

DATED

2023

IAN DAVID CHESHIRE

-AND-

PETER MICHAEL RUSSELL and SHINAINE 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

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- 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 18TH February 2022 and registered under reference 22/00244/FULEXT].
- 1.7. By notice of refusal dated the 1st day of 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.
- 1.9. 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.
- 1.10. 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 companies and corporations and vice versa.
- 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 and in the case of the District Council the successors to its functions as local planning authority and local housing authority.
- 2.9. 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 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 and which complies with the definition of Affordable Housing in Annexe 2 of the National Planning Policy Framework as the same may be amended by time to time;
“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;

“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 alternatively a body providing Affordable Housing, in both cases selected by the Owner and approved such consent not to be unreasonably withheld or delayed by the District Council;
“Affordable Housing Units”	means 26 units being 40% of the Dwellings 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;
“Affordable Rented Units”	means the Affordable Housing Units provided to households who are eligible for affordable rented housing, and provided i) at a rent of no more than 70% of the local open market rent (including service charges) for 1 bed and 2 bed properties and ii) at a rent of no more than 65% of the local open market rent (including service charges) for 3 bed properties and for both i) and ii) always below the Local Housing Allowance and for both i) and ii) where local open market rents are calculated using the Royal Institution of Chartered Surveyors approved valuation methods;
“Application for Planning Permission”	means the outline application with all matters reserved except for access given planning reference number APP/W0340/W/22/3312261 with a description of the Development for the [];
“Application Site”	means the land which is the subject of the Application for Planning Permission and known as [] 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;
“District Council Contributions”	means the SAMM Contribution and the SANG Contribution and District Council Contribution shall be interpreted accordingly;
“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;
“Compliance Certificate”	<p>means the certificate issued by the District Council confirming that a Dwelling 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;</p>
“Cluster”	<p>shall mean a group of Affordable Dwellings which does not have contiguous boundaries with another group of Affordable Dwellings;</p>
“Deed”	<p>means this document when it is duly executed, dated and delivered;</p>
“Default Interest Rate”	<p>means eight per centum (8%) per annum above the Bank of England Base Rate;</p>
“Development”	<p>means the development of the Application Site pursuant to the Planning Permission;</p>
“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

	<p>available for occupation except where the transfer is to a First Homes Owner</p> <p>(c) an Exempt Disposal</p> <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%;
“Dwelling”	means a residential unit to be constructed on the Obligation Land pursuant to the Planning Permission and “Dwellings” shall be construed accordingly;
“Eligibility Criteria (Local)”	<p>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> <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>(b) any or all of criteria (i) and (ii) 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</p> <p>it being acknowledged that at the date of this Deed the District Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Home;</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”	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;
“First Home”	means a Dwelling 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;
“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 Dwelling (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

	<p>First Home is made available and is disposed of for occupation as a First Home; or</p> <p>the freehold a tenant or sub-tenant of a permitted letting under paragraph 4 of Part 1(b) of Schedule 1;</p>
“First Time Buyer”	means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003;
“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”	means All Items Index of Retail Prices issued by the Office for National Statistics;
“Index-Linked”	means that with reference to the District Council Contributions the payment of such sums shall be uplifted to the extent of being Index-Linked by reference to the Index in accordance with the formula set out at Schedule 3 of this Deed;
“Inspector”	means a person appointed by the Secretary of State or PINS by virtue of the Act to hear and/or determine the Planning Appeal;
“LEAP”	means the locally equipped area of play as defined by the National Playing Fields Association 2010 as part of the Development as shown on the Illustrative Masterplan with the location or locations to be determined in accordance with the Planning Permission and the Reserved Matters Approval(s);
“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>“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 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;</p>

"Market Value"	means the open market value as assessed by a Valuer of Dwelling 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;
"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 2;
"Occupation"	means in respect of each Dwelling its first occupation excluding occupation for the purposes of construction marketing or security and the words "Occupy" and "Occupied" shall be construed accordingly;
"Open Market Units"	means those Dwellings which are not Affordable Housing Units;
"Plan"	means Plan 1 and Plan 2;
"Planning Appeal"	means the appeal by the Owner and Stax Group Limited under section 78 of the Act from the refusal of the Application for Planning Permission by the District Council with planning appeal reference [];
"Planning Permission"	means the planning permission granted pursuant to the Application for Planning Permission;
"PINS"	means the Planning Inspectorate;
"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;
"Practical Completion"	means the stage reached when the construction of a Dwelling is sufficiently complete that, where

	necessary, a certificate of practical completion can be issued and it can be Occupied;
“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
“Reserved Matters”	means those matters listed as such in the Town and Country Planning (Development Management Procedure) (England) Order 2015;
“Reserved Matters Approval(s)”	means approval(s) of one of more Reserved Matters granted pursuant to the Planning Permission;
“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;
“Social Rented Housing”	means the Affordable Housing Units provided by Affordable Housing Providers to households who are eligible for social rented housing, and for which guideline target rents are determined through the national rent regime;
"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;

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 then this Deed shall absolutely determine and become null and void.

6.4. The parties to this Deed agree that unless the Secretary of State or an Inspector concludes that any individual planning obligation requirements or restrictions in this Deed including each District Council Contribution are compatible with all of the tests for planning obligations at Regulation 122 of the CIL Regulations and ought to be given weight then:

6.4.1. the relevant obligation or requirement shall cease to have effect and shall not be enforceable by the District Council as appropriate; and

6.4.2. in the case of the obligation or requirement being an individual District Council Contribution it shall not be payable to the District Council **PROVIDED THAT** in a case where an Inspector or the Secretary of State concludes in the determination of the Planning Appeal that a specified lower District Council Contribution would meet the requirements of Regulation 122 that lower sum shall be deemed to be the sum payable under that contribution in place of the sum set out for that contribution in this Deed.

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 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.

- 7.3. The District Council covenants with the Owner to perform the obligations contained in clause 19 of this Deed.
- 8. Interest And Statements Of Account**
- 8.1. 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 from the date the same became due until actual payment thereof.
- 9. Liability For Obligations**
- 9.1. 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.
- 9.2. The obligations under this Deed shall not be binding on nor enforceable against:
- 9.2.1. any statutory undertaker which acquires any part of the Obligation Land or an interest in it for the purposes of its statutory undertaking;
- 9.2.2. an Affordable Housing Provider or any person to whom an Affordable Housing Provider grants a lease of an Affordable Housing Unit or any successor in title or any mortgagee to such a person, save for Part 1(a) of Schedule 1 which shall apply subject to the exemptions herein; or
- 9.2.3. any individual owner, occupier or tenant of the Open Market Units or any successor in title or any mortgagee to such a person;
- 9.3. 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.
- 10. Notices**
- 10.1. 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.
- 10.2. 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.
- 11. VAT**
- 11.1. All consideration given in accordance with the terms of this Deed shall be inclusive of any VAT properly payable.
- 12. General**
- 12.1. The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.

16. **Dispute Resolution**

- 16.1. All disputes or differences arising out of this Deed or as to the rights or obligations of the parties to this Deed under it or in connection with its construction shall be referred to a person acting as an expert (hereinafter referred to as the "**Expert**") being a person with the relevant experience of the matter in dispute whose identity will be agreed between the parties to this Deed or, failing agreement, within 21 days by an Expert to be appointed at the request of any party by the President of The Royal Institution of Chartered Surveyors as the case may be having due regard to any representations made to him as to the appropriate qualifications of such Expert.
- 16.2. It is further agreed that:-
- 16.2.1. the determination of the Expert will be final and binding on the parties to this Deed save in the case of manifest error;
- 16.2.2. the parties to this Deed will be entitled to make representations and counter representations in accordance with such timetable as the Expert shall direct; and
- 16.2.3. the Expert's costs will be borne in such proportions as he may direct failing which each party will bear its own costs of the reference and determination and an equal proportion each of the Expert's costs.

17. **Severability**

- 17.1. 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.

18. **Developer consent**

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

19. **Jurisdiction**

- 19.1. This Deed 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 covenants with the District Council:

1. Timetable

- 1.1. To submit the Affordable Housing Plan to the District Council for its agreement prior to the Commencement of Development.
- 1.2. To carry out the Development and provide the Affordable Housing Units exactly as to quantum in accordance with the Planning Permission, the Affordable Housing Plan and the following tenure mix:

	Affordable Rented	Shared Ownership	First Homes	Total
1 bed	3	0	0	3
2 bed	3	0	1	4
3 bed	0	3	1	4
4 bed	1	0	1	2
Total	7	3	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. 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:
 - 4.5.1. 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
 - 4.5.2. 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 4.6 below.
- 4.6. Any Chargee of a Affordable Housing Provider shall prior to seeking to dispose of any of the Affordable Housing Units (save for the First Homes) pursuant to any default under the terms of its mortgagee or charge give not less than 1 month prior to the District Council of its intention to dispose and:
 - 4.6.1. shall prior to seeking to dispose of any of the Affordable Housing Units (save for the First Homes) pursuant to any default under the terms of its mortgage of charge shall give not less than four weeks prior notice to the District Council of its intention to dispose and;
 - 4.6.2. in the event that the District Council responds within four weeks from receipt of the notice served under paragraph 4.6.1 indicating that arrangement for the transfer of the relevant Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee of an Affordable Housing Provider shall co-operate with such arrangements and use reasonable endeavours to secure such transfer PROVIDED THAT such arrangements shall not require the Chargee of an Affordable Housing Provider to dispose of its interest in the relevant Affordable Housing for a sum less than the total of all accrued principal monies interest and costs;
 - 4.6.3. If the District Council does not serve its response to the notice served under paragraph 4.6.1 within four weeks then the Chargee of an Affordable Housing Provider shall be entitled to dispose free of the restrictions set out in this Schedule which shall cease to apply and determine absolutely
 - 4.6.4. If the District Council or any other person cannot within eight weeks from the date of service of its response to the notice served under paragraph 4.6.1 complete such transfer then provided that the Chargee of an Affordable Housing Provider shall have complied with its obligations under this paragraph 4.6 the Chargee of an Affordable Housing Provider shall be entitled to dispose free of the restrictions set out in this Deed

(including, but not by limitation of this part 1(a) of this Schedule) which shall from the time of completion of the transfer cease to apply and determine absolutely.

AND FURTHER PROVIDED THAT at the time the rights and obligations in this paragraph 4.6 shall not require the Chargee of an Affordable Housing Provider to act contrary to its duties under the charge or mortgage and the District Council must give full consideration to protecting the interest of the Chargee in respect of all monies and interest outstanding and relates costs under the charge or mortgage.

Part 1(b) First Homes:

- 1 **1. Quantum of First Homes**
 - 1.1 Seven (7) of the Dwellings 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
 - 2.3 Clusters of houses shall not exceed 10 Affordable Dwellings;
 - 2.4 Clusters of flats in blocks with three (3) or less storeys shall:
 - 2.4.1 not exceed 10 Affordable Dwellings;
 - 2.4.2 not have more than 6 flats with shared access; and
 - 2.4.3 be of a single tenure where sharing a communal entrance;
 - 2.5 The size of Clusters and shared access arrangements for Affordable Dwellings which are flats in blocks with 3 or more storeys shall be agreed in writing with the Council as part of the Affordable Housing Plan
- 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 applies meets the Eligibility Criteria (Local) (if any)
 - 3.4.1.2 the Dwelling 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 dated [] made between **IAN DAVID CHESHIRE (1) PETER MICHAEL RUSSELL AND SHINAINE KATHLEEN WYKES AND IAN RUSSELL AND HUGH RUSSELL (2) RAYMOND NORMAN SHAW AND KAREN PATRICIA SHAW (3) T A FISHER & SONS LIMITED (4) WEST BERKSHIRE DISTRICT COUNCIL (4)**
- d) a provision that the Property 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 Property 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 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 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 provision) 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 Council to Dispose of it other than as a First Home on the grounds that either:

3.6.1 the Dwelling 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 Dwelling as a First Home but it has not been possible to Dispose of that Dwelling 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 Dwelling 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 Dwelling 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 Dwelling 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 Dwelling) 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 Dwelling apart from paragraph 3.10 which shall cease to apply on receipt of payment by the District Council where the relevant Dwelling is disposed of other than as a First Home.

- 3.9 If the District Council does not wish to acquire the relevant Dwelling 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 Dwelling 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 Dwelling 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 Dwelling may be Disposed of other than as a First Home.
- 3.10 Where a Dwelling 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 28 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.

4. **Use**

5 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.

6 5. FH Mortgage Exclusion

The obligations in paragraphs 1-4 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:

- 5.1 such FH Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and
- 5.2 once notice of intention to Dispose of the relevant First Home has been given by the FH Mortgagee or Receiver to the Council the FH Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 5.3
- 5.3 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 Council the Additional First Homes Contribution.
- 5.4 following receipt of notification of the Disposal of the relevant First Home the Council shall:
 - 5.4.1 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 3.5; and
 - 5.4.2 apply all such monies received towards the provision of Affordable Housing

Part 2: Change In Ownership

- 1. The Owner covenants that before all 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 3 shall not apply to the disposition of individual Dwellings or part(s) of the Obligation Land to statutory undertakers for their statutory purposes.

Part 3: District Council Contributions

1. The Owner covenants with the District Council:

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

SCHEDULE 2: INDEX-LINKING FORMULA

Amount payable = the District Council Contributions x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date the District Council Contribution was required to be paid pursuant to this Deed.

B= the figure for the Retail Prices Index (All Items) that applied at the date of the Planning Permission.

SCHEDULE 3: PLAN

**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]
[Builder] [Current First Homes Owner]	[Builder/Seller]
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)	[£]
Copied to:	[First Homes Buyer(s) current address before purchase] [First Homes house builder]

This **COMPLIANCE CERTIFICATE** is issued by West Berkshire District Council and confirms that a Dwelling 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 Agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 relating to relating to land at [x] dated [date] and made between [x] ("**Planning Obligations**").

The First Homes Buyer(s) (the new First Homes Owner) has provided all the necessary First Homes confirmations and declarations of eligibility required by West Berkshire District Council and the First Homes Buyer(s) solicitor has confirmed that the transfer to the First Home Buyer(s) will comply with the requirements in Planning Obligations in relation to the Obligation Land.

Yours sincerely

Name:	
Signed:	

For and on behalf of	West Berkshire District Council
Dated:	

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

The Common Seal of **WEST BERKSHIRE DISTRICT COUNCIL**

Council was hereunto affixed in the presence of:

.....
Authorised Officer