the Application for Planning Permission that were given by the District Council in the notice.
- 1.11. If the Inspector determines that any of the obligations secured by this Deed do not meet the requirements of Regulation 122 of the CIL Regulations the relevant obligations shall not take effect.

NOW THIS DEED WITNESSES as follows:

2. INTERPRETATION

In this Deed:

- 2.1. Words importing the masculine include the feminine and vice versa.
- 2.2. Words importing the singular include the plural and vice versa.
- 2.3. Words importing persons include a natural person, companies, corporations or unincorporated body and vice versa (whether or not having separate legal personality).
- 2.4. Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.
- 2.5. Any reference to a clause, schedule or plan is to a clause, schedule or plan in or attached to this Deed.

- 2.6. Any reference to a colour or letter is to a colour or letter on the plan(s) attached to this Deed.
- 2.7. In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it.
- 2.8. References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party, including that party's personal representatives and permitted assigns and in the case of the District Council the successors to its functions as local planning authority and local housing authority.
- 2.9. A reference to **writing** or **written** excludes faxes and e-mail.
- 2.10. A reference to **this Deed** or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 2.11. References to clauses are to the clauses of this Deed.
- 2.12. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.13. The headings are for reference only and shall not affect construction.

3. DEFINITIONS

It is hereby agreed between the parties to this Deed that the following expressions have the following meanings:

"Act"	means the Town and Country Planning Act 1990 as amended;
"Additional First Homes Contribution"	<p>means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 3.8, 3.9 or 5 of Part 1(b) of Schedule 1, the lower of the following two amounts:</p> <p>(a) 30% of the proceeds of sale; and</p> <p>(b) the proceeds of sale less the amount due and outstanding to any FH Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the FH Mortgagee under the terms of any mortgage but for the</p>

	<p>avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home</p> <p>and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home;</p>
"Affordable Housing"	means housing for sale or rent for those whose needs are not met by the market as the same may be amended by time to time including Social Rented Dwellings, Shared Ownership Dwellings and First Homes;
"Affordable Housing Land"	land or Residential Units to be used for Affordable Housing in accordance with the details submitted pursuant to the Schedule 1;
"Affordable Housing Plan"	means the Affordable Housing Plan showing the location, type, bed size and tenure mix of the Affordable Housing Units within the Development as shown on Plan 2;
"Affordable Housing Provider"	means a registered provider of social housing within the meaning of Section 80(1) of the Housing and Regeneration Act 2008 or any other body organisation or company that has been approved in writing by the Council and which has objects demonstrably similar to or compatible with or promoting those of a housing association, such consent not to be unreasonably withheld or delayed by the Council;
"Affordable Housing Units"	means 13 units being 40% of the Residential Units to be provided as Affordable Housing in accordance with Part 1 of Schedule 1 to this Deed and Affordable Housing Unit shall be construed accordingly;
"Application for Planning Permission"	means the full planning application given planning reference number 22/00244/FULEXT with a description of the Development being "Erection of 32 dwellings including affordable housing, parking and landscape. Access via Regis Manor Road";
"Application Site"	means the land which is the subject of the Application for Planning Permission and known as Land to the rear of The Hollies Reading Road Burghfield Common Berkshire and being all parts of the land as shown edged red on Plan 1;

“Armed Services Member”	means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service;
“Authority to Proceed & Eligibility Approval”	means the document issued by the Council confirming that the person(s) who have submitted a First Homes Application Form satisfy the Eligibility Criteria (National) and Eligibility Criteria (Local) (if any) may proceed with the purchase of a First Home such document (or its equivalent) to be in the form prescribed by Homes England from time to time;
“Base Rate”	the base rate from time to time of the Bank of England;
“CIL Regulations”	means the Community Infrastructure Regulations 2010 as amended;
“Commencement Date”	means the date of Commencement of Development;
“Commencement of Development”	<p>means the carrying out of a Material Operation in respect of the Development and the words "Commence Development" and "Development Commences" shall be construed accordingly and in accordance with Section 56 (1) of the Act where the development consists of:-</p> <ul style="list-style-type: none"> a. the carrying out of operations the commencement will be when those operations are begun b. a change of use the commencement will be when the new use is implemented c. both carrying out of operations and change of use the commencement will be the earlier of the times in paragraphs (a) and (b) above; <p>but disregarding for the purposes of this Deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Obligation Land;</p>
“Commenced and Commences”	shall be construed accordingly;

"Compliance Certificate"	means the certificate issued by the District Council confirming that a Residential Unit is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 3.2 of Part 1(b) of Schedule 1 applies the Eligibility Criteria (Local) in the form at Appendix 1 or as amended by the District Council from time to time;
"Cluster"	shall mean a group of Affordable Dwellings which does not have contiguous boundaries with another group of Affordable Dwellings;
"Deed"	means this document when it is duly executed, dated and delivered;
"Default Interest Rate"	4% per annum above the Base Rate;
"Developer Contributions Team Leader"	the person from time to time holding the post of Developer Contributions Team Leader with the Council or the person who is designated as such by the Council for the purposes of this Deed;
"Development"	means the development of the Application Site pursuant to the Planning Permission;
"Disposal"	<p>means a disposal of the Affordable Housing Units to an Affordable Housing Provider whether by transfer of the freehold or the grant of a long lease for a term of at least 125 years or in the case of a disposal of a First Home a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:</p> <ul style="list-style-type: none"> (a) a letting or sub-letting in accordance with paragraph 4 of Part 1(b) of Schedule 1 (b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner (c) an Exempt Disposal <p>and "Disposed" and "Disposing" shall be construed accordingly;</p>
"Discount Market Price"	means a sum which is the Market Value discounted by at least 30%;
"Eligibility Criteria (Local)"	means criteria (if any) published by the District Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:

	<p>(a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local) (if any); and</p> <p>(c) any or all of criteria (i) (ii) or (iii) below are met:</p> <p>(i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or</p> <p>(ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member; and/or</p> <p>(iii) the purchaser is (or, in the case of a joint purchaser, at least one of the joint purchasers is) a Key Worker (it being acknowledged that at the date of this Deed the Council has not designated any categories of employment as First Homes Key Worker employment).</p>
"Eligibility Criteria (National)"	<p>means criteria which are met in respect of a purchase of a First Home if:</p> <p>(a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and</p> <p>(b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National)</p>
"FH Mortgagee"	<p>means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home;</p>
"First Home"	<p>means a Residential Unit which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap;</p>
"First Homes Application Form"	<p>means the application form pursuant to which person(s) may apply to purchase a First Home such document (or its equivalent) to be in the form prescribed by Homes England from time to time;</p>

“First Home Exempt Disposal”	<p>means the Disposal of a First Home in one of the following circumstances:</p> <ul style="list-style-type: none"> (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner; (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner; (c) a Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order; (d) a Disposal to a trustee in bankruptcy prior to sale of the relevant Residential Unit (and for the avoidance of doubt paragraph 8 shall apply to such sale) <p>Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 4 of Part 1(b) of Schedule 1;</p>
“First Homes Owner”	<p>means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:</p> <ul style="list-style-type: none"> (a) the Developer; or (b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or <p>the freehold a tenant or sub-tenant of a permitted letting under paragraph 4 of Part 1(b) of Schedule 1;</p>
“First Home Unit”	means the three Residential Units to be delivered as First Homes marked on Plan 2;
“First Time Buyer”	means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003;
“Homes England”	means the Homes and Communities Agency (which trades as Homes England) being a body corporate created by Section 1 of the

	Housing and Regeneration Act 2008. This body funds and regulates Affordable Housing Providers including successors to the functions and powers of Homes England;
“Income Cap (National)”	means eighty thousand pounds (£80,000) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home;
“Income Cap (Local)”	means local income cap as may be published from time to time by the District Council and is in force at the time of the relevant disposal of the First Home it being acknowledged that at the date of this agreement the District Council has not set an Income Cap (Local);
“Index”	the General Index of Retail Prices (all items) published by the Office of National Statistics or during any period when no such index exists the index which replaces the same or is the nearest equivalent thereto as may reasonably be specified by the Council;
“Key Worker”	means a person employed or with a confirmed job offer in one of the categories of employment as currently defined in the West Berkshire District Council Housing Strategy 2020 - 2036 who are moving to work in the West Berkshire District or such categories of employment as may be designated and published by the District Council from time to time as the “First Homes Key Worker Criteria” and is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the “Key Worker” criteria which shall apply to that disposal it being acknowledged that at the date of this Deed the District Council has not designated any categories of employment as First Homes Key Worker employment;
“Local Housing Allowance”	means the housing benefit scheme based on private market rents being paid by tenants in the broad rental market area (the area within which a person might reasonably be expected to move by the District Council) and which do not exceed the maximum local housing allowance (or whatever benefit scheme is in place from time to time) and as set by the Valuation Office Agency for the area of the District Council;

<p>“Local Connection Criteria”</p>	<p>means either (a) or (b) below:</p> <p>(a) criteria which are met by a person who satisfies one or more of (i) to (iii) below:</p> <p>(i) is ordinarily resident within the area of West Berkshire District Council for three out of the last five years prior to exchange of contracts for the relevant First Home; and/or</p> <p>(ii) who has a close family relative (parent, adult son/daughter or adult sibling who has lived in the area of West Berkshire District Council for at least the last five years; and/or</p> <p>(iii) has worked over 16 hours a week within the area of West Berkshire District Council for at least 12 months precedent the date of the exchange of contracts for the relevant First Home</p> <p>(b) such other local connection criteria as may be published by the District Council from time to time as its “West Berkshire District Council Housing Allocation Scheme” as may be amended from time to time and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the “Local Connection Criteria” which shall apply to that disposal;</p> <p>(c) if no-one is eligible for the property from the criteria listed then other examples of local connection may be considered at the discretion of the Housing Strategy and Reviews Manager.</p>
<p>“Material Operation”</p>	<p>means a material operation pursuant to the Planning Permission on the Application Site pursuant to Section 56(4)(a)-(e) of the Act provided that for the avoidance of doubt a Material Operation shall be deemed not to have taken place for the purposes of this Deed by any surveying ground investigation archaeological investigations structural or advanced planting site clearance and decontamination works site preparation including earth moving laying and connection of sewers and services the formation of accesses the erection of fences and hoardings and</p>

	the creation of a site compound. The undertaking of a Material Operation is considered to be the Commencement of Development pursuant to the Planning Permission;
"Market Value"	means the open market value as assessed by a Valuer of Residential Unit as confirmed to the District Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation;
"Mortgagee"	means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home;
"Nomination Agreement"	means an agreement between the District Council and the Affordable Housing Provider under which the District Council exercises its right to nominate prospective tenants or lessees for the Affordable Housing Units (save for the First Homes) in accordance with Part VI of the Housing Act 1996 section 159 and the Homelessness Act 2002 the final form of which reflects the tenure and mix of Affordable Housing agreed pursuant to the Affordable Housing Plan;
"Obligation Land"	means the land owned by the Owner registered at the Land Registry under Title Numbers BK268769, BK412104, BK324735 and BK480212 forming part of the Application Site and shown edged red on Plan 1;
"Occupation"	beneficial occupation for the purposes permitted by the Planning Permission which shall be the date upon which Council Tax becomes payable for that Residential Unit or when the Owner first transfers or leases that Residential Unit (whichever is earlier) but shall not include occupation for the construction of Development, daytime occupation by workmen involved in the construction fitting out or decoration of the Development the use of finished buildings for sales purposes or use as temporary offices or for show houses or for the storage of plant and materials or in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly;
"Open Market Units"	means those Residential Units which are not Affordable Housing Units;

“Plan”	means Plan 1 showing the application site plan and Plan 2 being the Affordable Housing Plan;
“Planning Administration Fee”	£1,350.00
“Planning Appeal”	means the appeal by the Owner and the Developer under section 78 of the Act from the refusal of the Application for Planning Permission by the District Council with planning appeal reference APP/W0340/W/22/3312261;
“Planning Permission”	means the planning permission for the Development to be granted pursuant to the Planning Appeal and including any variation pursuant to Section 73 and Section 73A of the Act and non-material amendment to such planning permission under Section 96A of the Act;
“PINS”	means the Planning Inspectorate;
“Practical Completion”	the issue of a certificate by the Owner's architect or surveyor certifying the completion of any part of the Development so that that part can be used for the purpose and operate in the manner for which it was designed. Practically Complete and Practically Completed shall be construed accordingly;
“Price Cap”	means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State;
“Protected Tenant”	means any tenant who: <ul style="list-style-type: none"> a. has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or b. has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit
“Registered Provider”	means a provider of Affordable Housing registered with the Homes England under the 2008 Act or any body organisation or company which is a registered charity with the Charity Commissioners for England and Wales and approved by Homes England or any other body organisation or company that has been approved in writing by the District Council and which

	has objects demonstrably similar to or compatible with or promoting those of a housing association;
“Residential Unit(s)”	any residential unit (including amenity space and car parking associated with that dwelling unit) created pursuant to the Planning Permission;
“Service Director – Development & Housing”	the person from time to time holding the post of Service Director – Development & Housing with the District Council or the person who is designated as such by the District Council for the purposes of this Agreement;
“SDLT”	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect;
“Secretary of State”	means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function;
“Shared Ownership Dwellings”	Residential Units with arrangements under a lease which is granted to those persons eligible for Shared Ownership and who have been approved by the Registered Provider who is selling the home on payment of a premium calculated by reference to a percentage of either the value of the Shared Ownership Dwelling or the cost of providing it with that percentage of the value or cost being owned by the tenant and which allows upon further payments being made for the tenant to obtain the freehold or leasehold interest of that Shared Ownership Dwelling from the provider of the Affordable Dwellings or arrangements under which the owner of a freehold or leasehold interest in a Shared Ownership Dwelling conveys that interest to the buyer where the buyer pays an initial payment expressed as a percentage of the value of the interest in that Shared Ownership Dwelling at that time and agrees to pay other sums calculated by reference to a percentage value of the interest in that Shared Ownership Dwelling at the time when each sum is due to be paid with those payments being secured by a charge or mortgage over the Shared Ownership Dwelling in both cases in accordance with any requirements of the HE;
“Social Rented Dwellings ”	Residential Units to be transferred to and managed by a Registered Provider who agrees to enter into a nominations agreement and available for rent at or below the social target rent as may from time to time be set by the Homes England or by any successor charged with providing housing to those not adequately served by the commercial housing market;

"Valuer"	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity;
"Working Day"	any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England;
"2008 Act"	The Housing and Regeneration Act 2008.

4. Statutory Authorities

4.1. This Deed is made in pursuance of:

4.1.1. section 106 of the Act;

4.1.2. section 111 of the Local Government Act 1972;

4.1.3. section 1 of the Localism Act 2011;

4.1.4. section 33 of the Local Government (Miscellaneous Provisions) Act 1982; and

4.1.5. all other enabling powers.

5. Statutory Functions

5.1. Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the District Council in the exercise of its functions as local planning authority or under any public or private statute bylaw or regulation.

6. Conditionality

6.1. Save for the provisions of clauses 1-20 (inclusive) which shall come into effect immediately upon the completion of this Deed and the provisions of paragraph 1.1 of Part 1(a) of Schedule 1, paragraph 1.1 of Part 1(b) of Schedule 1, paragraphs 1.1 and 1.2 of Part 2 of Schedule 1, Part 3 of Schedule 1 and Part 4 of Schedule 1 which shall come into effect immediately upon the grant of Planning Permission this Deed is conditional upon:

6.1.1. the grant of Planning Permission; and

6.1.2. the Commencement of Development;

6.2. If the Planning Permission expires prior to the carrying out of a Material Operation or at any time be revoked or modified without agreement of the Owner this Deed shall forthwith determine and cease to have effect.

6.3. If the Planning Permission is quashed after the date of this Deed and any subsequent redetermination of the appeal be dismissed then this Deed shall absolutely determine and become null and void.

7. Planning Obligations

- 7.1.** The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the District Council.
- 7.2.** The Owner and Developer covenant to comply with the planning obligations contained in this Deed. The obligations contained in this Deed are entered into by the Owner with the intention that they should bind their interest in the Obligation Land as provided by Section 106 of the Act.

8. Interest And Statements Of Account

Without prejudice to any other right remedy or power herein contained or otherwise available to the District Council if any payment of any sum referred to herein shall not have been paid by the Commencement Date or other relevant trigger date contained herein (as appropriate) the Owner shall pay on demand to the District Council interest thereon at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

9. Indexation

- 9.1.** In addition to any sum stated as being payable in this Deed a further sum ("the Additional Sum") shall be paid and any obligation in this Deed to pay a sum shall be construed as an obligation to pay the Additional Sum as well.
- 9.2.** The Additional Sum, shall be calculated by multiplying the relevant sum by the percentage by which the Index has increased from the date of this Deed to the date that payment of the relevant sum is made.

10. Application of Contributions

- 10.1.** The Council may either spend a contribution or sum it has received under this Deed itself for the purposes for which it was paid or pass it to a third party to spend on its behalf PROVIDED THAT such contribution or sum may only be applied by the third party for the purpose for which it was paid to the Council and the Council shall procure that the third party complies with the relevant terms of this Deed in relation to such sum or contribution.
- 10.2.** In the event of any of the relevant contributions required under this Deed not being expended or contractually committed to be expended within a period of ten years starting on the date of receipt by the Council of the relevant contribution or the date of the Commencement of the Development whichever is the later then the Council shall within 28 days of receiving a written request to do so repay the unexpended part of that relevant contribution or the part of that relevant contribution which has not been contractually committed to the person from whom it was received along with the interest accrued from time to time at the Bank of England base rate thereon following the expiry of the said ten year period.

11. CIL

- 11.1.** If CIL is applicable to the Development or if after the date of this Deed a CIL is introduced or amended that is applicable to the Development then the parties to this Deed will use reasonable endeavours to agree variations to this Deed with the intent that:
- 11.2.** the planning benefits secured by this Deed should continue to be secured and delivered; and

- 11.3.** the Owner and Developer should not be in a position where they are in a financially worse position because of CIL in respect of the obligations contained in the Schedules than they would be if they performed the obligations in this Deed and no CIL had been introduced or amended.

12. Liability For Obligations

- 12.1.** The Owner shall cease to have any obligation or liability under the terms of this Deed in relation to the Obligation Land or any part thereof once they shall have parted with all their interest in the Obligation Land or that part thereof but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 12.2.** The obligations under this Deed shall not be binding on nor enforceable against:
- 12.2.1.** any statutory undertaker which acquires any part of the Obligation Land or an interest in it for the purposes of its statutory undertaking;
- 12.3.** The Owner or their successors in title may rely upon any written confirmation by the District Council of compliance or completion of an obligation or requirement of this Deed.

13. Notices

- 13.1.** Any notice to be given hereunder shall be in writing and shall either be delivered personally or sent by first class pre-paid post. The addresses for service on the parties to this Deed shall be those stated in this Deed or such other address in England for service as any party to this Deed shall previously notify in writing.
- 13.2.** Each notice served in accordance with clause 10.1 hereof shall be deemed to have been given or made and delivered if by delivery when left at the relevant address or if by letter two working days after posting by first class prepaid or four working days if by second class prepaid post.
- 13.3.** This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14. VAT

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

15. General

- 15.1.** For the avoidance of doubt the provisions of this Deed (other than those contained in this sub clause) shall not have any effect until this document has been dated.
- 15.2.** Any covenant given by the Owner shall be construed as given on behalf of and shall be binding on them jointly and severally.
- 15.3.** References to statutes by-laws, regulations, orders and delegated legislation shall include any statute, by-law, regulation, order or delegated legislation re-enacting or made pursuant to the same.

- 15.4.** References to the Owner includes references to their successors in title as owner of the Obligation Land or any part thereof and this Deed shall bind such successors in title of the Obligation Land or any part thereof.
- 15.5.** Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 15.6.** Nothing in this Deed shall prohibit or limit the right to develop any part of the Obligation Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not at appeal) after the date of this Deed but this Deed shall not apply to any subsequent permission under section 73 or 73A of the Act which shall be the subject of a separate deed under section 106/106A of the Act and planning permission shall be construed to include the Development as stated in the subsequent permission and as shall be expressly provided for in that subsequent deed.

16. Local Land Charges

- 16.1.** This Deed is a Local Land Charge and shall be registered as such by the District Council in the Local Land Charges Register provided that if the Planning Permission is not granted or expires unimplemented, or is revoked, or if all obligations under this Deed have been discharged then the registered charge shall be treated as having ceased to have effect under rule 8 of the Local Land Charges Rules 2018 or any statutory re-enactment thereof and the registration shall be cancelled on application.

17. Contracts (Rights Of Third Parties) Act 1999

- 17.1.** It is not intended that the provisions of this Deed shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not party to this Deed (other than by the Owner, and their successors in title and assigns and any successor to the District Council's functions).

18. Costs

- 18.1.** The Developer shall pay on completion of this Deed of written request the District Council its reasonable legal costs in respect of this Deed and within 14 days of Planning Permission being granted the Planning Administration Fee.

19. Waiver

- 19.1.** No waiver (whether express or implied) by the Council 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 Council from enforcing any of the relevant terms or conditions or acting upon any subsequent breach or default.

20. Severability

- 20.1.** Each clause, sub-clause, schedule or paragraph shall be separate, distinct and severable from each other to the extent only that if any clause, sub-clause, schedule or paragraph becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause, sub-clause, schedule or paragraph shall be held by the Courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted

or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause, sub-clause, schedule or paragraph be valid shall apply without prejudice to any other clause, sub-clause, schedule or paragraph contained herein.

21. Developer consent

- 21.1. The Developer hereby consents to the Owner entering into the Deed and the Obligation Land being bound by the obligations contained herein

22. Jurisdiction

- 22.1. This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by and interpreted in accordance with the law of England.

SCHEDULE 1: COVENANTS WITH THE DISTRICT COUNCIL
Part 1(a): Affordable Housing

The Owner and Developer covenants with the District Council:

1. Timetable

- 1.1. Not to Commence the Development unless the provisions of Affordable Housing shall be in accordance with Plan 2 (being the Affordable Housing Plan) save only if otherwise agreed in writing by the District Council.
- 1.2. Not to continue suffer or allow the Development to continue without providing the Affordable Housing Units exactly as to quantum in accordance with the Planning Permission, the Affordable Housing Plan and the following tenure mix:

	Social Rented Dwellings	Shared Ownership Dwellings	First Homes	Total
1 bed	3	0	0	3
2 bed	3	0	1	4
3 bed	1	1	2	4
4 bed	2	0	0	2
Total	9	1	3	13

- 1.3. To carry out the Development and provide the Open Market Units in accordance with the following housing mix:

	Unit no.	Percentage of Open Market Units
1 bed	0	0
2 bed	1	5
3 bed	12	63
4 bed+	6	32
Total	19	100%

2. Use of Affordable Housing Units

- 2.1. Unless otherwise agreed in writing with the District Council and subject to Schedule 1 Part 1(b) Paragraph 4 the Affordable Housing Units shall not be used other than for Affordable Housing.

3. Standard of the Affordable Housing Units

- 3.1. The Affordable Housing Units shall be built in accordance with the quality and design standards current at the time of construction together with any local requirements as set out in the District Council's adopted local plan.

4. Completion of the Affordable Housing Units

- 4.1. Unless otherwise agreed in writing with the District Council, the Affordable Housing Units (save for the First Homes) shall be Occupied pursuant to the provisions of the Nominations Agreement.

- 4.2. None of the Affordable Housing Units (save for the First Homes) shall be Occupied until an Affordable Housing Provider has entered into the Nominations Agreement with the District Council.
- 4.3. Not to permit nor enable more than 50% of the Open Market Units to be in Occupation until the date upon which the Owner or their successors in title have transferred (or entered into an unconditional contract for the transfer) the Affordable Housing Units (save for the First Homes) (either a freehold or leasehold interest for a term of not less than 125 years) to the Affordable Housing Provider.
- 4.4. Not to permit nor enable more than 75% of the Open Market Units to be Occupied until the Affordable Housing Units have been Practically Completed in accordance with the Planning Permission and made ready for residential Occupation.
- 4.5. Not to cause suffer or permit Occupation of any of the Open Market Units until the freehold interest in the Affordable Housing Land has been transferred to a Affordable Housing Provider with the benefit of the following:
- 4.5.1. Full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Land; and
- 4.5.2. Full and free rights to the passage of water soil electricity gas and other services through the pipes drains channels wires cables and conduits which shall be in the adjoining land up to and abutting the boundary to the Affordable Housing Land all such services to be connected to the mains;

and reserving such rights as the transferors may reasonably require.

- 4.6. Subject to the provisos hereinafter set out not to sell lease licence let or otherwise dispose of the Affordable Housing Land or any part thereof in any manner whatsoever (except by way of legal charge or mortgage) or dispose of the Social Rented Dwellings on assured tenancies above social target rents without first obtaining the written consent of the Council given under the hand of its Service Director - Development & Housing (such consent not to be unreasonably withheld or delayed) **PROVIDED THAT**
- 4.6.1. Subject to paragraphs 4.9, 4.10 and 4.11 of this Schedule no consent is required for the first disposal of the Affordable Housing Land to a Registered Provider.
- 4.6.2. No consent will be required for the disposal of the Social Rented Dwellings or any of them on assured tenancies at or below social target rents to be assessed by a Registered Provider in accordance with the performance standards set out in "The Regulatory Framework for Social Housing in England" dated April 2012 by the HE or such other HE Guidance as shall be available from time to time to a Registered Provider.
- 4.6.3. No consent will be required for the disposal of the Shared Ownership Dwellings or any of them if such disposal is by way of lease by shared equity in a form which is based on forms published from time to time by the HE (or its successors) and has first been approved in writing by the Council (such approval not to be unreasonably withheld or delayed) or with such minor variations as the parties shall agree ("Approved Lease") **PROVIDED THAT** for the avoidance of doubt assignment surrender or other disposal of

the Lease shall not constitute a disposal for the purposes of this paragraph (4.6).

- 4.7. On the first disposal of each of the Shared Ownership Dwellings (for the avoidance of doubt this does not include the first disposal of the Affordable Housing Land to a Registered Provider) not to sell lease or otherwise dispose of a share of the same for a consideration in excess of SEVENTY FIVE PERCENT (75%) of the open market value at the date of such first sale lease or other disposal.
- 4.8. In the event that a mortgagee or chargee (or any receiver including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver")) of a Registered Provider or of a shared ownership lessee of the Affordable Dwellings is bound by the terms of this Agreement as mortgagee or chargee or Receiver in exercise of its power of sale of the Affordable Dwellings or any of them none of the Affordable Dwellings shall be sold or otherwise disposed of by the mortgagee or chargee or Receiver unless the following procedure has been followed in respect of each of the Affordable Dwellings:
- (A) The mortgagee, chargee or Receiver shall on each sale have first offered in writing to transfer each of the Affordable Dwellings at the price hereinafter defined for the purposes of social housing to the Council or to a registered housing association or bona fide housing trust nominated by the Council whose objects or functions include the provision of low cost rented housing (the deed of transfer relating to such transfer to be in such form as the Council shall reasonably require) or in the case of Shared Ownership Dwellings or any of them to a person nominated by the Council; and
- (B) The Council has refused the offer or has failed to accept such offer or is unable to nominate a registered housing association or bona fide housing trust whose objects or functions include the provision of low cost rented accommodation or in the case of the Shared Ownership Dwellings is unable to nominate a person for such dwelling(s) within a period of six (6) weeks from the date of receipt by the Council of the offer in writing by the mortgagee chargee or Receiver OR has accepted such offer or made such nomination and has failed to complete the disposal arising from such offer or nomination within a period of twelve (12) weeks from the date of such offer or nomination (whichever is the later) AND the mortgagee chargee or Receiver shall then be at liberty to dispose of the Affordable Dwellings or any of them free from the restrictions contained in this Schedule;
- (C) 'The price referred to in (A) above shall be a sum equal to the higher of:
- a. The open market value on the date of the offer of the Affordable Dwelling(s) on the assumption that (at the date of the offer) the Affordable Dwelling(s) is/are let on an assured tenancy; or
- b. The sum required by the mortgagee or chargee (or any receiver appointed by such mortgagee or chargee) to redeem its borrowing on the Affordable Dwelling(s) including all accrued principal monies, interest, costs and expenses" in clause (4.8) of this Schedule.
- 4.9. In the event that any of the Affordable Dwellings is sold pursuant to the right to buy or the right to acquire provisions of the Housing Act 1985 or the Housing Act 1996 or any amendment or re-enactment thereof such sale and all subsequent dealings shall be free from the restrictions relating to the Affordable Dwellings contained in this Schedule subject to paragraph 4.10 below.

4.10. For the avoidance of doubt in the event that:

- 4.10.1. the Property is located in a designated Protected Area (as defined by the Housing and Regeneration Act 2008) the leaseholder of a lease of one of the Shared Ownership Dwellings or flats may either only acquire a maximum level of Eighty Percent (80%) equity shares, or once the leaseholder has acquired One Hundred (100%) of the shares, the leaseholder must sell those shares back to the Registered Provider; and
- 4.10.2. the Property is located within a National Park, an Area of Outstanding Natural Beauty, or is located in a Designated Rural Area for the purposes of section 157 of the Housing Act 1985 the statutory limitations restricting sale by a leaseholder of a lease of one of the Shared Ownership Dwellings or flats only to persons with a local connection will apply;

Otherwise if:

- 4.10.3. a leaseholder of a lease of one of the Shared Ownership Dwellings has completed the purchase of the freehold reversion pursuant to its right to staircase under the said lease the restrictions relating to the Affordable Dwellings contained in this Schedule shall with effect from the date of completion of such purchase cease to apply to such one of the Shared Ownership Dwellings; and
 - 4.10.4. a leaseholder of a Shared Ownership flat has completed the purchase of the full leasehold interest pursuant to its right to staircase under the said lease the restrictions relating to the Affordable Dwellings contained in this Schedule shall with effect from the date of completion of such purchase waiver
 - 4.10.5. to apply to such one of the Shared Ownership flat;
- 4.11. On the first disposal of the Affordable Housing Land to a Registered Provider the consideration for the Affordable Housing Land on which all of the Social Rented Dwellings and all of the Shared Ownership Dwellings (for the avoidance of doubt all of the Affordable Dwellings are to be transferred at nil grant) are to be constructed pursuant to paragraph (i) of this schedule shall be a sum calculated per dwelling plot (which for the avoidance of doubt shall include the consideration for the plot of land and the infrastructure and utilities to the boundary of the plot)
- 4.12. Upon first disposal of the Affordable Housing Land to a Registered Provider the restriction detailed in clause 4.10.1 and 4.10.2 above are local land charges and a restriction reflecting the limitation in the form below in clause 4.13 shall be registered on the title with HM Land Registry by the Registered Provider and evidence of such registration shall be provided to the Council as soon as reasonably practical after registration
- 4.13. Not to appoint a Registered Provider to deliver the Affordable Dwellings or transfer the Affordable Housing Land to a Registered Provider without the prior written approval of the Council (such approval not be unreasonably withheld) and in the event that the Council receives an application for approval to sell the Affordable Housing Land or any part thereof to a Registered Provider the Council shall (subject to the proviso hereafter contained and subject to paragraph 4.14 of this Schedule) grant consent to such sale with

such reasonable conditions as are appropriate including an obligation on the Registered Provider to enter into a nominations agreement

- 4.14. Any person who applies to the Council for consent to sell the Affordable Housing Land or any part thereof under this Agreement shall if so requested by the Council provide such reasonable information as the Council shall demand in connection with such application
- 4.15. Not to Occupy without first entering into a nomination agreement with the Council and thereafter to liaise with the Council in its review of the nominations agreement at a minimum of every five years from the date of completion
- 4.16. Subject to the provisions of this paragraph the Affordable Housing Units (save for the First Homes) shall remain as Affordable Housing save that the obligations in this Deed relating to the provision and/or use of the Affordable Housing Units (save for the First Homes) (including but not limited to the obligations set out in this Schedule) shall cease to apply in respect of and not be binding or enforceable against:
- 4.16.1. any Protected Tenant or any mortgagee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or
- 4.16.2. any mortgagee or chargee or security trustee of the Affordable Housing Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or its successors in title or any person deriving title from therefrom ("**Chargee of a Affordable Housing Provider**") who has first complied with its duty under paragraph 4.17 below.

Part 1(b) First Homes:

- 1 **1. Quantum of First Homes**
- 1.1 Three (3) of the Residential Units on the Obligation Land shall be identified reserved and set aside as First Homes in accordance with the Affordable Housing Plan to be approved pursuant to Paragraph 1.1 of Part 1(a) of this Schedule and shall be provided and retained as First Homes in perpetuity subject to the terms of Part 1(b) of this Schedule.
- 2 **2. Clustering**
- 2.1 The First Homes shall not be visually distinguishable from the Open Market Units based upon their external appearance
- 2.2 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Open Market Units but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted
- 3 **3. Delivery mechanism**
- 3.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:
- 3.1.1 the Eligibility Criteria (National); and
- 3.1.2 the Eligibility Criteria (Local) (if any).
- 3.2 If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 3.1.2 shall cease to apply.

- 3.3 Subject to paragraphs 3.6 to 3.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a FH Mortgagee.
- 3.4 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:
- 3.4.1 The District Council has been provided with evidence that:
- 3.4.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 3.2 of this Schedule applies meets the Eligibility Criteria (Local) (if any)
 - 3.4.1.2 the Residential Unit is being Disposed of as a First Home at the Discount Market Price and
 - 3.4.1.3 the transfer of the First Home includes:
 - a) a definition of the "District Council" which shall be West Berkshire District Council
 - b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in part 1(b) of Schedule 1 of the S106 Agreement a copy of which is attached hereto as the Annexure."
 - c) A definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 contained in this Deed made between **IAN DAVID CHESHIRE (1) PETER MICHAEL RUSSELL AND SHINAIKE KATHLEEN WYKES AND IAN RUSSELL AND HUGH RUSSELL (2) RAYMOND NORMAN SHAW AND KAREN PATRICIA SHAW (3) and T A FISHER & SONS LIMITED (4) TO WEST BERKSHIRE DISTRICT COUNCIL**
 - d) a provision that the First Home is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the First Home or any part of it other than in accordance with the First Homes Provisions
 - e) a copy of the First Homes Provisions in an Annexure
- 3.4.2 the Council has issued the Authority to Proceed & Eligibility Approval (as published at the time) confirming the evidence provided that the purchaser meets the eligibility criteria is sufficient.
- 3.4.3 The District Council has issued the Compliance Certificate and the District Council hereby covenants that it shall issue the Compliance Certificate within twenty-eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 3.3 and 3.4 of this Schedule have been met.
- 3.5 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by [Local Authority] of [address] or their conveyancer that the provisions of clause XX (the First Homes Provisions) of the Transfer dated [Date] referred to in the

Charges Register have been complied with or that they do not apply to the disposition”

- 3.6 The owner of a First Home (which for the purposes of this clause shall include the Developer and any First Homes Owner) may apply to the District Council to Dispose of it other than as a First Home on the grounds that either:
- 3.6.1 the Residential Unit has been actively marketed as a First Home for six (6) months in accordance with Clauses 3.1 and 3.2 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Residential Unit as a First Home but it has not been possible to Dispose of that Residential Unit as a First Home in accordance with paragraphs 3.3 and 3.4.1; or
 - 3.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 3.6.1 before being able to Dispose of the Residential Unit other than as a First Home would be likely to cause the First Homes Owner undue hardship.
- 3.7 Upon receipt of an application served in accordance with paragraph 3.6 the District Council shall have the right (but shall not be required) to direct that the relevant Residential Unit is disposed of to it at the Discount Market Price.
- 3.8 If the District Council is satisfied that either of the grounds in paragraph 3.6 above have been made out it shall confirm in writing within twenty-eight (28) days of receipt of the written request made in accordance with paragraph 3.6 that the relevant Residential Unit may be Disposed of:
- 3.8.1 to the District Council at the Discount Market Price; or
 - 3.8.2 (if the District Council confirms that it does not wish to acquire the relevant Residential Unit) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Residential Unit apart from paragraph 3.10 which shall cease to apply on receipt of payment by the District Council where the relevant Residential Unit is disposed of other than as a First Home.

- 3.9 If the District Council does not wish to acquire the relevant Residential Unit itself and is not satisfied that either of the grounds in paragraph 3.6 above have been made out then it shall within twenty eight (28) Working Days of receipt of the written request made in accordance with paragraph 3.6 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Residential Unit as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Residential Unit as a First Home he may serve notice on the District Council in accordance with paragraph 3.6 following which the District Council must within 28 Working Days issue confirmation in writing that the Residential Unit may be Disposed of other than as a First Home.
- 3.10 Where a Residential Unit is Disposed of other than as a First Home or to the District Council at the Discount Market Price in accordance with paragraphs 3.8 or 3.9 above the owner of the First Home shall pay to the District Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.

3.11 Upon receipt of the Additional First Homes Contribution the District Council shall:

3.11.1 within ten (10) working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 3.5 where such restriction has previously been registered against the relevant title

3.11.2 apply all monies received towards the provision of Affordable Housing

3.12 Any person who purchases a First Home free of the restrictions in Schedule 2 of this Deed pursuant to the provisions in paragraphs 3.9 and 3.10 shall not be liable to pay the Additional First Homes Contribution to the District Council.

3 Use

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 4.1 – 4.4 below.

4.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the District Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.

4.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the District Council and the District Council consents in writing to the proposed letting or sub-letting. The District Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:

- a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
- b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
- c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
- d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
- e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
- f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.

4.3 A letting or sub-letting permitted pursuant to paragraph 4.1 or 4.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.

- 4.4 Nothing in this paragraph 4 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

5. ASSESSMENT OF ELIGIBILITY

- 5.1 The Owner hereby covenants with the Council that in respect of the first Disposal of each First Home it shall:

5.1.1. prior to the submission of any First Homes Application Form undertake a full and proper assessment of the person(s) named in the First Homes Application Form to assess whether such person(s) meet the required Eligibility Criteria (National) and Eligibility Criteria (Local) (if any); and

5.1.2. submit a First Homes Application Form to the Council together with such evidence as the Council shall reasonably require in order to be able to satisfy itself that such person(s) meets the Eligibility Criteria (National) and Eligibility Criteria (Local) (if any).

- 5.2 The Council hereby covenants with the Owner that in respect of the first Disposal of each First Home:

5.2.1 it shall upon receipt of First Homes Application Form consider whether the person(s) named in the First Homes Application Form meet the required Eligibility Criteria (National) and Eligibility Criteria (Local) (if any) and either:

- (a) issue an Authority to Proceed & Eligibility Approval; or
- (b) confirm in writing that it does not consider the person(s) named in the First Homes Application Form meet the required Eligibility Criteria (National) and Eligibility Criteria (Local) (if any); or
- (c) request such additional evidence as the Council shall reasonably require in order to proceed pursuant to (a) or (b) above.

5.2.2 the Owner shall be entitled to rely upon any Authority to Proceed & Eligibility Approval issued by the Council as the Council's confirmation that the person(s) named in the First Homes Application Form meet the Eligibility Criteria (National) and Eligibility Criteria (Local) (if any) and are eligible to purchase a First Home.

6. FH Mortgagee Exclusion

The obligations in paragraphs 1-5 of Part 1(b) of Schedule 2 of this Deed in relation to First Homes shall not apply to any FH Mortgagee or any receiver (including an administrative receiver appointed by such FH Mortgagee or any other person appointed under any security documentation to enable such FH Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such FH Mortgagee or Receiver PROVIDED THAT:

- 6.1 such FH Mortgagee or Receiver shall first give written notice to the District Council of its intention to Dispose of the relevant First Home; and

- 6.2 once notice of intention to Dispose of the relevant First Home has been given by the FH Mortgagee or Receiver to the District Council the FH Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 6.3

6.3 following the Disposal of the relevant First Home the FH Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the District Council the Additional First Homes Contribution.

6.4 following receipt of notification of the Disposal of the relevant First Home the District Council shall:

6.4.1 forthwith issue a completed application to the purchaser of that Residential Unit to enable the removal of the restriction on the title set out in paragraph 3.5; and

6.4.2 apply all such monies received towards the provision of Affordable Housing

Part 2: Change In Ownership

1. The Owner covenants that before all of the planning obligations in this Deed have been discharged to give the District Council written notice of any change in ownership of any of its interest in the Obligation Land or any part of it within 2 weeks thereof such notice to give details of the lessee assignee or transferee's full name and registered office (if a company or usual address if not) together with the area of the Obligation Land in respect of which such disposition applies PROVIDED THAT this Part 2 shall not apply to the disposition of individual Residential Units or part(s) of the Obligation Land to statutory undertakers for their statutory purposes.

Part 3: Notification of Commencement of Development

1. The Owner covenants with the District Council:

To give written notice of the Commencement Date to the District Council's Service Director - Development & Planning quoting reference number **APP/W0340/W/22/3312261** not less than 10 days prior to Commencement of Development.

SCHEDULE 2: PLANS

Plan 1 – Obligation Land

Plan 2 – Affordable Housing Plan 2021/P0162 101 B

**APPENDIX 1
COMPLIANCE CERTIFICATE**

FIRST HOMES COMPLIANCE CERTIFICATE

Date:	[]
To:	[Buyer's conveyancer]
	[Builder's/Seller's conveyancer]
	[Buyer's mortgage advisor]
	[First Home Buyer(s)]
First Homes Buyer(s) name(s) (the proposed First Homes Owner(s)):	[]
First Home property to be purchased:	[plot number & site name/address]
Copied to:	[First Homes Buyer(s) current address before purchase] [First Homes house builder]

The proposed First Homes Buyer(s) First Homes application has been approved by West Berkshire District Council pursuant to the Agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 relating to [details of site] dated [date] and made between [parties] and this Compliance Certificate issued to the proposed First Homes Buyer(s) and their conveyancer by [Council] as follows:

First Homes Buyer(s) name(s) (the proposed First Homes Owner(s))	[Full Names]
[Builder] [Current First Homes Owner]	[Builder/Seller]
First Home property to be purchased:	[plot number & site name/address]
First Home forecast purchase legal completion date:	
Market value (100% of value)	[£]
First Homes discount %	30%
First Homes Purchase Price (price to be paid by the proposed First Homes Buyer(s) applying the First Homes discount to the Market value)	[£]
Proposed date of exchange of contracts	
Proposed date of completion	

This **COMPLIANCE CERTIFICATE** is issued by West Berkshire District Council and confirms that a Residential Unit is being disposed of to the First Home Buyer(s) specified in this Compliance Certificate who meet the:

- a. Eligibility Criteria (National)
 - (i) First Time Buyer;
 - (ii) Having Household income no more than £80,000 per annum [; and if applicable
- b. the Eligibility Criteria (Local)
 - i [insert Local eligibility Criteria]
 - ii []

As set out in full in the supplemental agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 relating to [details of site] dated [date] and made between [parties] ("**Planning Obligations**").

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first before written

SIGNED as a **DEED** by the said
IAN DAVID CHESHIRE

**IAN DAVID CHESHIRE –
FIRST OWNER**

In the presence of:

Witness: Signature

Name

Address

Occupation

SIGNED as a **DEED** by the said
PETER MICHAEL RUSSELL

**PETER MICHAEL RUSSELL –
SECOND OWNER**

In the presence of:

Witness: Signature

Name

Address

Occupation

**SIGNED as a DEED by the said
SHINAINE KATHLEEN WYKES**

**SHINAINE KATHLEEN WYKES –
SECOND OWNER**

In the presence of:

Witness: Signature

Name

Address

Occupation

SIGNED as a **DEED** by the said
IAN RUSSELL

**IAN RUSSELL –
SECOND OWNER**

In the presence of:

Witness: Signature

Name

Address

Occupation

SIGNED as a **DEED** by the said
HUGH RUSSELL

**HUGH RUSSELL –
SECOND OWNER**

In the presence of:

Witness: Signature

Name

Address

Occupation

SIGNED as a **DEED** by the said
RAYMOND NORMAN SHAW

**RAYMOND NORMAN SHAW –
THIRD OWNER**

In the presence of:

Witness: Signature

Name

Address

Occupation

SIGNED as a **DEED** by the said
KAREN PATRICIA SHAW

**KAREN PATRICIA SHAW –
THIRD OWNER**

In the presence of:

Witness: Signature

Name

Address

Occupation

EXECUTED as a **DEED** by
T A FISHER & SONS LIMITED
acting by a director

DIRECTOR – THE DEVELOPER

In the presence of:

Witness: Signature

Name

Address

Occupation