

Dated

26th June.

2024

- (1) South Holland District Council
and
(2) Postland Developments Limited
and
(3) Others

DEED OF VARIATION
Sections 106 and 106A of the Town and Country Planning Act 1990

Relating to land at South of Roman Road,
Moulton Chapel, Spalding

South Holland District Council
Council Offices
Priory Road
Spalding
PE11 2XE

SHDC Reference: LD/H13-0479-20

Date

26th June

2024

BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the Council"); and
- (2) **POSTLAND DEVELOPMENTS LIMITED** (Company Registration No. 06660923) of Rutland House, Minerva Business Park, Lynch Wood, Peterborough, PE2 6PZ ("the Owner"); and
- (3) **SILVERWOOD ENTERPRISES LIMITED** (Overseas Entity Registration no. OE005754 and registered in the British Virgin Islands with company no. 1384474) of 108 Consulting Dmcc 2005a Goldcrest Executive Jumeirah Lake Towers, Cluster C, P.O. Box 337386, Dubai, United Arab Emirates ("the First Mortgagee"); and
- (4) **BHAVESH NATWARLAL LAKHANI** –of 83 Kingsfield Drive, Manchester, M20 6HX ("the Second Mortgagee"); and
- (5) **WENDY JUNE LEPLA** of 11a Scaldgate, Whittlesey, Peterborough, PE7 1SD ("the Third Mortgagee"); and
- (6) **OXBRIDGE INVESTMENTS LIMITED** (Company Registration No. 13946573) of 24 Peacock Drive, Highfields Caldecote, Cambridge, United Kingdom, CB23 7FF ("the Fourth Mortgagee"); and
- (7) **JIGNA CHANDARANA** of 15 Russell Road, West Hendon, London, NW9 6AB ("the Fifth Mortgagee"); and
- (8) **WENDY JUNE LEPLA** of 11a Scaldgate, Whittlesey, Peterborough, PE7 1SD and **PARADISE PROPERTIES (WHITTLESEY) LIMITED** (Company Registration No. 07440868) of 11a Scaldgate, Whittlesey, Peterborough, PE7 1SD ("the Sixth Mortgagee"); and
- (9) **RASIKLAL HARIDAS KOTECHA** of 70 Bishops Road, Trumpington, Cambridge, CB2 9NH ("the Seventh Mortgagee"); and
- (10) **YST FINANCE LIMITED** (Company Registration no. 13989097) of C/O Ashburton Pharmacy, 337 Tildesley Road, London, SW15 3BB ("the Eighth Mortgagee"); and
- (11) **THE WATFORD DENTAL PARTNERSHIP LIMITED** (Company Registration No. 05890896) of 14 David Mews, London, W1U 6EQ and **RAMESH HARIDAS KOTECHA** and **BHARTI KOTECHA** of 25 Leavesden Road, Stanmore, HA7 3RQ ("the Ninth Mortgagee"); and

- (12) **NEWTON FINANCIAL SERVICES LTD.** (Company Registration No. 09463209) of Newby House, 41 Eastgate, Deeping St. James, Peterborough PE6 8HH ("the Tenth Mortgagee"); and
- (13) **YST FINANCE LIMITED** (Company Registration no. 13989097) of C/O Ashburton Pharmacy, 337 Tildesley Road, London, SW15 3BB and **RASIKLAL HARIDAS KOTECHA** of 70 Bishops Road, Trumpington, Cambridge, CB2 9NH ("the Eleventh Mortgagee"); and
- (14) **NAVinchandra Thakrar** and **BHANUMATI THAKRAR** both of 15 Russell Road, London, NW9 6AB ("the Twelfth Mortgagee");
- (15) **DUNCAN PAUL VINCENT** of 45 Priory Green, Highworth, Swindon, SN6 7NU ("the Thirteenth Mortgagee"); and
- (16) **DIVYESH LAKHANI** of 2 Penmore Chase, Hazel Grove, Stockport SK7 5BT ("the Fourteenth Mortgagee"); and
- (17) **KAVISHA THAKAR** of 22 Bodley Road, New Malden, KT3 5QE ("the Fifteenth Mortgagee"); and
- (18) **RASIKLAL HARIDAS KOTECHA** of 25 Leavesden Road, Stanmore, HA7 3RQ, **YOGESH THAKAR**, **SANGITA THAKAR** and **KAVISHA THAKAR** all of 22 Bodley Road, New Malden, KT3 5QE ("the Sixteenth Mortgagee"); and
- (19) **RACHEL HICKSON** of 31 Orchard Road, Oxford, OX2 9BL ("the Seventeenth Mortgagee"); and
- (20) **ELIZABETH LOUISE CHIVA** and **SIMON PAUL CHIVA** both of 2 Faywood Drive, Marple, Stockport, SK6 7DF and **ROBERT JOSE CHIVA** and **JOYCE MARY CHIVA** both of 29A Church Street, Northborough, Peterborough, PE6 9BN ("the Eighteenth Mortgagee"); and
- (21) **EILEEN EUNICE VINCENT** of 3 Parklands, Eynsham Road, Farmoor, Oxford, OX2 9TA ("the Nineteenth Mortgagee").

BACKGROUND

- (A) The Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Land is situated.
- (B) The Owner is the freehold owner of the land registered at HM Land Registry under Title Number LL257636 and LL400491 (to the extent included in the Land).
- (C) The Owner is the registered proprietor of all that freehold land comprised in the Land or, as the case may be, entitled to be registered at HM Land Registry as the registered proprietor of part or part(s) of such Land.
- (D) The Mortgagees, collectively, are the persons who are either the registered proprietor of the charges registered at HM Land Registry against the title to the Owner's land or otherwise in the course of registration against such.
- (E) On 24 September 2018 the Council, Woodgate Farms Limited (Company Registration no. 02561247), Robert John Palmer and Debra Ann Palmer entered into the Original Agreement.
- (F) The parties hereto have agreed to vary the terms of the Original Agreement as set out in this Deed.
- (G) The purpose of this Deed is to secure an amendment to the affordable housing provisions within the Original Agreement in order to confirm a reduced level of Affordable Dwellings from 25% (being 15 Affordable Dwellings) to 3 Affordable Dwellings to be provided on the Development of the Site pursuant to the S.106A Modification Application.
- (H) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of the Original Agreement as set out in this Deed.
- (I) The parties have agreed to enter into this Deed to give its consent to the terms of this Deed.
- (J) This Deed is made under section 106 and 106A of the 1990 Act and is supplemental to the Original Agreement.

NOW THIS DEED WITNESSES AS FOLLOWS:**1. DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

"Original Agreement"	means the agreement made under section 106 of the 1990 Act dated 24 September 2018 relating to land south of Roman Road, Moulton Chapel, Spalding and made between (1) the Council; (2) Woodgate Farms Limited; and (3) Robert John Palmer and (4) Debra Ann Palmer
"S.106A Modification Application"	means the application for the modification or discharge of planning obligations submitted by the Owner to the Council on 17 June 2020 to reduce the number of Affordable Dwellings from 25% (being 15 Affordable Dwellings) to 3 Affordable Dwellings to be provided on the Land and allocated reference number H13-0497-20
"Mortgagees"	means the First Mortgagee the Second Mortgagee the Third Mortgagee the Fourth Mortgagee the Fifth Mortgagee the Sixth Mortgagee the Seventh Mortgagee the Eighth Mortgagee the Ninth Mortgagee the Tenth Mortgagee the Eleventh Mortgagee the Twelfth Mortgagee the Thirteenth Mortgagee the Fourteenth Mortgagee the Fifteenth Mortgagee, Sixteenth Mortgagee, Seventeenth Mortgagee, Eighteenth Mortgagee and the Nineteenth

	Mortgagee and for the purpose of this Agreement any one of them as the context so requires
"Owners"	means the Owner and the Second Owner and for the purpose of this Agreement any one of them as the context so requires
"Land"	such part of the land referred to in the Original Agreement as is shown edged red on the attached plan.

2. CONSTRUCTION OF THIS DEED

- 2.1 Unless the context otherwise requires and save as herein varied all words and phrases defined in the Original Agreement shall have the same meaning in this Deed.
- 2.2 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party to the Site or any part thereof and in the case of the District Council and the County Council, successors to their functions.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Sections 106 and 106A of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011

and all other enabling powers with the intent that the covenants and obligations shall run with the Site.

3.2 This Deed shall take effect upon the date that it is executed

4. VARIATIONS TO THE ORIGINAL AGREEMENT

4.1 The following definitions shall be added to the Original Agreement:

"Original Planning Permission"	means the planning permission issued by the Council and given reference H13-0844-17
"S.106A Modification Application"	means the application for the modification or discharge of planning obligations submitted by the Owner to the Council on 17 June 2020 to reduce the number of Affordable Dwellings from 25% (being 15 Affordable Dwellings) to 3 Affordable Dwellings to be provided on the Land and allocated reference number H13-0497-20
"S.106A Planning Permission"	means the planning permission to be issued pursuant to the S.106A Modification Application under reference H13-0479-20

4.2 The definition "Affordable Dwellings" in clause 1 in the Original Agreement shall be deleted and replaced with the following:

"Affordable Dwellings"	means the three (3) Dwellings within the Development to be provided for use as Affordable Housing in accordance with the Schedule 3;
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4.3 The definition "Affordable Housing Scheme" in clause 1 in the Original

Agreement shall be deleted and replaced with the following:

"Affordable Housing Scheme"	means the scheme for securing the Affordable Housing and detailing the design, tenure, mix, size and location of the Affordable Housing to be provided as part of the Development and consisting of 2 x two-bedroom houses for Rented Housing and 1 x two-bedroom houses for Shared Ownership Dwellings together with the identity of the Affordable Housing Provider
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- 4.4 The definition "Application" in Clause 1 to the Original Agreement shall be deleted and replaced with the following:

"Application"	means the application for Planning Permission for the Development and allocated reference number H13-0479-20 as amended by the S.106A Modification Application;
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- 4.5 The definition "Chargee" in Clause 1 to the Original Agreement shall be deleted and replaced with the following:

"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
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	administrator (each a Receiver) of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver
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- 4.6 The definition "Planning Permission" in Clause 1 to the Original Agreement shall be deleted and replaced with the following:

"Planning Permission"	means the Original Planning Permission as varied by the S.106A Modification Application or such other planning permissions for the Development granted pursuant to sections 73 or 96A of the Act;
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- 4.7 The definition "the Nomination Agreement" in Clause 1 to the Original Agreement shall be deleted and replaced with the following:

"the Nomination Agreement"	means an agreement negotiated between the Council and the Affordable Housing Provider which guarantees the Rented Housing will be let on the Council's Housing Register such agreement to be substantially in the form set out and attached hereto at Schedule 5
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- 4.8 A new definition of "Affordable Housing Contribution" shall be inserted in alphabetical order into clause 1 of the Original agreement as follows:

"Affordable Housing Contribution"	means a financial contribution calculated in accordance with the Affordable
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	Housing Contribution formula set out at Annex A Part 1 or Part 2 to this Deed
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4.9 A new definition of "Shared Ownership Dwellings" shall be inserted in alphabetical order into clause 1 of the Original agreement as follows:

"Shared Ownership Dwellings"	means dwellings part sold part let to eligible households in accordance with the terms of a Shared Ownership Lease
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4.10 A new definition of "Shared Ownership Lease" shall be inserted in alphabetical order into clause 1 of the Original agreement as follows:

"Shared Ownership Lease"	means a lease in a form of the Homes England's model shared ownership lease. Such lease to provide for the following: - not more than 75% and not less than 25% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Affordable Housing Provider - power to the purchaser to increase their ownership to 100% if they so wish - an initial rent not exceeding 2.75% of the value of the equity retained by the Affordable Housing Provider subject to annual increases as specified by Homes England
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4.11 The following Clause shall be inserted after Clause 8.12 of the Original

Agreement to the Original Agreement:

- "8.13 *It is agreed between the parties that where planning permission is issued in relation to the Development pursuant to an application under section 73 of the 1990 Act this Deed shall continue to bind the Development and shall be in full force and effect subject to and in accordance with the provisions contained herein and shall in addition bind the Development in respect of any subsequent planning permission granted pursuant to section 73 of the Act **AND PROVIDED THAT** in the event that upon receipt of an application under section 73 of the 1990 Act the Council considers that the obligations contained in this Deed should be varied or amended it is agreed and acknowledged that the Council should retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations."*
- 4.12 Paragraph 1.2 of Schedule 3 of the Original Agreement shall be deleted and replaced with the following wording:
- "1.2 *Not to Occupy or permit the Occupation of more than 72% of the Market Dwellings until the construction of all the Affordable Dwellings has been commenced in accordance with the Affordable Housing Scheme and written notification of that commencement has been received by the Council"*.
- 4.13 Paragraph 1.3 of Schedule 3 of the Original Agreement shall be deleted and replaced with the following wording:
- "1.3 *Not to Occupy or permit the Occupation of more than 85% of the Market Dwellings until the construction of all the Affordable Dwellings has been certified Practically Complete and has been transferred to an Affordable Housing Provider (or, as the case may be, the Owner has paid the Affordable Housing Contribution in accordance with paragraph 1.10 of this schedule)"*.
- 4.14 Paragraph 1.8 of Schedule 3 of the Original Agreement shall be deleted and replaced with the following wording:

*"The affordable housing provisions in this Deed shall not be binding on a Chargee **PROVIDED THAT** such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Dwellings to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses **AND** if such disposal has not completed within the three (3) month period, the Chargee shall be entitled to dispose of the Affordable Dwellings free from the affordable housing provisions in this Deed which provisions shall determine absolutely"*

4.15 The following paragraphs shall be inserted into the Original Agreement after paragraph 1.9 of Schedule 3 of the Original Agreement

"1.10 Where the Affordable Housing Provider is unwilling to take a transfer of an Affordable Dwelling at a price acceptable to the Owner (acting reasonably) and the Owner has supplied to the Council evidence of the use of all reasonable endeavours to secure a transfer of such Affordable Dwelling to an Affordable Housing Provider (including copies of any offers to and responses from any Affordable Housing Provider) and the Council having taken into account paragraph 1.5 above is satisfied (acting reasonably) that having used all reasonable endeavours the Owner is unable to identify an Affordable Housing Provider willing to purchase the Affordable Dwelling at a price acceptable to the Owner (acting reasonably) then the Owner shall at the Council's discretion either:

*1.10.1 provide instead an alternative tenure of Affordable Housing for that Affordable Dwelling such tenure to be approved in writing by the Council acting reasonably **AND** where any such Affordable Dwelling is a tenure referred to in this Deed then that Dwelling shall be subject to the relevant provisions of this Deed **SUBJECT TO** the Owner paying an Affordable Housing Contribution calculated in line*

with the Affordable Housing Contribution Formula set out in Annex A Part 1 for the difference in values of the tenure of the Affordable Housing such sum to be used for the provision of off-site Affordable Housing; or

- 1.10.2 *pay to the Council an Affordable Housing Contribution calculated in line with the Affordable Housing Contribution Formula set out in Annex A Part 2 and upon the Council providing written confirmation that such Affordable Housing Contribution has been received (which confirmation to be given promptly by the Council following receipt of the Affordable Housing Contribution) that Affordable Dwelling shall be discharged from the terms of this Deed and the Owner shall be free to sell that Dwelling on the open market to a willing purchaser and the Council shall remove reference to this Deed in the local land charges register in relation to that Dwelling"*

- 4.16 Paragraph 1.10 of Schedule 3 of the Original Agreement shall be renumbered accordingly.
- 4.17 The draft decision notice for the S.106A Planning Permission annexed to this Deed at Schedule 1 shall be added to Schedule 2 of the Original Agreement
- 4.18 The Nomination Agreement described in this Deed at Schedule 2 shall be added to the Original Agreement as Schedule 5
- 4.19 The Affordable Housing Contribution Formula described in this Deed at Schedule 3 shall be added to the Original Agreement as Annex A
- 4.20 In all other respects the Original Agreement (as varied by this Deed) shall remain in full force and effect.

5. THE OWNER'S COVENANTS

- 5.1 The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this Deed.

6. MORTGAGEES' CONSENT

- 6.1 The Mortgagees hereby consent to the Owner entering into this Agreement and confirm that their respective interests in the parts of the Land over which they respectively have the benefit of a legal charge shall be bound by this

Agreement provided that the Mortgagees shall otherwise have no liability under this Agreement unless the Mortgagees or any individual Mortgagee takes possession of the Land or the part of it in respect of which the Mortgagee has the benefit of a legal charge as a mortgagee in possession in which case the Mortgagee entering into possession will be bound by the planning obligations insofar as they relate to the part of the Land in respect of which the Mortgagee shall have gone into possession as if such Mortgagee were a party deriving title from the Owner but only for such period as it shall be mortgagee in possession of the such part of the Land. The consent of the Mortgagee shall be communicated to the Council by way of a letter of consent.

7. LOCAL LAND CHARGE

- 7.1 This Deed shall be registerable as a local land charge by the District Council.

8. LEGAL COSTS

- 7.1 On completion of this Deed, the Owner shall pay to the Council their reasonable legal costs together with all reasonable disbursements that have been incurred in the negotiation and completion of this Deed.

8. VAT

- 8.1 Any consideration given under this Deed shall be done in such a way that the VAT liability is borne by the Owner.

9. THIRD PARTY RIGHTS

- 9.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

10. JURISDICTION

- 10.1 This Deed is governed by and interpreted in accordance with the laws of England

11. EXECUTION AND DELIVERY

11.1 This Deed is executed as a deed by the parties and is delivered on the date first hereinbefore written

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

SCHEDULE 1
DRAFT S.106A PLANNING PERMISSION

Postland Developments Ltd.
Poplar Farm
Wisbech Road
Coates
Whittlesey
PE7 2DU

Council Offices
Priory Road
Spalding
Lincolnshire
PE11 2XE

Admin 01775 764723
DC Officers 01775 761161
Facsimile 01775 762937

planningadvice@sholland.gov.uk

www.sholland.gov.uk

TOWN AND COUNTRY PLANNING ACT 1990

DRAFT APPROVAL

Reference:	H13-0479-20	Date of Decision:
Applicant:	Postland Developments Ltd. Poplar Farm Wisbech Road Coates Whittlesey PE7 2DU	
Location:	Land South: Roman Road Moulton Chapel Spalding	
Description:	Modification of Section 106 Agreement to reduce affordable housing provision - planning approval H13-0844-17.	

South Holland District Council hereby give notice that permission has been GRANTED (or equivalent) subject to the following condition(s):

- 1 South Holland District Council hereby approve the Modification of the Agreement in accordance with the application and details submitted under s.106A of the Town and Country Planning Act 1990.

Notes:

The determined plans are:
Application Form



Phil Norman
Head of Planning
South Holland District Council

14th September 2023

BUILDING REGULATIONS:

This decision refers only to planning permission as granted under the Town and Country Planning Act 1990. The works that you are proposing may also require Building Regulations and this planning permission does not give authority under Building Regulations to commence work. Please contact the Building Control section for further information on 01775 764557 or bcadmin@sholland.gov.uk

SCHEDULE 2
THE NOMINATION AGREEMENT

Dated

20....

(1) South Holland District Council

and

(2) [REGISTERED PROVIDER]

NOMINATION AGREEMENT

Relating to land at
[LOCATION]

South Holland District Council
Council Offices
Priory Road
Spalding
PE11 2XE

SHDC Reference: LD/

THIS DEED is made the day of Two thousand and

.....
BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices Priory Road Spalding PE11 2XE ("the Council"); and
- (2) **[REGISTERED PROVIDER]** whose registered office is situated at [registered office] ("the Association")

RECITALS

- (A) The Council resolved on [insert date] to grant planning permission for the Development subject to the provision of (...) dwellings to be delivered as affordable housing. The Council has agreed that [..... (...) Rented Dwellings and [..... (...) Intermediate Dwellings] shall be provided to meet the obligation to provide affordable housing.
- (B) The Association intends to take a transfer of the Rented Dwellings and by this Deed the Association agrees with the Council that the said Rented Dwellings shall be let to occupiers in accordance with the nominations procedure detailed in Clause 4 below allowing the Council to nominate 100% of the initial tenants of each Rented Dwelling and thereafter at least 75% of the tenants of each Rented Dwelling.
- (C) The Association intends to take a transfer of the Intermediate Dwellings and by this Deed the Association agrees with the Council that the Intermediate Dwellings shall be disposed of by the Association in accordance with Clause 5 below

NOW THIS DEED WITNESSES AS FOLLOWS

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"the Development"	means the erection of dwellings on land [insert location] with planning application reference
"District"	means the District of South Holland

<i>"Intermediate Dwelling"</i>	<i>means the (...) Intermediate Dwellings (being plot numbers x, x, x and x on the Development) to be provided as as defined in Annex 2 of the National Planning Policy Framework dated February 2019 or any replacement amendment or supplemental guidance to it on the land to which the allocation procedure in Clause 5 shall relate</i>
<i>"Local Housing Need"</i>	<i>means local housing need as determined by the Council in accordance with the Council's Housing Allocations Policy and for the avoidance of doubt does not include any local connection criteria for the Shared Ownership Dwellings</i>
<i>"Nomination Notice"</i>	<i>means a notice served by the Council on the Association providing details of nominated prospective tenants for a Rented Dwelling in accordance with Clause 4.3.3 of this Deed</i>
<i>"Protected Tenant"</i>	<i>means (i) any tenant who has:</i> <i>(a) exercised the right to acquire pursuant to the Housing Act 1996 or the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a Rented Dwelling; or</i> <i>(b) exercised any statutory right to buy (or any equivalent contractual right) in respect of a Rented Dwelling; and</i> <i>(ii) any lessee of an Intermediate Dwelling</i>
<i>"Rented Dwellings"</i>	<i>means the (...) Rented Dwellings (being plot numbers x, x, x and x on the</i>

	<i>Development) to be provided as affordable rented dwellings [and (being plot numbers x, x, x, and x on the Development) to be provided as social rented dwellings] as defined in Annex 2 of the National Planning Policy Framework dated February 2019 or any replacement amendment or supplemental guidance to it on the land to which the nomination rights contained in Clause 4 shall relate</i>
<i>"Vacancy Notice"</i>	<i>means a notice served by the Association giving the Council notice that a Rented Dwelling is available for occupation or re-let as appropriate</i>
<i>"Working Day"</i>	<i>means any day other than a Saturday Sunday or public or bank holiday in England</i>

2 CONSTRUCTION OF THIS DEED

- 2.1** *Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.*
- 2.2** *Words importing the singular meaning where the context so admits include the plural meaning and vice versa.*
- 2.3** *Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably*
- 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 unless there is an express provision otherwise.*
- 2.5** *Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that act for the time being in force and shall include all instruments,*

orders, plans, regulations, permissions and directions for the time being made, issued or given under that act or deriving validity from it.

- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council, successors to its functions.

3. **NOTICES**

- 3.1 Any notice or document which is required to be given under the terms of this Deed shall be sent by email and shall be deemed to be sufficiently served if signed by or on behalf of the party issuing the notice.
- 3.2 The Council's email for service is allocations@sholland.gov.uk (or such other email address as the Council may from time to time notify the Association).
- 3.3 The Association's email address for service is [RP Email Address] (or such other email address as the Association may from time to time notify the Council).
- 3.4 Service shall be deemed to be made on the day of transmission if transmitted before 4:00 pm on a Working Day but otherwise on the next following Working Day

4. **NOMINATIONS PROCEDURE: RENTED DWELLINGS**

- 4.1 Subject to the provisions of this Deed the initial occupiers of each of the Rented Dwellings shall be nominated by the Council
- 4.2 After the initial nominations and subject to the provisions of this Deed the Council shall have the right to nominate the occupiers of at least 75% of all Rented Dwellings which become vacant
- 4.3 Where the Council's rights of nomination apply the following provisions shall apply:
- 4.3.1 the Association shall serve on the Council a Vacancy Notice giving to the Council
- (a) 4 weeks' notice that a Rented Dwelling is ready for occupation in

respect of an initial let; and

- (b) *5 Working Days' notice of impending vacancy of a Rented Dwelling in respect of a re-let*

4.3.2 *the Vacancy Notice shall include the following details:*

- (a) *address of the Rented Dwelling;*
- (b) *weekly rental and any service charges;*
- (c) *number of bedrooms and maximum occupancy;*
- (d) *age designation; and*
- (e) *any other relevant information such as adaptations to the Rented Dwelling*

4.3.3 *The Council shall within ten (10) Working Days (in respect of an initial let) and five (5) Working Days (in respect of a re-let) of receipt of the Vacancy Notice serve on the Association a Nomination Notice containing in priority order details of as many names and addresses of persons known to the Council as being in Local Housing Need as the Council considers appropriate*

4.3.4 *If the initial Nomination is exhausted without the tenancy having been accepted the Association will notify the Council and the Council will have a further period of five (5) Working Days within which to provide a further Nomination Notice in accordance with the above provisions*

4.3.5 *A Rented Dwelling shall be offered to occupiers in accordance with the following provisions:*

- (a) *the tenancy of a Rented Dwelling shall first be offered to the person whose name appears first on the Nomination Notice;*
- (b) *if that person shall refuse or fail to accept the offer of a tenancy the Rented Dwelling shall be offered to the person whose name next appears on the Nomination Notice and if that person shall also refuse or fail to accept the offer of a tenancy then this process shall be repeated as often as may be necessary until **EITHER** the offer of a tenancy has been accepted **OR** the initial Nomination Notice*

and any further Nomination Notices have been exhausted without the tenancy having been accepted;

- (c) where **EITHER** the initial Nomination Notice and any further Nomination Notices are exhausted without the tenancy having been accepted **OR** the Council fails to provide a Nomination Notice **OR** the Council advises that it is not aware of any persons whom it considers to be in Local Housing Need then the Association shall have the right to select the occupier of the Rented Dwelling from its own applications provided such person or persons are in Local Housing Need **BUT FOR THE AVOIDANCE OF DOUBT** it is hereby agreed that if the Association exercises such a right the tenancy shall not be considered a Council nomination for the purpose of determining the sequence of nominations provided for in this Deed.

4.3.6 the Association will notify the Council:

- (a) within ten (10) Working Days of the end of the acceptance period where the prospective tenant fails to accept a tenancy;
- (b) within ten (10) Working Days where a prospective tenant provisionally accepts a tenancy;
- (c) within ten (10) Working Days where a prospective tenant refuses the tenancy including any reasons for refusal given;
- (d) within ten (10) Working Days of any decision by the Association that the prospective tenant does not meet the Association's criteria including the reasons why the prospective tenant does not meet such criteria; and
- (e) within three (3) Working Days of the start date of the tenancy

4.3.7 the Association will liaise with the Council where the Owner wishes to use for a management transfer any vacancy for which the Council has nomination rights.

4.4 the Association shall provide to the Council details of all lettings completed in respect of all Rented Dwellings such returns to be made quarterly to the Council.

5. ALLOCATION PROCEDURE: INTERMEDIATE DWELLING

- 5.1 The Association or its nominated agent shall not permit any Shared Ownership Dwelling to be occupied except by a person who satisfies the Governments (or any successor) criteria as at the date of an application for a Shared Ownership Dwelling.
- 5.2 The Association or its nominated agent shall on a quarterly basis provide to the Council reports on the sales of the Shared Ownership Dwellings including qualifying nature of the purchasers, percentage of equity purchased and the overall price of the Shared Ownership Dwelling.

6. DISPUTES AND MEDIATION PROCEDURE

- 6.1 Any disputed cases arising from this Deed will be discussed and dealt with by the Council's Housing Options Manager (or successor post) (or such other officer as the Council may from time to time notify the Association) and the Association's [insert post] (or successor post)
- 6.2 If they cannot decide then the Council's Assistant Director of Housing (or successor post) and the Association's [insert post] (or successor post) will discuss the case and make a final decision.

7. AGREEMENTS AND DECLARATIONS

- 7.1 This Deed is personal to the Association and the Council and for the avoidance of doubt **IT IS HEREBY DECLARED** that this Deed shall not bind

- 7.1.1 any Protected Tenant;
- 7.1.2 any mortgagee or charge of a Protected Tenant;
- 7.1.3 any mortgagee or charge of the Association or any receiver (including administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or charge to realise its security or any administrator (howsoever appointed) or the whole or any part of the Rented Dwellings and/or Intermediate Dwellings or any persons or bodies deriving title through such mortgagee or charge or Receiver

7.2 *The parties hereto agree and declare that the parties hereto shall have the right to vary this Deed in writing if they jointly so wish*

Signed on behalf of **SOUTH
HOLLAND DISTRICT COUNCIL**

Signed on behalf of
[ASSOCIATION]

SCHEDULE 3

ANNEX A

AFFORDABLE HOUSING CONTRIBUTION FORMULA

Part 1

The Affordable Housing Contribution is calculated as follows: $A = (B \text{ less } C) \text{ multiplied by } D$

Where:

- A = the Affordable Housing Contribution
- B = the value of the relevant dwelling if subject to the alternative tenure referred to in paragraph 1.8.1 of Schedule 3 as determined by an independent expert and agreed by all parties
- C = the value of the relevant dwelling if subject to the tenure specified in the Affordable Housing Scheme in this Deed as determined by an independent expert or agreed by all parties
- D = the Affordable Housing Contribution if not paid within 12-months of the date of this Deed will be index linked to the percentage difference between house price inflation (UK House Price Index) and the Index calculated with reference to the figures last published prior to the date 12-months after the date of this Deed and the figure last published prior to the date of payment.

The Affordable Housing Contribution will be paid in full to the Council when no more than 85% of the Market Dwellings have completed. The costs for re-determining the values of B and C will be fully recharged to the Owner. The independent expert will be appointed and act under Clause 14

Part 2

The Affordable Housing Contribution is calculated as follows: $A = (B \text{ less } C) \text{ multiplied by } D$

Where:

- A = the Affordable Housing Contribution
- B = the open market value of the relevant dwelling if it were not subject to the terms of this Deed as determined by an independent expert and agreed by all parties
- C = the value of the relevant dwelling subject to the terms of this Deed as determined by an independent expert and agreed by all parties
- D = the Affordable Housing Contribution if not paid within 12-months of the date of this Deed will be index linked to the percentage difference between house price inflation (UK House Price Index) and the Index calculated with reference to the figures last published prior to the date 12-months after the date of this Deed and the figure last published prior to the date of payment.

The Affordable Housing Contribution will be calculated by the independent expert appointed and acting under Clause 14 when no more than 60% of the Market Dwellings have been completed and will be paid in full to the Council when no more than 85% of the Market Dwellings have completed. The Owner will reimburse the Council for the full cost of the independent valuation in all but exceptional circumstances.

The **COMMON SEAL** of **SOUTH HOLLAND DISTRICT COUNCIL**

was hereunto affixed
in the presence of:

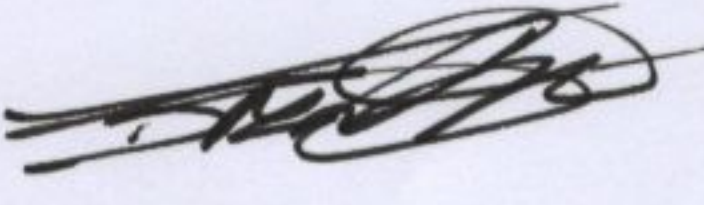


Authorised Signatory

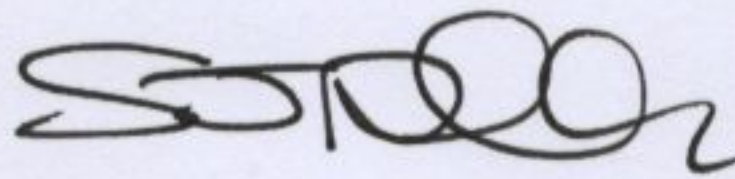


SIGNED as a **DEED** by
POSTLAND DEVELOPMENTS
LIMITED acting by a Director
and its Secretary or two Directors:-

Signature of Director

X  Y

Signature of Secretary/Director

X  Y