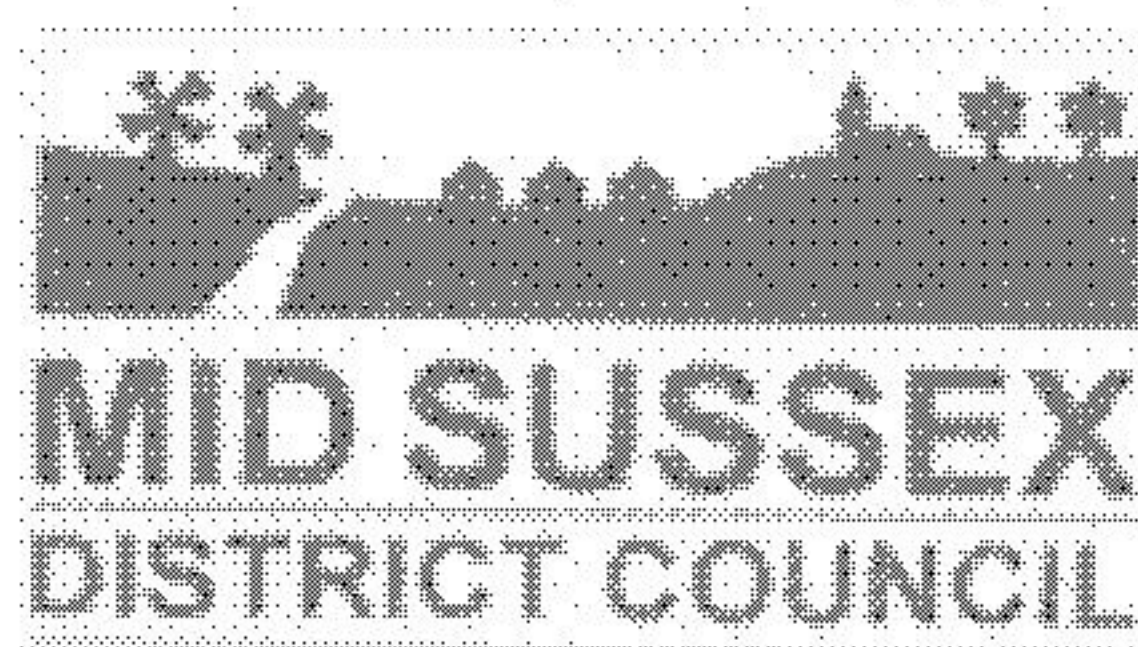




DATED

2025

MID SUSSEX DISTRICT COUNCIL (1)

AND

WEST SUSSEX COUNTY COUNCIL (2)

AND

ASHILL REGEN LIMITED (3)

AND

CANDID FINANCE LIMITED (4)

DEED of VARIATION OF PLANNING OBLIGATION
pursuant to Section 106 and 106A of the
Town and Country Planning Act 1990 (as amended)
relating to Land at West Hoathly Brickworks,
Hamsey Road, Sharpthorne, East Grinstead RH19 4PD

Mid Sussex District Council
'Oaklands' Oaklands Road
Haywards Heath
West Sussex
RH16 1SS

IKEN REF: 8261

THIS DEED is dated the

day of

2025

BETWEEN

- (1) **MID SUSSEX DISTRICT COUNCIL** of Oaklands, Oaklands Road, Haywards Heath, West Sussex, RH16 1SS ("the District Council")
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, Chichester, West Sussex PO19 1RQ ("the County Council")
- (3) **ASHILL REGEN LIMITED** (Co.Regn. No 13525416) whose registered office is situated at Aissela 46 High Street, Esher< Surrey KT10 9QY ("the Owner")
- (4) **CANDID FINANCE LIMITED** (Co.Regn. No 13265321) whose registered office is situated at Unit 3-4 Teddington Business Park, Station Road, Teddington TW11 9BQ ("the Mortgagee")

together referred to as the "**Parties**"

BACKGROUND

- (A) The Owner is the freehold owner of the Land with title absolute under title Number WSX443057.
- (B) The Land is subject to a registered charge dated 14 October 2022 in favour of the Mortgagee.
- (C) The District Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- (D) The County Council is the local authority responsible for education, libraries and transport infrastructure in the area in which the Land is situated.
- (E) By the Original Obligation the Planning Obligations were given to the District Council and the County Council in respect of the Development and use of the Land pursuant to the Planning Permission.
- (F) Pursuant to Section 106A of the Act the Owner has made an application to the District Council to amend the affordable housing provisions in the Original Obligation.
- (G) The Parties have agreed to enter into this Deed to vary the Original Obligation in the manner herein appearing.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. INTERPRETATION AND DEFINITIONS

- 1.1. In this Deed unless the context otherwise requires all expressions shall have the meaning given to them under the Original Obligation save for the following expressions which shall have the following meaning:

Original Obligation means the agreement dated 15 October 2024 between the District Council (1) the County Council (2) the Owner (3) and the Mortgagee (4) made pursuant to Section 106 of the Act

Planning Obligation means any obligation by any party (or successors in title) to the Original Obligation and/or this Deed as the context requires and "Planning Obligations" shall be construed accordingly.

- 1.1. This Deed shall be construed and interpreted as a modification of the Planning Obligations in the Original Obligation and the Original Obligation shall be read and construed accordingly but for the avoidance of doubt shall remain in full force and effect other than as modified by this Deed.
- 1.2. All provisions of the Original Obligation regarding or relating to the interpretation or construction of the Original Obligation shall apply to the Original Obligation as varied in this Deed.
- 1.3. Unless otherwise specifically stated in this Deed, the modifications herein shall not absolve any party from any liability for any act or omission constituting a breach of any provisions of the Original Obligation occurring before the date of this Deed notwithstanding that the effects hereof render such act or omission lawful if they occur after the date of this Deed.

2. LEGAL BASIS

- 2.1. This Deed is made pursuant to:
- 2.1.1. Section 106A of the Act insofar as it modifies or discharges any Planning Obligation in the Original Obligation;
- 2.1.2. Section 106 of the Act insofar as any new planning obligations are given by any party hereto; and
- 2.1.3. Sections 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers enabling the District Council as local planning authority and the County Council to enter into it.
- 2.2. Any covenants, restrictions and requirements imposed upon the Owner under this Deed are planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council as local planning authority and the County Council against the Owner.
- 2.3. The parties hereto acknowledge and confirm that the Planning Obligations in the Original Obligation as modified hereby remain in compliance with Regulation 122 of the Community Infrastructure Levy Regulations 2010.

- 2.4. The obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owner and the Mortgagee with the intention that they bind the interests held by those persons in the Land and their respective successors and assigns.

3. CONDITIONALITY

This Deed shall come into effect immediately upon the completion of this Deed.

4. VARIATION TO THE ORIGINAL OBLIGATION

4.1 The Parties agree that:

- 4.1.1 the Original Obligation shall be varied and supplemented as set out in the Schedule and annexes hereto; and
- 4.1.2 the Original Obligation shall be varied and read and construed as being subject to the terms of this Deed and as having been amended by the terms of this Deed and the terms of the Original Obligation otherwise shall continue in full force and effect.

5. COSTS

- 5.1. The Owner shall pay to the District Council on or before the date of this Deed the District Council's reasonable legal costs together with all disbursements incurred in connection with the preparation, negotiation and completion of this Deed.
- 5.2. The Owner shall pay to the County Council on or before the date of this Deed the County Council's reasonable legal costs together with all disbursements incurred in connection with the preparation, negotiation and completion of this Deed.

6. LOCAL LAND CHARGE

This Deed is a local land charge and shall be registered as such by the District Council.

7. OWNERSHIP

The Owner warrants that no person other than the Owner and the Mortgagee has any legal or equitable interest in the Land.

8. NO FETTER OF DISCRETION

Nothing contained or implied in this Deed shall fetter or prejudice or otherwise affect the rights, powers, duties and obligations of the District Council or the County Council in exercise of their functions either as local planning authority or in any capacity and that all rights, powers, duties and obligations under any public and private statutes, bylaws and regulations (including for the avoidance of doubt the ability to apply for or be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other

means of enforcing this Deed and consequential and interim orders and relief) and the same may be.

9. MORTGAGEE'S CONSENT

The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in the Original Obligation as amended by this Deed and that the security of its mortgage over the Land shall take effect subject to the Original Obligation as amended by this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under the Original Obligation as amended by this Deed unless it takes possession of the Land (or any part thereof), in which case it too will be bound as if it were a person deriving title from the Owner.

10. THIRD PARTY RIGHTS

It is agreed that nothing in this Deed shall be construed as expressly providing a right for any third party within the meaning of the Contract (Rights of Third Parties) Act 1999 and nothing in this Deed is intended to confer on any third party (whether referred to herein by name class description or otherwise) any benefit or any right to enforce any provision of this Deed.

11. GOVERNING LAW

This Deed shall be governed by and interpreted in accordance with the law of England.

IN WITNESS whereof the parties hereto have duly executed this Deed on the day and year first before written.

FIRST SCHEDULE - VARIATION TO THE ORIGINAL OBLIGATION

1. The Parties agree that the Original Obligation shall be varied as follows:
 - 1.1. The following definitions shall be deleted and replaced in Clause 1 of the Original Obligation as follows:

"Affordable Housing" means housing to include Social Rented Units, Affordable Rented Units, Shared Ownership Units and First Homes provided to specified eligible households whose needs are not met by the market. Affordable Housing shall:

- (a)*** meet the needs of eligible households who the District Council could reasonably expect to occupy this Development having regard to its Allocation Scheme and the Local Connection Criteria (Social or Affordable Rented Units) or the Shared Ownership National Eligibility Criteria and the Local Connection Criteria (Shared Ownership) (as applicable) including availability at a cost low enough for them to afford (or at rent levels previously approved by the Responsible Officer for Housing in writing), determined with regard to local incomes and local house prices; and
- (b)*** include provision for the homes to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision subject to any such recycling of the subsidy being in accordance with the requirements of Homes England;

"Affordable Housing Units" means Twenty Four (24) Social Rented Units or Affordable Rented Units or Shared Ownership Units and Nine (9) First Homes together with at least Sixty Two (62) associated car parking spaces comprising a minimum of one parking space per one and two bedroom Dwellings and a minimum of two parking spaces per three and four bedroom Dwellings and gardens / amenity land which are to be constructed on the Affordable Housing Land pursuant to the Planning Permission and which are to be occupied as Affordable Housing by a Nominee or Other Eligible Person in accordance with the Affordable Housing Scheme, the Local Connection Criteria (Social or Affordable Rented Units) and the Nomination Agreement in the case of the Social Rented Units or Affordable Rented Units and the Shared Ownership National Eligibility Criteria and the Local Connection Criteria (Shared Ownership) and the Nomination Agreement in the Case of the Shared Ownership Units and the Eligibility Criteria (National) and the Eligibility Criteria (Local) and the Local Connection Criteria (First Homes) in the case of the First Homes and ***Affordable Housing Unit*** is any part of the Affordable Housing Units capable of separate occupation;

"Chargee" means 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)) the whole or any part of the Social Rented Units or Affordable Rented Units or Shared Ownership Units;

"Nomination Agreement" means an agreement between the District Council and the Registered Provider substantially in the form annexed hereto at Appendix 2 under which the District Council exercises its right to nominate prospective occupiers for the Social Rented Units or Affordable Rented Units or Shared Ownership Units in accordance with Part VI of the Housing Act 1996 section 159 and which agreement shall give the District Council the right to nominate 100% of the prospective occupiers of the Social Rented Units or Affordable Rented Units or Shared Ownership Units on the first letting of a tenancy or the granting of each and every Shared Ownership Lease and (unless otherwise agreed in writing by the Responsible Officer for Housing) shall provide for the District Council to have the right to nominate 100% of the prospective occupiers of the Social Rented Units and/or Affordable Rented Units and/or Shared Ownership Units on any re-letting or assignment PROVIDED THAT such nomination rights shall not apply to Shared Ownership Units which form part of the Affordable Homes Programme;

"Nominee" means a person who is selected by the District Council and whose name is taken from the Mid Sussex Housing Register originally established under section 162 of the Housing Act 1996, or such other procedures as may be implemented by the District Council; the Local Connection Criteria will be detailed in the Nomination Agreement and the site is in a Designated Protected Area;

"Other Eligible Person" means a person selected by a Registered Provider in accordance with the Nomination Agreement and who is in need of Affordable Housing and in the case of Shared Ownership means a person who shall meet the Shared Ownership National Eligibility Criteria and the Local Connection Criteria (Shared Ownership) and in the case of First Homes means a person who shall meet the Eligibility Criteria (National) and unless paragraph 11.2 of Part One of the SECOND SCHEDULE applies the Eligibility Criteria (Local);

"Protected Occupier" means in respect of an Affordable Housing Unit a person who:

- (a) has exercised the right to acquire so far as legally permissible pursuant to section 180 of the Housing and Regeneration Act 2008 and governed by the Housing Act 1985 and modified by the Housing (Right to Acquire) Regulations 1997 or any

equivalent statutory provision for the time being in force in respect of a particular Affordable Rented Unit or Social Rented Unit and their mortgagee and successors in title;

- (b) has exercised any statutory right to buy or statutory preserved right to buy pursuant to the Housing Act 1985 or any equivalent statutory provision for the time being in force in respect of a particular Affordable Rented Unit or Social Rented Unit and their mortgagee and successors in title;*
- (c) has been granted a lease of a Shared Ownership Unit by a Registered Provider and has subsequently purchased from the Registered Provider 100% of the equity from the Registered Provider and owns the entire Shared Ownership Unit and their mortgagee and successors in title;*

"Registered Provider" means Heylo (but for the avoidance of doubt the inclusion of Heylo in this definition does not fetter the District Council's discretion when deciding whether to approve Heylo as a registered provider pursuant to paragraph 1.2.1 of Schedule 2 of this Deed), or a provider of social housing as defined in part 2 of the Housing and Regeneration Act 2008 who is registered with the Regulator of Social Housing pursuant to Section 116 of that Act and who is approved in writing by the Responsible Officer for Housing

- 1.2. The following definitions shall be inserted into Clause 1 of the Original Obligation:

***"Designated Protected Area"** means an area designated under the Housing (Right of Enfranchisement) (Designated Protected Areas) (England) Order 2009 (SI 2009/2098); as a protected area for the purposes of paragraph 4A(1) of Schedule 4A to the Leasehold Reform Act 1967;*

***"Heylo"** means Heylo Housing Registered Provider Limited (registered under company number 06573772) and having its registered office at 6 Wellington Place, Fourth Floor [Ref Csu], Leeds, England, LS1 4AP but for the avoidance of doubt, the inclusion of Heylo in this Deed does not constitute the District Council's approval of Heylo as a Registered Provider for the Affordable Housing Units*

***"Local Connection Criteria (Shared Ownership)"** means criteria which is met by a person who has a local connection to Mid Sussex by satisfying one or more of the following requirements:*

- (a) Currently lives within the Mid Sussex District Council's administrative area; or*

- (b) *Currently works within the Mid Sussex District Council's administrative area; or*
- (c) *Has a parent, adult child, or brother or sister who lives within the Mid Sussex District Council's administrative area*

and such eligible persons will be allowed to purchase Shared Ownership Units with one additional bedroom to their need;

"Model Lease" *means the appropriate form of model lease for a Shared Ownership Unit published by Homes England (as may be amended from time to time);*

"Shared Ownership National Eligibility Criteria" *means criteria to qualify for Shared Ownership where an applicant(s) must be at least 18 years old, have a combined annual household income of less than £80,000 (outside London) and be a first time buyer or unable to afford a property which suits their needs on the open market;*

"Shared Ownership Lease" *means where grant funding has been provided by Homes England for the purchase by the Registered Provider of the Shared Ownership Units a lease in accordance with the guidelines and requirements of Homes England for a Shared Ownership Unit in a Designated Protected Area but otherwise substantially in the form of the Model Lease for a Shared Ownership Unit published by Homes England as may be amended by Homes England from time to time;*

"Shared Ownership Unit" *means an Affordable Housing Unit which is occupied by a person(s) who meet the Shared Ownership National Eligibility Criteria and the Local Connection Criteria (Shared Ownership) pursuant to a Shared Ownership Lease granted by a Registered Provider, where the occupier purchases an initial share of the equity and "Shared Ownership" shall be construed accordingly;*

- 1.3. Clause 16.11 of the Original Obligation shall be deleted and replaced as follows:

16.11 *Except for the obligations restricting the Occupation and regulating the use of the Social Rented Units and/or Affordable Rented Units and/or Shared Ownership Units contained in paragraphs 6 and 7.1 of Part One of the Second Schedule and the obligations restricting the Occupation and regulating the use of First Homes in paragraphs 10, 11, and 12 of Part One of the Second Schedule, the obligations in this Deed shall not be binding upon any person whose interest in the Land is restricted to being an individual owner or tenant or occupier of any individual Affordable Housing Unit and their successors in title or their mortgagee.*

- 1.4. Paragraphs 1, 2, 3, 5, 6, 7, 8 and 10 of Part One of the Second Schedule shall be deleted and replaced as follows:

"1. Affordable Housing

- 1.1 To provide the Affordable Housing Units in accordance with this Deed, the Affordable Housing Scheme and the Planning Permission and for the avoidance of doubt, a minimum of 30% of the total number of Dwellings comprised within the Development shall be Affordable Housing Units split 25% First Homes and 75% Social Rented Units and/or Affordable Rented Units and/or Shared Ownership Units (unless otherwise agreed in writing by the Responsible Officer for Housing).

- 1.2 Not to cause or allow the Commencement of the Development until the following has occurred:

1.2.1 the Responsible Officer for Housing has approved in writing the identity of the Registered Provider with responsibility for the delivery of the Social Rented Units and/or Affordable Rented Units and/or Shared Ownership Units; and

1.2.2 the Owner has entered into an unconditional and binding contract to Transfer the Social Rented Units and/or Affordable Rented Units and/or Shared Ownership Units and associated Affordable Housing Land to the Registered Provider;

1.2.3 the Owner has provided the Responsible Officer for Housing with a certified copy of the contract referred to in paragraph 1.2.2

2. Restrictions on occupations

- 2.1 No more than 50% of the Market Housing Units shall be Occupied until all of the Social Rented Units and/or Affordable Rented Units and/or Shared Ownership Units and First Homes have been constructed in accordance with the Planning Permission and made ready for residential occupation and written notice of such has been received by the Responsible Officer for Housing.

- 2.2 No more than 50% of the Market Housing Units shall be Occupied until the Social Rented Units and/or Affordable Rented Units and/or Shared Ownership Units and associated Land have been Transferred to the Registered Provider.

3. Provision of Information

To keep the Responsible Officer for Housing informed of progress of any negotiations to dispose of the Social Rented Units and/or Affordable Rented Units and/or Shared Ownership Units and to promptly provide the Responsible Officer for Housing with such information and supporting evidence as she may reasonably request.

5. Provisions relating to Affordable Housing to be transferred to a Registered Provider

5.1 That the Transfer of the Social Rented Units and/or Affordable Rent Units and/or Shared Ownership Units to a Registered Provider(s) approved by the Responsible Officer for Housing shall be at a price reflecting the provision of serviced land at nil value and an assumption of nil public subsidy.

5.2 The Owner covenants with the District Council that the Transfer of the Social Rented Units and/or Affordable Rented Units and/or Shared Ownership Units pursuant to paragraph 5.1 shall contain the following:

5.2.1 the grant by the Owner to the Registered Provider of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Social Rented Units and/or Affordable Rented Units and/or Shared Ownership Units and associated Land;

5.2.2 a reservation of all rights of access and passage of services and rights of entry and rights of support reasonably necessary for the purpose of the Development (including its construction);

5.2.3 such other terms as the Owner agrees with the Registered Provider.

6 Nomination Rights

That none of the Social Rented Units and/or Affordable Rented Units and/or Shared Ownership Units shall be Occupied until the Owner (being a Registered Provider) has entered into a Nomination Agreement with the District Council provided always (for the avoidance of doubt) a Nomination Agreement must be entered into in respect of all of the applicable Social Rented Units and/or Affordable Rented Units and/or Shared Ownership Units. The Local Connection Criteria (Social or Affordable Rented Units) and the Local Connection Criteria (Shared Ownership) will be detailed in the Nomination Agreement and the Land is in a Designated Protected Area.

7 Use of the Social Rented Units and/or Affordable Rented Units and/or Shared Ownership Units

7.1 Subject to paragraphs 7.2 and 8 below, from the date of Practical Completion of the Social Rented Units and/or Affordable Rented Units and/or Shared Ownership Units they shall not be used or Occupied for any purpose other than as Affordable Housing in accordance with the Affordable Housing Scheme and the Nomination Agreement

7.2 The covenant set out in paragraph 7.1 shall not be binding on or enforceable against:

7.2.1 any Chargee and any successors in title thereto provided that the Chargee shall have first complied with the Chargee's Duty PROVIDED ALWAYS THAT if any

successor in title to the Chargee (as referred to in this paragraph) is a Registered Provider or any other provider of affordable housing the provisions of paragraph 7.1 shall thereupon become enforceable against the said Registered Provider or other provider of affordable housing and their successors in title subject as provided herein; and

7.2.2 where grant funding is not used by a Registered Provider to acquire the Social Rented and/or Affordable Rented and/or Shared Ownership Units, any Protected Occupier

8 Chargee Clause

8.1 Prior to seeking to dispose of the Social Rented Units or Affordable Rented Units or Shared Ownership Units (or any one or more of them) and the associated Land (or any part thereof) pursuant to any default under the terms of its mortgage or charge ("the Charged Property") the Chargee shall give prior written notice including evidence and written confirmation of the default (the "Chargee's Notice") to the District Council of its intention to dispose and:

8.1.1 the Chargee shall use reasonable endeavours over a period of three (3) months from the date of service of the Chargee's Notice on the District Council to complete a disposal of the Charged Property in such a way so as to safeguard it as Affordable Housing in line with paragraph 8.2 for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation relating to the Charged Property including all accrued principal monies and interest due and reasonable costs relating to the said security documentation; and

8.1.2 if such disposal has not completed within the three (3) month period the Chargee shall, subject to the proviso set out in paragraph 7.2.1 of this Part One of the Second Schedule, be entitled to dispose of the Charged Property free from the affordable housing provisions contained in the Second Schedule to this Deed which provisions shall determine absolutely; and

8.2 In the event of a default under any security referred to in paragraph 8.1 **Error! Reference source not found.** or in other circumstances warranting the intervention of Homes England nothing in this Deed shall prevent the transfer of the Social Rented Units and/or Affordable Rented Units and/or Shared Ownership Units or any one or more of them (as the case may be) to another Registered Provider or alternative affordable housing provider (in either case approved in writing by the Responsible Officer for Housing) or to the District Council subject to the Social Rented Units and/or Affordable Rented Units and/or Shared Ownership Units and associated Land remaining bound by the provisions of this Deed.

10 Designated Protected Area & Designated Rural Area

10.1 To comply at all times with the legal and statutory obligations relating to the Designated Rural Area and all requirements as may be made by Homes England from time to time insofar as such requirements apply to affordable housing within a Designated Rural Area.

10.2 Where grant funding has been provided by Homes England for the purchase by the Registered Provider of the Affordable Housing Units to comply at all times with all legal and statutory obligations relating to the Designated Protected Area and all requirements as may be made by Homes England from time to time insofar as such apply to affordable housing within a Designated Protected area.

1.5. The Affordable Housing Scheme in Part Two of the Second Schedule of the Original Obligation shall be deleted and replaced with the affordable housing scheme in Annex 1 attached to this Deed.

1.6. The nomination agreement at Appendix 2 of the Original Obligation shall be deleted and replaced with the nomination agreement in Annex 2 attached to this Deed.

2. Save as amended in this Deed of Variation the covenants in the Original Obligation shall continue in full force and effect.

Annex 1 – Affordable Housing Scheme

SECOND SCHEDULE

Part Two

AFFORDABLE HOUSING SCHEME

NUMBER OF DWELLINGS	DWELLING TYPES	TENURE OF DWELLINGS (Social Rented / Affordable Rented / Shared Ownership / First Homes)	PLOT NUMBERS
3	ONE BED / 2 PERSON FLAT @ a minimum of 50m ² excluding any staircases and hallways or 58m ² including them	Social Rent or Affordable Rent or Shared Ownership	61,63 and 66 As shown on the Affordable Housing Plan
1	ONE BED / 2 PERSON WHEELCHAIR ACCESSIBLE M4(3)(2)(b) FLAT @ a minimum of 70m ² with its own private garden space	Social Rent or Affordable Rent or Shared Ownership	62 As shown on the Affordable Housing Plan
2	TWO BED / 4 PERSON FLAT @ a minimum of 70m ² excluding any staircases and hallways or 79m ² including them	Social Rent or Affordable Rent or Shared Ownership	64 and 65 As shown on the Affordable Housing Plan
12	TWO BED / 4 PERSON HOUSE @ a minimum of 79m ² (2 storey)	Social Rent or Affordable Rent or Shared Ownership	9,10,13,14,75,76,77,78, 79,88,89 and 90 As shown on the Affordable Housing Plan
1	TWO BED / 4 PERSON WHEELCHAIR ACCESSIBLE M4(3)(2)(b) HOUSE @ a minimum of 116 m ² with its own private garden space	Social Rent or Affordable Rent or Shared Ownership	86 As shown on the Affordable Housing Plan
3	THREE BED / 5 PERSON HOUSE @ a minimum of 93m ² (2 storey) or 99m ² (3 storey)	Social Rent or Affordable Rent or Shared Ownership	8,15 and 87 As shown on the Affordable Housing Plan
2	FOUR BED / 6 PERSON HOUSE @ a minimum of 106m ² (2 storey) or 112m ² (3 storey)	Social Rent or Affordable Rent or Shared Ownership	11 and 12 As shown on the Affordable Housing Plan
3	ONE BED / 2 PERSON FLAT @ a minimum of 50m ²	First Homes	104, 107 and 108

	excluding any staircases and hallways or 58m2 including them		As shown on the Affordable Housing Plan
3	TWO BED / 4 PERSON FLAT @ a minimum of 70m2 excluding any staircases and hallways or 79m2 including them	First Homes	103, 105 and 106 As shown on the Affordable Housing Plan
3	TWO BED / 4 PERSON HOUSE @ a minimum of 79m2(2 storey)	First Homes	21, 22 and 23 As shown on the Affordable Housing Plan

Annex 2 – Nomination Agreement

DATED

202[]

[] 1(1)

and

MID SUSSEX DISTRICT COUNCIL (2)

NOMINATION AGREEMENT
Relating to land known as []

**Tom Clark
Solicitor and Head of Regulatory Services
Mid Sussex District Council
Oaklands
Oaklands Road
Haywards Heath
West Sussex
RH16 1SS**

[Ref]

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THIS NOMINATION AGREEMENT is made the day of 202[]

BETWEEN

- (1) [] [a Registered Society/Co-Operative Society/Community Benefit Society] (Registration Number []) under the Co-Operative and Community Benefit Societies Act 2014 whose registered office is at [] ("the Registered Provider")
- (2) **MID-SUSSEX DISTRICT COUNCIL** of Oaklands, Oaklands Road, Haywards Heath, West Sussex, RH16 1SS ("the District Council")

1 BACKGROUND

- 1.1 Words and expressions used in this Agreement are defined in clause 2.
- 1.2 The Registered Provider [has acquired] OR [shall by virtue of an Agreement for Sale acquire] OR [by virtue of a transfer/lease dated acquired] the Property and pursuant to the provisions of the Section 106 Agreement the Registered Provider has agreed to grant to the District Council the nomination rights hereinafter contained in respect of the Affordable Housing Units].

AGREED TERMS

2 INTERPRETATIONS

- 2.1 In this Agreement the following expressions shall unless the context otherwise requires have the following meanings:-

Affordable Housing means housing to include Social Rented, Affordable Rented and Shared Ownership provided to specified eligible households whose needs are not met by the market. Affordable housing shall:-

- (a) meet the needs of eligible households whom the District Council could reasonably expect to occupy the Affordable Housing Units having regard to its Allocation Scheme including availability at a cost low enough for them to afford (or at rent levels previously approved by the Responsible Officer for Housing in writing), if appropriate with the support of benefits, determined with regard to local incomes and local house prices; and
- (b) include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision subject to any such recycling of the subsidy being in accordance with the requirements of Homes England;

Affordable Housing Units means the [] ([]) units of residential accommodation as detailed in Schedule 1 which are to be constructed on the Property pursuant to the Planning Permission and which are to be occupied as Affordable Housing by a Nominee or Other Eligible Person in accordance with this Agreement and "Affordable Housing Unit" is any part of the Affordable Housing Units capable of separate occupation;

Affordable Rent means rented housing let to households who are eligible for social rented housing and shall be subject to rent controls that require a rent of no more than 80% of the local market rent

(including service charges and a Rentcharge where applicable and where local market rents are calculated using the Royal Institution of Chartered Surveyors approved valuation methods) AND [in any event and in all cases] the rent levels shall not at any time exceed the maximum amount of Local Housing Allowance applicable for the size of the relevant Affordable Housing Unit and "Affordable Rented" shall be construed accordingly;

Allocation Scheme means the scheme adopted by the District Council from time to time for determining priorities and the procedure to be followed in allocating housing accommodation in accordance with Part VI of the Housing Act 1996 as amended;

[Agreement for Sale means the agreement dated [] made between (1) [] and (2) the Registered Provider];

Capital Funding Guide means the rules and procedures published by Homes England on 4th November 2016 (as amended) or any successor documents issued by Homes England;

Chargee means any 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 the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or receiver;

Choice Based Letting Scheme means a process through which the District Council may allocate the Affordable Housing Units in accordance with its adopted Allocation Scheme and which incorporates an advertising scheme under the Communities and Local Government Code of Guidance for Local Housing Authorities Allocation of accommodation: Choice Based Lettings or as set out in any subsequent guidance or legislation in relation to the allocation of accommodation which the District Council must or chooses to adopt;

Data Controller has the meaning as set out in the Data Protection Legislation;

Data Protection Legislation has the meaning set out in [clause 25.1];

Data Subject has the meaning as set out in the Data Protection Legislation;

[Deed of Variation means the agreement made pursuant to section 106A of the Town and Country Planning Act 1990 (as amended) dated [] and made between [(1) Mid Sussex District Council, (2) West Sussex County Council, (3) [] and (4) []];

Help to Buy Agents means the body nominated by Homes England who assume administrative responsibility for all low cost home ownership products in a given area or any successor in function and for the purposes of this Agreement in the south east currently means Abri Group Limited, Collins House, Bishopstoke Road, Eastleigh, Hampshire, SO50 6AD;

Help to Buy: Shared Ownership means the government scheme for low cost home ownership products administered by the Help to Buy Agents and "Help to Buy" shall be construed accordingly;

Homes England means the executive non-departmental public body known as Homes England which replaced the Homes and Communities Agency (HCA) and as the context so requires, the functions conferred by the HCA on the Regulator of Social Housing as established by the Legislative Reform (Regulator of Social Housing) (England) Order 2018 and shall include any successor regulatory body for social housing and/ or the functions conferred by the HCA on Homes England or any successor organisation or body;

Initial Let means the first letting of each newly constructed and previously unoccupied Rented Unit;

Initial Sale means the first sale of a newly constructed and previously unoccupied Shared Ownership Unit;

Lease means a shared ownership lease drawn in accordance with the guidelines and requirements of Homes England and substantially in the form of the Model Lease;

Local Connection Criteria means the criteria set out in para 16

Local Housing Allowance means the flat rate rental allowance providing financial assistance towards the housing costs of low income households for different rental market areas and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department of Works and Pensions or such similar framework that may replace it;

Management Transfer means a transfer of an existing tenant by the Registered Provider previously agreed by the District Council in writing in circumstances where the District Council is satisfied that the tenant needs or is required to move to a different area due to exceptional circumstances requiring immediate or urgent resolution;

Market Value means the value of the leasehold interest of a Shared Ownership Unit with vacant possession on the open market between a willing seller and a willing buyer as assessed by a qualified independent valuer and registered with the Royal Institution of Chartered Surveyors and calculated in accordance with the Capital Funding Guide;

Model Lease means the appropriate form of model lease for a shared ownership flat or house published by Homes England (as may be amended from time to time);

Nominee means a person who is selected by the District Council and whose name is taken from the Mid Sussex Housing Register originally established under section 162 of the Housing Act 1996 or such other procedure as may be implemented by the District Council including any Choice Based Letting Scheme or Help to Buy register;

Nomination Notice means notice given by the District Council to the Registered Provider nominating a Nominee to a relevant Affordable Housing Unit;

Nomination Request means a written notice to the District Council requesting the District Council to nominate a Nominee for an Affordable Housing Unit (or part thereof) and in the case of a Shared Ownership Unit must include a shortlist of prospective purchasers;

Other Eligible Person means a person selected by the Registered Provider in accordance with this Agreement and who is in need of Affordable Housing and in the case of Shared Ownership who shall meet the eligibility criteria for Help to Buy;

Personal Data has the meaning as set out in the Data Protection Legislation;

Plan means the plan annexed at Schedule 2;

Planning Permission means the planning permission granted by the District Council dated [] under reference [];

Property means the [freehold] OR [leasehold] land known as [] being registered at the Land Registry under title number(s) [] and shown for the purposes of identification only edged [] on the Plan OR means the land known as [] and shown for the more particularly delineated and edged [] on the Plan;

Processing has the meaning as set out in the Data Protection Legislation and "Process" and "Processed" shall be construed accordingly;

Rentcharge means an annual charge imposed on each freehold or leasehold interest (as the case may be) in respect of an Affordable Housing Unit for the purposes of the maintenance and management of any retained open space and roads and otherwise on terms to be approved by the District Council and **Rentcharges** shall be construed accordingly;

[Protected Occupier means a person who is occupying an Affordable Housing Unit and is a Nominee or Other Eligible Person who:-

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any similar statutory provision for the time being in force (in respect of a particular Affordable Housing Unit; or
- (b) has exercised any statutory right to buy or statutory preserved right to buy pursuant to the Housing Act 1985 or any equivalent statutory provision from the time being in force in respect of a particular Affordable Housing Unit; or
- (c) has been granted a Lease by the Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the Nominee or Other Eligible Person and the remaining share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the Nominee or the Other Eligible Person (or his or her assignee) has subsequently purchased from the Registered Provider (or other provider of Affordable

Housing) all the remaining shares so that the Nominee or Other Eligible Person (or his or her assignee) owns the entire Affordable Housing Unit];

Rented Units means any Affordable Housing Units which are to be let at Affordable Rent or Social Rent as identified in the Schedule 1 [and coloured in [] on the Plan] which are to be provided by the Registered Provider and occupied by a Nominee or Other Eligible Person in accordance with the provisions of this Agreement pursuant to a Tenancy and "Rented Unit" is any of the Rented Units;

[Re-Sales means any existing Shared Ownership Unit in respect of which the Registered Provider:-

- (a) has received from the existing leaseholder thereof notice of a proposed onward sale or assignment in accordance with the alienation provisions (or equivalent) contained within the Lease of the same; or
- (b) is entitled to dispose via the grant of a fresh Lease (whether as a result of a surrender or forfeiture of the previous Lease or otherwise)

and "Re-Sale Shared Ownership Unit" shall be construed accordingly].;

Responsible Officer for Housing means the Assistant Chief Executive or such person as the District Council may nominate in her place from time to time.

Section 106 Agreement means the agreement made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) dated [] and made between (1) the District Council (in its capacity as local planning authority) and [] (2) relating to the development of the Property pursuant to the Planning Permission or any modification or variation thereof.

Sensitive Lets means Rented Units which:-

- (i) are adapted for use or occupation by certain users or occupiers; or
- (ii) have been deemed sensitive lets in order to assist in rectifying problems on a development where there are management difficulties or the homes have become difficult to let, in accordance with the Allocation Scheme.

AND agreed to be such by the District Council and the Registered Provider in accordance with [clause 6];

[Shared Ownership Units means any Affordable Housing Units as identified in the Schedule 1 [and coloured [] on the Plan] which are to be provided by the Registered Provider and occupied by a Nominee or Other Eligible Person in accordance with the provisions of this Agreement pursuant to a Lease and "Shared Ownership Unit" is any of the Shared Ownership Units and "Shared Ownership" shall be construed accordingly];

Social Rent means rented housing for which guideline target rents (including service charges and Rentcharges where applicable) are determined through the national rent regime or provided under equivalent rental arrangements as agreed in writing with the District Council or with Homes England AND [in all cases] the rent levels (including service charges and Rentcharges where applicable) shall

not at any time exceed the maximum amount of Local Housing Allowance applicable for the size of the relevant Affordable Housing Unit and "Social Rented" shall be construed accordingly;

Tenancy means an assured tenancy or assured shorthold tenancy of a Rented Unit drawn in accordance with the guidelines and requirements of Homes England or such other form of tenancy as may be authorised by Homes England from time to time for use by the Registered Provider and "Tenancies" shall be construed accordingly;

Tenancy Strategy means the strategy adopted by the District Council from time to time setting out its high level objectives to which providers of Affordable Housing within its area should have regard as required under the Localism Act 2011;

Void Rented Unit means an existing Rented Unit which is vacant as a result of its previous tenant or occupier vacating and "Void" shall be construed accordingly;

Working Day means any day from Monday to Friday (inclusive) but not including Christmas Day, Good Friday or any statutory bank holiday;

2.2 For the purposes of this Agreement words importing gender include any other gender and words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.3 For the purposes of this Agreement a reference to legislation (including subordinate legislation) is to that legislation as extended, amended, modified, consolidated or re-enacted from time to time and includes any instrument, order, regulation, permission, consent, licence, notice, direction, bye-law, statutory guidance or code practice made or granted under such legislation whether made before or after the date of this Agreement .

2.4 In the event of any inconsistency between this Agreement and the Section 106 Agreement, the Section 106 Agreement shall prevail.

3 NOMINATION RIGHTS

3.1 In consideration of the District Council discharging its responsibility for identifying, allocating and bringing forward sufficient housing land to meet the strategic housing requirements as they relate to its district and for facilitating the provision of Affordable Housing the Registered Provider hereby agrees for the benefit of the District Council as set out in this Agreement.

3.2 The Registered Provider covenants not to cause, permit or suffer the disposal or occupation of any Affordable Housing Unit at any time otherwise than strictly in accordance with the procedures set out in this Agreement.

4 RENTED UNITS

4.1 From the date hereof the Registered Provider grants the District Council the right to nominate 100% of the occupiers of the Rented Units upon the terms contained in this [clause 4].

Initial Let Rented Units

4.2 In the case of all Initial Let Rented Units :-

- 4.2.1 The Registered Provider shall give the District Council not less than four (4) months' prior written notice of the date when it reasonably believes an Initial Let Rented Unit will be ready for occupation.
- 4.2.2 The Registered Provider shall serve on the District Council a Nomination Request not less than two (2) months prior to such Initial Let Rented Unit becoming available for occupation. A Nomination Request shall be deemed to have been served if a Rented Unit is advertised as available to let through the Choice Based Letting Scheme on the basis of the Local Connection Criteria.
- 4.2.3 Within five (5) Working Days of receipt of the Nomination Request (or within five (5) Working Days of the relevant bidding cycle closing if the Choice Based Letting Scheme is applicable) the District Council or its agents shall be entitled to give a Nomination Notice.
- 4.2.4 Upon receipt of the Nomination Notice the Registered Provider will (subject to [clause 8]) offer the Nominee identified in the Nomination Notice a Tenancy of the Initial Let Rented Unit subject to the Local Connection Criteria having been met.
- 4.2.5 If the District Council or its agents fail to serve a Nomination Notice within five (5) Working Days of receipt of the Nomination Request (or within five (5) Working Days of the relevant bidding cycle closing if the Choice Based Letting Scheme is applicable) the Registered Provider may make its own allocation in respect of the relevant Rented Unit to an Other Eligible Person.
- 4.2.6 If a Nominee named in a Nomination Notice served pursuant to [clause 4.2.3] to whom the Registered Provider offers a Tenancy pursuant to [clause 4.2.4] either:-
 - (a) does not accept that offer within five (5) Working Days of the offer being made; or
 - (b) thereafter fails to enter into a Tenancy within a reasonable time of the offer being acceptedthen the Registered Provider must give the District Council a further Nomination Request and the District Council or its agents will then be entitled to serve a further Nomination Notice within five (5) Working Days (or within five (5) Working Days if the Choice Based Letting Scheme is applicable) of the date of receipt of that further Nomination Request and the procedure set out in [clauses 4.2.4 to 4.2.6] (inclusive) shall be repeated (and for the avoidance of doubt the procedure shall be repeated until such time as the District Council is unable to provide a Nominee).

Void Rented Units

- 4.3 In the case of all Rented Units which have become Void after the Initial Let or the Registered Provider has reasonable cause to believe they will become Void (to include Sensitive Lets):-**
- 4.3.1 The Registered Provider shall give the District Council not less than fifteen (15) Working Days prior written notice of the date when it reasonably believes a Void Rented Unit will be ready for occupation.

- 4.3.2 The Registered Provider shall serve on the District Council a Nomination Request not less than five (5) Working Days prior to such Void Rented Unit becoming available for occupation. A Nomination Request shall be deemed to have been served if a Rented Unit is advertised as available to let through the Choice Based Letting Scheme.
- 4.3.3 Within five (5) Working Days of receipt of the Nomination Request (or within five (5) Working Days of the relevant bidding cycle closing if the Choice Based Letting Scheme is applicable) the District Council or its agents shall be entitled to give a Nomination Notice.
- 4.3.4 Upon receipt of the Nomination Notice the Registered Provider will offer the Nominee identified in the Nomination Notice a Tenancy of the Void Rented Unit.
- 4.3.5 If the District Council or its agents fail to serve a Nomination Notice within five (5) Working Days of receipt of the Nomination Request (or within five (5) Working Days of the relevant bidding cycle closing if the Choice Based Letting Scheme is applicable) the Registered Provider may make its own allocation in respect of the relevant Rented Unit to an Other Eligible Person.
- 4.3.6 If a Nominee named in a Nomination Notice served pursuant to [clause 4.3.3] to whom the Registered Provider offers a Tenancy pursuant to [clause 4.3.4] either:-
- (a) does not accept that offer within five (5) Working Days of the offer being made; or
 - (b) thereafter fails to enter into a Tenancy within a reasonable time of the offer being accepted
- then the Registered Provider must give the District Council a further Nomination Request and the District Council or its agents will then be entitled to serve a further Nomination Notice within five (5) Working Days (or within five (5) Working Days if the Choice Based Letting Scheme is applicable) of the date of receipt of that further Nomination Request and the procedure set out in [clauses 4.3.4 to 4.3.6] (inclusive) shall be repeated (and for the avoidance of doubt the procedure shall be repeated until such time as the District Council is unable to provide a Nominee).

5 [SHARED OWNERSHIP UNITS]

- 5.1 [From the date hereof the Registered Provider grants the District Council the right to nominate 100% of the purchasers of the Shared Ownership Units upon the terms contained in this [clause 5]].

Initial Sale Shared Ownership Units

- 5.2 In the case of all Initial Sale Shared Ownership Units:-
- 5.2.1 The Registered Provider shall give the District Council not less than four (4) months' prior written notice of the date when it reasonably believes an Initial Sale Shared Ownership Unit will be ready for occupation and within (5) Working Days register the Shared Ownership Units with the Help to Buy Agents for

advertisement setting out the requirements of the Lease and simultaneously notify the District Council that this has been done.

5.2.2 The Registered Provider shall serve on the District Council a Nomination Request not less than two (2) months prior to such Initial Sale Shared Ownership Units becoming available for occupation and such request shall also confirm that each prospective purchaser is aware of the requirements of the Lease.

5.2.3 Within ten (10) Working Days of receipt of the Nomination Request the District Council or its agents shall be entitled to give a Nomination Notice.

5.2.4 Upon receipt of the Nomination Notice the Registered Provider will offer the Nominee identified in the Nomination Notice a Lease of the Initial Sale Shared Ownership Units.

5.2.5 If the District Council or its agents fail to serve a Nomination Notice within ten (10) Working Days of receipt of the Nomination Request the Registered Provider may make its own allocation and shall offer a Lease in respect of the relevant Shared Ownership Units to an Other Eligible Person.

5.2.6 If a Nominee named in a Nomination Notice served pursuant to [clause 5.2.3] to whom the Registered Provider offers a Lease pursuant to [clause 5.2.4] either:-

- (a) does not accept that offer within ten (10) Working Days of the offer being made; or
- (b) thereafter fails to enter into a contract for the grant of a Lease within a reasonable time (but not less than eight (8) weeks following the offer being accepted).

then the Registered Provider must give the District Council a further Nomination Request and the District Council or its agents will then be entitled to serve a further Nomination Notice within 10 (ten) Working Days of the date of receipt of that further Nomination Request and the procedure set out in [clauses 5.2.4 to 5.2.6] (inclusive) shall be repeated (and for the avoidance of doubt the procedure shall be repeated until such time as the District Council is unable to provide a Nominee).

Re-Sale Shared Ownership Units

5.3 In the case of all Re-Sale Shared Ownership Units:

5.3.1 On receipt of a notice from the existing leaseholder enquiring whether the Registered Provider has any nomination to offer pursuant to the terms of the Lease ("a Leaseholder Notice") or a Re-Sale Shared Ownership Unit becoming available for purchase, the Registered Provider must:

- (a) within five (5) Working Days register the Shared Ownership Unit with the Help to Buy Agents for advertisement setting out the requirements of the Lease and shall simultaneously notify the District Council that this has been done; and
- (b) serve on the District Council a Nomination Request not more than ten (10) Working Days after advertisement pursuant to [clause 5.3.1(a)] and such request shall also confirm that each prospective purchaser is aware of the requirements of the Lease.

- 5.3.2 Within five (5) Working Days of receipt of the Nomination Request the District Council or its agents shall be entitled to give a Nomination Notice
- 5.3.3 Upon receipt of the Nomination Notice the Registered Provider will (subject to clause 8) offer (or procure a reasonable offer is made to) the Nominee identified in the Nomination Notice a Lease of the Re-Sale Shared Ownership Unit
- 5.3.4 If the District Council or its agents fail to serve a Nomination Notice within five (5) Working Days of receipt of the Nomination Request, the Registered Provider may make its own allocation and shall offer a Lease in respect of the relevant Shared Ownership Unit to an Other Eligible Person
- 5.3.5 If a Nominee named in a Nomination Notice served pursuant to [clause 5.3.2] to whom the Registered Provider offers a Lease pursuant to [clause 5.3.3] either:-
 - (a) does not accept that offer within ten (10) Working Days of the offer being made; or
 - (b) thereafter fails to enter into a contract for the grant or assignment of a Lease within a reasonable time (but not less than eight (8) weeks following the offer being accepted)
 then the Registered Provider (to the extent it is entitled to do so under the Lease) must give the District Council a further Nomination Request and the District Council or its agents will then be entitled to serve a further Nomination Notice within three (3) Working Days of the date of receipt of that further Nomination Request and the procedure set out in [clauses 5.3.3 to 5.3.5] (inclusive) shall be repeated until the eight (8) week period has been exhausted.]

6 SENSITIVE LETS

- 6.1 If the Registered Provider at any time reasonably requires a Void Rented Unit to be a Sensitive Let then it shall notify the District Council in writing providing detailed reasons and justification for this requirement.
- 6.2 Within five (5) Working Days of receipt of written notice pursuant to [clause 6.1] the District Council shall (acting reasonably) notify the Registered Provider in writing whether it agrees that the letting of the Void Rented Unit in this instance is a Sensitive Let and whether it will be a Sensitive Let indefinitely or for this letting only PROVIDED THAT the District Council shall have absolute discretion to determine at any stage that the relevant Void Rented Unit should no longer be a Sensitive Let.
- 6.3 Should the Void Rented Unit be deemed a Sensitive Let in accordance with this clause, the provisions of the Allocation Scheme in relation to Sensitive Lets will be applied.
- 6.4 Should the District Council fail to respond to the Registered Provider in accordance with [clause 6.2] then the Void Rented Unit shall be deemed to be a Sensitive Let.

7 RELEASE OF NOMINATION RIGHTS ON RENTED UNITS

- 7.1 The District Council may consent to a release of its nomination rights under [clause 4] (such consent not to be unreasonably withheld or delayed) in relation to a specific Tenancy of a Rented Unit for:-
 - 7.1.1 a temporary decant of a Rented Unit after which the tenant occupier will be returning to that Rented Unit;
 - 7.1.2 a Management Transfer

- 7.2 The District Council shall consent to a release of its nomination rights under clause 4 (such consent not to be unreasonably withheld or delayed) in relation to a specific Tenancy of a Rented Unit in the following circumstances:-

- 7.2.1 a mutual exchange; or
- 7.2.2 a transfer of a Tenancy to a qualified successor being a person entitled to succeed to the Tenancy by reason of statute or the specific terms of the Tenancy

PROVIDED ALWAYS that any such release under [clause 7.1 and 7.2] will not affect the District Council's future nomination rights under [clause 4].

8 REJECTION OF NOMINEES

- 8.1 The Registered Provider may reject a Nomination Notice given by the District Council in respect of an Affordable Housing Unit pursuant to [clauses 4 or 5] on the following (and no other) grounds:-

- 8.1.1 the Affordable Housing Unit does not meet the household's need in terms of size or accessibility;
- 8.1.2 the Registered Provider considers that the Nominee is not a qualifying person as defined by the Allocation Scheme;
- 8.1.3 the Nominee is not considered suitable for a Sensitive Let in accordance with [clause 6]
- 8.1.4 the Registered Provider can refuse a nomination provided the Registered Provider and the District Council are satisfied that the property is unaffordable for the nominated household and the Registered Provider can demonstrate that it is not affordable and all reasonable steps have been taken to accurately check affordability;

- 8.2 The Registered Provider may in exceptional circumstances reject a Nominee where the Registered Provider (acting reasonably) considers that the Nominee fails the criteria set out in its own internal policies and procedures for letting Rented Units and shall provide the reasons for refusal in writing to the District Council

PROVIDED THAT where such a rejection is made pursuant to clause [8.1 or 8.2] the District Council shall be entitled to serve another Nomination Notice in respect of the Affordable Housing Unit in accordance with [clauses 4 or 5] by way of replacement

9 CHOICE BASED LETTING SCHEME AND HELP TO BUY AGENTS

- 9.1 In the case of Rented Units the Registered Provider will comply fully at all times with the Choice Based Letting Scheme (where applicable).
- 9.2 In the case of Shared Ownership Units the Registered Provider will comply fully at all times with the requirements of the Help to Buy Agents or their successors (where applicable).

10 ALLOCATION SCHEME

The Allocation Scheme shall apply to all nominations made by the District Council pursuant to this Agreement and shall take precedence over any other letting or allocation scheme, marketing strategy or other procedure or policy adopted by the Registered Provider.

11 TENANCY TERMS AND LETTINGS POLICY

11.1 In respect of all Tenancies of Rented Units offered or granted to Nominees and Other Eligible Persons pursuant to [clause 4] the Registered Provider shall:-

11.1.1 ensure its tenure term and terms are reasonably appropriate to the relevant Nominee or Other Eligible Person; and

11.1.2 have reasonable regard to and reasonably reflect the Tenancy Strategy

11.2 The Registered Provider shall upon the date of this Agreement provide the District Council with copies of its current:-

11.2.1 tenancy policy;

11.2.2 lettings/allocations policy; and

11.2.3 associated policies and documents adopted or followed by the Registered Provider

and provide to the District Council any revisions of the above from time to time promptly following their issue or adoption.

12 SUPPLY OF INFORMATION AND MONITORING MEETINGS

12.1 The Registered Provider shall promptly provide to the District Council upon reasonable request at any time any information in relation to the Affordable Housing Units relating to:-

12.1.1 waiting lists, allocation criteria, vacancies, allocations and (where applicable) rent levels and any policy relating to rent in advance payments;

12.1.2 any proposed or actual sales pursuant to any statutory or contractual right to buy (whether under Part 1 of the Housing Act 1996 or otherwise);

12.1.3 any proposed or actual staircasing to 100% under any Lease;

12.1.4 Sensitive Lets and any proposed or completed works or adaptations which may lead to a Sensitive Let; and

12.1.5 such other information that the District Council may reasonably require in order to enable it to ensure that the Registered Provider is at all times complying with the provisions of this Agreement

12.2 Upon reasonable written notice from the District Council the Registered Provider will attend monitoring meetings to consider and discuss its compliance with the provisions of this Agreement. and in particular the Registered Provider shall ensure that:-

12.2.1 any information requested by the District Council pursuant to [clause 12.1] shall be provided to it not less than five (5) Working Days prior to any such meeting; and

12.2.2 staff and agents with reasonable seniority and experience of the subject matter of this Agreement attend any such meeting

PROVIDED THAT the District Council shall not call such meetings more than once annually, unless the District Council has reasonable grounds to believe that the Registered Provider is in material breach of any of its any obligations under this Agreement (in which event the District Council will set out these grounds in its written notice to the Registered Provider requesting such meeting)

13 MANAGEMENT AND MAINTENANCE

- 13.1 The Registered Provider shall ensure or procure that following practical completion of the Affordable Housing Units they are at all times properly managed and maintained and that the Registered Provider (in its capacity as landlord of the Affordable Housing Units) complies at all times with all its statutory and contractual obligations to the tenants, leaseholders and occupiers of the same.

14 FINANCIAL CONSTRAINTS ON RENTED UNITS

- 14.1 In relation to the Rented Units the Registered Provider shall:-

- 14.1.1 be responsible for providing (or procuring the provision of) all services required to be provided under each Tenancy; and
- 14.1.2 not require:-
 - (a) any form of tenancy deposit (meaning any money intended to be held by the landlord under the Tenancy or otherwise as security for the performance of any obligations of the tenant or the discharge of any liability of his/hers arising under or in connection with the Tenancy);
 - (b) a charge for credit reference checks; or
 - (c) any form of guarantee or bond from any third party guarantor unless the tenant is under the age of 18
- 14.1.3 be entitled to levy rent in advance but such a levy shall not be applied in such a way that excludes eligible households that meet the definition of Affordable Housing. Where such exclusion occurs, based on the households income and expenditure, the Registered Provider will make arrangements with the Nominee to levy the rent in advance in instalments over a reasonable period of time.
- 14.1.4 ensure compliance at all times with the requirements for rents and service charges published by Homes England and/or contained in statute or other guidance affecting the Rented Units from time to time.

15 [SHARED OWNERSHIP UNIT SALES]

- 15.1 [In respect of each sale of a Shared Ownership Unit (whether an Initial Sale or a Re-Sale as the context permits):-

- 15.1.1 the Registered Provider shall not on an Initial Sale of fifty per cent (50%) of any newly constructed and previously unoccupied Shared Ownership Unit offer such a Shared Ownership Unit for sale at more than a 35% share of the equity in that Shared Ownership Unit PROVIDED ALWAYS this shall not prevent a buyer from acquiring a greater share in a Shared Ownership Unit where this can be afforded by the buyer taking into account their individual financial circumstances and the

limits imposed by the Lease and in all cases should be in accordance with the requirements of Homes England;

15.1.2 the Registered Provider shall ensure compliance at all times with the requirements for rents and service charges published by Homes England and/or contained in statute or other guidance affecting the Shared Ownership Units from time to time;

15.1.3 the Registered Provider shall retain in perpetuity a legal interest in each Shared Ownership Unit as landlord under each Lease (subject to any right of the leaseholder under each Lease to staircase to 100%);

15.1.4 subject to any statutory provision and the requirements and/or guidance of Homes England published from time to time the leaseholder under each Lease shall be entitled to increase his share in the value of the Shared Ownership Unit in tranches of the Market Value so that on the final tranche the leaseholder shall acquire either the freehold interest or the whole of the leasehold interest;

15.1.5 the Registered Provider shall ensure that the Lease contains the following provisions (unless the terms of the Model Lease expressly provide otherwise):

(a) the leaseholder under the Lease shall occupy the Shared Ownership Unit as his only main residence for himself and his household only; and

(b) the leaseholder shall not be entitled to assign or transfer the Shared Ownership Unit or any part of it unless he has first offered in writing to assign his interest to a person nominated by the Registered Provider in accordance with the terms of the Lease (where applicable); and

(c) the leaseholder under the Lease shall not without the prior consent of the Registered Provider underlet the whole or any part of the Shared Ownership Unit;

15.1.6 the sale price in respect of any assignment by the leaseholder under each Lease shall be determined in accordance with the provisions of that Lease (where applicable); and

15.1.7 in the event of any breach by the leaseholder under a Lease of the provisions of [subclauses 15.1.5, 15.1.5(a), (b) or (c)] herein the Registered Provider shall take all reasonably necessary action to enforce the provisions of the same (including the taking of legal proceedings where reasonably necessary);

16 LOCAL CONNECTION

16.1 To contribute to the sustainability of communities, specific local connection criteria are applied to the first letting or sale as outlined below:

16.1.1 The Applicant or joint applicant:

a) resides in [VILLAGE NAME] as their only or principal home and had done so for the previous 2 years; or

b) has resided in the village as their only or principal home for a period of at least 3 years in aggregate out of the preceding 5 years; or

c) is in paid employment in [VILLAGE NAME] (working 16 hours or more a week) and has been for the previous 2 years; or

d) has close relatives who reside in [VILLAGE NAME] as their only or principal home and have done so for at least the previous 5 years, or the previous 2 years if the Applicant is aged 65 or over. Close relatives will normally only cover parents, adult children or brothers or sisters, including corresponding step relationships. Grandparents, grandchildren, aunts or uncles and non-adult children will normally be included only where the District Council considers that it is necessary for the applicant to be accommodated within the village in order to provide or receive medical or social support to/from the relative.

16.2 In the event that no suitable Applicant has bid or been put forward via a Nomination Request for a home in [VILLAGE NAME] using the above Local Connection criteria, then bids from Applicants with a Local Connection to the parish in which the village is located will be considered in the same way as if they had a Local Connection with the village.

16.3 In the further event that no bids or Nomination Requests are received for a home in [VILLAGE NAME] from an Applicant who has a Local Connection with the parish in which the village is located, then bids from Applicants with a Local Connection to a neighbouring parish in the district of Mid Sussex will be considered in the same way as if they had a Local Connection with the village.

16.4 In the further event that no bids or Nomination Requests are received for a home in [VILLAGE NAME] from an Applicant who has a Local Connection with a neighbouring parish in the district of Mid Sussex, then bids from other Applicants on the register will be considered in the same way as if they had a Local Connection with the village in which the new housing development is situated.

16.5 Where a new home is a wheelchair accessible unit priority will be determined by need rather than local connection, but priority will still be given to bids from suitable local applicants who have a specific mobility need for these homes and who have the relevant Local Connection with the new development

17 DISPOSAL RESTRICTIONS

17.1 The parties reaffirm the covenants and conditions contained in the Section 106 Agreement in relation to the occupation and disposal of the Affordable Housing Units.

17.2 The Registered Provider shall not dispose or part with possession of the Affordable Housing Units (or part thereof) unless the Registered Provider has ensured compliance at all times with the terms of this Agreement.

17.3 The Registered Provider shall not dispose or part with possession of the Affordable Housing Units (or part thereof) unless the Registered Provider shall first procure that the disponent (being a provider of Affordable Housing registered with Homes England and first approved in writing by the Responsible Officer for Housing) shall have entered into a nomination agreement with the District Council which shall be substantially in the form of this Agreement (or such other form of nomination agreement as the District Council shall adopt from time to time).

18 LAND REGISTRY RESTRICTION

18.1 *[Clauses 18.1 and 18.2 are for use where the Land has not yet been transferred to the RP:]*

The Registered Provider shall promptly [enforce the Agreement for Sale and secure the transfer] OR [make an application to the Land Registry for registration of the transfer/lease] of the Affordable Housing Units pursuant to clause [] of the Section 106 Agreement].

18.2 [The Registered Provider shall supply to the District Council a copy of the title information document issued by the Land Registry immediately following receipt of notice of completion of registration].

18.3 Immediately following the completion of [this Agreement] OR [registration referred to at [clause 18.2] above] the Registered Provider shall apply to the Land Registry for entry of a restriction in the proprietorship register of the title(s) to the Property as follows:-

"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 on behalf of Mid Sussex District Council of "Oaklands", Oaklands Road, Haywards Heath, West Sussex RH16 1SS by its conveyancer that the provisions of [clause 17] of a Nomination Agreement dated [] have been complied with or that they do not apply to the disposition." (Land Registry Form L).

18.4 The Registered Provider shall promptly supply to the District Council a copy of the title information document issued by the Land Registry following receipt of notice of completion of registration of the restriction referred to in [clause 18.3].

18.5 Any certificates requested by the Registered Provider pursuant to the restriction referred to in [clause 18.3] must be made in writing to the District Council accompanied by the following information:-

18.5.1 the full address of the Affordable Housing Units affected and up-to-date official copies of each and every Land Registry title relating to such Affordable Housing Units (including all superior freehold and leaseholds to the same and title plans);

18.5.2 the date of the nomination agreement to which the Affordable Housing Units are subject and the addresses as stated in the nomination agreement;

18.5.3 official copies of the Land Registry title(s) of the Registered Providers' interest (if not the same as in [clause 18.3]);

18.5.4 a written description of the dealing for which the Registered Provider is requesting certificate;

18.5.5 the name of the proposed disponee;

18.5.6 the anticipated completion date of the proposed disposal; and

18.5.7 a copy of any plan to be used with such disposal

18.6 The District Council will deal with all requests for certificates received from the Registered Provider in accordance with [clause 18.3] within a reasonable period of time and the District Council shall be entitled to recover all reasonable and proper costs incurred in connection with the grant of any certificates required pursuant to this clause.

19 DISTRICT COUNCIL'S POWERS AND LIABILITIES

19.1 Nothing contained in or implied by this Agreement shall:-

19.1.1 prejudice or affect the District Council's rights, powers, duties or obligations relating to the exercise of the District Council's functions as a statutory body whether as a District Council, local planning authority or otherwise nor shall any

consent (express or implied) given by the District Council under this Agreement be binding upon it in any capacity other than as a beneficiary of the covenants contained in this Agreement; and

- 19.1.2 imply that the District Council has any further or future liability for the Affordable Housing Units in respect of the management, maintenance, repair, insurance or general upkeep of the Affordable Housing Units.

20 MORTGAGEE PROTECTION

- 20.1 The District Council will retain the nomination rights contained in this Agreement in respect of the Affordable Housing Units in perpetuity and notwithstanding any sale or transfer to another provider of Affordable Housing the nomination rights shall be retained by the District Council EXCEPT THAT:-

- 20.1.1 in the event of any Chargee disposing of the Affordable Housing Units (or any one or more of them) pursuant to any default under the terms of its mortgage or charge the terms of this Agreement shall cease to have effect in relation to the said Affordable Housing Units (or part thereof) and the terms of this Agreement shall not be binding or enforceable against any such Chargee PROVIDED THAT the Chargee has first complied with its obligations contained in clause [

] of the Section 106 Agreement EXCEPT THAT the District Council will retain the nomination rights as set out in this Agreement in the event of a disposal of the Affordable Housing Units (or part thereof) or any Affordable Housing Unit (as the case may be) to another provider of Affordable Housing; and

- 20.1.2 the terms of this Agreement shall cease to have effect in respect of any Affordable Housing Unit which is occupied by a Protected Occupier and the terms of this Agreement shall not be binding or enforceable against any Protected Occupier or any mortgagee or chargee of a Protected Occupier or any person deriving title from a Protected Occupier or any successor in title thereto and their respective mortgagees and chargees SAVE THAT if any successor in title to a Protected Occupier is a provider of Affordable Housing this provision shall not apply and the terms of this Agreement shall still be binding and enforceable against such successors in title

21 DISPUTE RESOLUTION

- 21.1 In the event that any difference or dispute arises between the parties with regard to this Agreement such matter shall in the first instance be referred to [] of the Registered Provider and the Responsible Officer for Housing (or any persons nominated by them to act on their behalf) who shall within ten (10) Working Days of the referral to them, negotiate in good faith and attempt to resolve the dispute
- 21.2 If the matter cannot be resolved as provided for in [clause 21.1] then it shall be referred to the respective Chief Executive Officers of the Registered Provider and the District Council (or any persons nominated by them to act on their behalf) who shall within twenty eight (28) Working Days of the referral to them negotiate in good faith and attempt to resolve the dispute.

- 21.3 If the matter cannot be resolved as provided for in [clause 21.2] then either person referred to in [clause 21.2] may refer it to be determined by a person chosen by the Chief Executive for the time being of the Chartered Institute of Housing. That person shall act as an expert and not an arbitrator but shall consider written representations made to him/her by the parties.
- 21.4 The parties agree that the decision of the person named in [clause 21.3] shall be binding and that each party shall bear its own costs of resolving the dispute and share equally the costs of such person (unless otherwise directed by such person).

22 NOTICES

- 22.1 Any notice or other communication required or permitted to be given under this Agreement shall be given in writing and addressed to:-

22.1.1 For the District Council: The Responsible Officer for Housing at the address of the District Council given herein

22.1.2 For the Registered Provider: [SPECIFY NAME OR ROLE] at [SPECIFY ADDRESS]

or to such other person or address as one party shall notify to the other in writing from time to time

- 22.2 Any notice or other communication may be given by one of the following means and shall be deemed to be served as described unless the actual time of receipt is proved:-

22.2.1 by first class post deemed served two (2) Working Days after posting;

22.2.2 by hand deemed served on signature of a delivery receipt provided that if delivery occurs before 9.00am on a Working Day, the notice will be deemed to have been received at 9.00am on that day, and if delivery occurs after 5.00pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00am on the next Working Day;

22.2.3 through a document exchange deemed served on the first (1st) Working Day after the day on which it would normally be available for collection by the addressee; and

23.2.5 by e-mail to a party who confirms they will accept service by electronic mean other than fax will be deemed served if sent on a business day before 4.30pm on that day; or in any other case, on the next business day after the day on which it was sent.

23 COSTS

The Registered Provider shall pay to the District Council on or before the Date of this Agreement the District Council's reasonable legal costs together with all disbursements incurred in connection with the preparation, negotiation and completion of this Agreement.

24 NO FETTER OF DISCRETION

Nothing contained or implied in this Agreement shall fetter or restrict the District Council's statutory rights, powers, discretions and responsibilities.

25 DATA PROTECTION

- 25.1 In this Agreement, "**Data Protection Legislation**" means, for the periods in which they are in force in the United Kingdom, the Data Protection Act 2018, the General Data Protection Regulation (Regulation (EU) 2016/679) ("**GDPR**"), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the GDPR and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner's Office, in each case as amended or substituted from time to time;
- 25.2 In relation to all Personal Data, each party shall at all times comply with the Data Protection Legislation in connection with this Agreement.
- 25.3 The parties shall (and shall procure that any of their respective personnel shall) insofar as it relates to the performance of their respective obligations under this Agreement:
- 25.3.1 adhere to all applicable provisions of the Data Protection Legislation;
 - 25.3.2 comply with any notification requirements under the Data Protection Legislation; and
 - 25.3.3 to the extent applicable, duly observe all their obligations under the Data Protection Legislation which arise in connection with this Agreement.
- 25.4 Notwithstanding the general obligation in [clause 25.3], in respect of the parties' rights and obligations under this Agreement, the parties acknowledge and agree that they are Data Controllers in respect of the Personal Data they hold for the purposes of the Agreement.
- 25.5 Each party shall notify the other of the name and contact details of that party's designated data protection lead or Data Protection Officer (as that term is understood by reference to the Data Protection Legislation). Each party shall promptly inform the other of any change in its Data Protection Officer.
- 25.6 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each party shall, in relation to the Personal Data, implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.
- 25.7 Each party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other (the "**Indemnified Party**") against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Indemnifying Party's non-compliance with the Data Protection Legislation. The Indemnified Party shall use its reasonable endeavours to mitigate the amount of any claim under the indemnity in this [clause 25.7].
- 25.8 The parties agree to provide reasonable assistance as is necessary to each other to enable them to comply with the application of Data Subjects' rights, including the right of subject access, as provided to Data Subjects under the Data Protection Legislation.

26 GOVERNING LAW

This Agreement shall be governed and interpreted in accordance with the law of England.

In witness whereof the parties hereto have duly executed this Agreement as a Deed on the day and the year first before written

SCHEDULE 1 - AFFORDABLE HOUSING UNITS

Plot	Postal No.	Street	Town	Postcode	Description	Tenure

SCHEDULE 2 - PLAN

[Insert appropriate attestation for RP]

[Execution clause: execution by a society of contracts or deeds using a common seal]

Executed as a deed by affixing the common seal of

[NAME OF SOCIETY]

in the presence of:-

[COMMON SEAL]

.....
[SIGNATURE OF COMMITTEE MEMBER/DIRECTOR]

[Committee member OR Director]

.....
[SIGNATURE OF COMMITTEE MEMBER/DIRECTOR/SECRETARY]

[Committee member OR Director OR Secretary]

[Execution clause: execution by a society of contracts and deeds without a common seal]

Executed as a deed by **[NAME OF SOCIETY]**

acting by **[NAME OF FIRST DIRECTOR/COMMITTEE MEMBER]**,

a **[director OR member of its Committee]** and

[NAME OF SECOND DIRECTOR/COMMITTEE MEMBER/SECRETARY],

[a director OR member of its Committee OR its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR/COMMITTEE MEMBER]

[Director OR Committee member]

.....
[SIGNATURE OF SECOND DIRECTOR/COMMITTEE MEMBER/SECRETARY]

[Director OR Committee member OR Secretary]

The **COMMON SEAL** of

MID SUSSEX DISTRICT COUNCIL

was hereunto affixed in the presence of:-

Authorised Officer

Executed as a Deed by
affixing the Common Seal of
MID SUSSEX DISTRICT COUNCIL
in the presence of:-

Authorised Officer

Executed as a Deed by
affixing the Common Seal of
WEST SUSSEX COUNTY COUNCIL
in the presence of:-

Authorised Officer

Executed as a Deed by
ASHILL REGEN LIMITED

acting by

a director

in the presence of:-

Signature of witness

Name (in BLOCK CAPITALS)

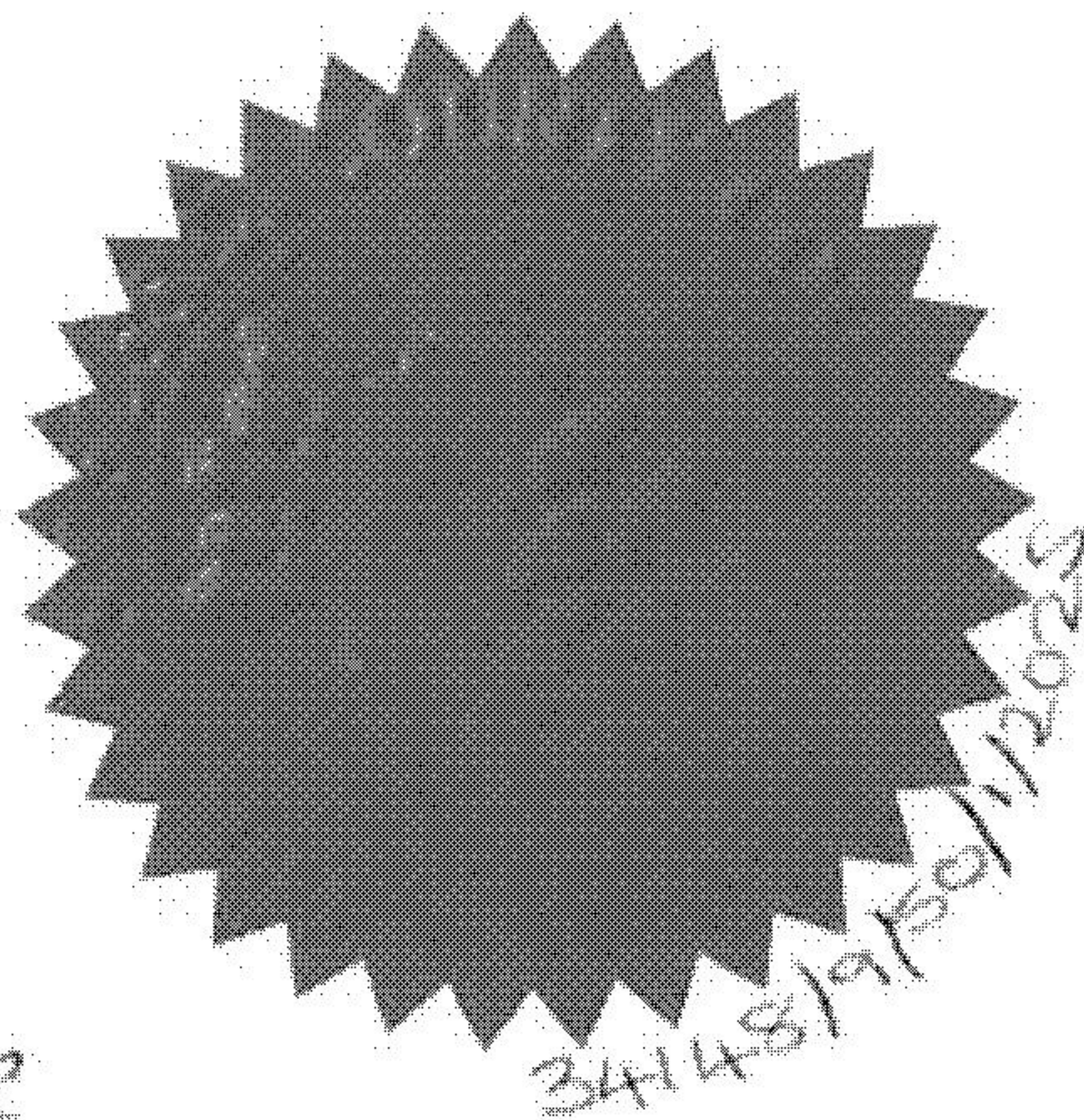
Address

Occupation

SALLY BATCHELOR

Director

TRACY POTOCK
2 MATLAND CLOSE
WILTON ON THAMES
TOWN PLANNER



Executed as a Deed by
CANDID FINANCE LIMITED

acting by
a director

in the presence of:-

Signature of witness

Name (in BLOCK CAPITALS)

Address

Occupation

NIKESH THAKKAR
25 BROWNING WAY
HOUSLOW, TW5 9BG
ACCOUNTANT