

DATED _____

(1) [DEVELOPMENT PARTNER]

(2) [COUNCIL RP / TORBAY COUNCIL / NOMINATED RP]

CONTRACT FOR SALE WITH DEVELOPMENT OBLIGATIONS

relating to

the construction and sale of
[] affordable units comprising Plots []
at [Collaton St Mary / Preston Down Road]

THIS AGREEMENT is made on the day of

BETWEEN:

- (1) **The Seller** **[This will be the Development Partner]**
Registered Number -

Registered Office -
- (2) **The Buyer** **[TORVISTA HOMES / TORBAY COUNCIL / NOMINATED RP]**

BACKGROUND

- (A) The Buyer has agreed with the Seller to acquire the Property (as hereinafter defined) upon the terms of this Agreement.
- (B) The Buyer has agreed with the Seller that the Seller will build out the Development in accordance with the terms of this Agreement.

NOW IT IS AGREED as follows:-

1 DEFINITIONS

In this Agreement unless the context otherwise requires the following words and expressions have the following meanings assigned to them respectively that is to say:

Affordable Housing means the [] dwellings being plot numbers [] shown edged red on Plan 1 including any curtilages parking spaces garages (if any) landscaping and accesses to be constructed on the Property by the Seller in accordance with the terms of this Agreement.

Affordable Housing Obligations means the obligations within paragraphs [] of the Section 106 Agreement (or equivalent provisions in the event the paragraph numbering changes pursuant to any variation or supplemental agreement to the Section 106 Agreement).

Agent such appropriately qualified person appointed from time to time by the Buyer (and notified to the Seller in writing as such) for the purpose of monitoring the Building Works and certifying that each Unit has been Practically Completed.

Agent's Certificate means the certificate to be issued by the Agent pursuant to the provisions of clause 15.4 that the Units on the property or the relevant Cluster are Practically Complete

Anti-Bribery Policy

means the Anti-Bribery Policy of Torbay Council as published from time to time

Approved Plans

means the Plan, the layout plans, elevations, sections, landscaping schemes, the Drawings and the other drawings and proposals for the development of the Infrastructure and the Affordable Housing on the Site including all Employers Requirements set out in Schedule 3 together with any variation to the Infrastructure or the Affordable Housing which has been previously approved by the Buyer in accordance with the terms of this Agreement .

Commented [JQM1]: The Employers Requirements will be provided and uploaded into the dataroom

Assurance

means the deed or deeds for the assurance of the Property to the Buyer which shall be a transfer of a freehold interest in the case of a Cluster comprising only houses and of an entire building (and curtilage) where the Buyer is acquiring the entirety of the Units within a building containing flats or apartments BUT which shall be a 999 year Lease in the case of each flat, apartment or maisonette where the Buyer is not acquiring all such Units in that building (with each Unit to be let to the Buyer under a separate 999 year lease) AND each such Assurance shall be in such form as shall be reasonably required by the Seller and shall contain all necessary rights and easements for the provision of access and services to the Unit(s) in questions and necessary rights for repair and maintenance of the said Units and appropriate rights of support and protection for the said Units and which shall contain no unusual or onerous covenants and which shall be compliant with all CML requirements current at the date the Assurance is entered into and which shall include the provisions required by Schedule 6 and which shall be previously approved in writing by the Buyer (such approval not to be unreasonably withheld or delayed) and if the form of Assurance cannot be agreed between the parties then the matter shall be referred for expert determination in accordance with the provisions of clause 17 of this Agreement.

Building Works

means the design and construction of the Affordable Housing and associated Infrastructure to enable the Units to be accessed including those features (including amenity areas) to benefit the Affordable Housing and services as more particularly described in the Specification and Approved Plans together with any operation or construction or building works on the Site required to be effected by the Seller in order to comply with the requirements of the Specification, Approved Plans, Statutory Requirements, Necessary Consents and this Agreement and for the avoidance of doubt the parties agree that the Building Works shall be deemed to include all of the works carried out on the Site prior to the date of this Agreement.

Buyer's Hand Over Process

means the Buyer's Hand Over Process at Part 1 of Schedule 5.

Commented [JQM2]: These details will be confirmed by the Buyer assuming that a Buyer's Hand Over Process is required

Buyer's Solicitors

means []

(Ref -)

CDM Regulations

means the Construction (Design and Management) Regulations 2015 and any amendments or modifications or the enactment of them.

Cluster

means a minimum of four Units (or less if there are less than four Units still to be acquired by the Buyer under this Agreement OR the Buyer is (in its absolute discretion) prepared to include fewer than four Units in a Cluster) and a maximum of ten Units AND to the intent that:

- (i) all Units within a Cluster shall be physically grouped together or within close proximity wherever reasonably practicable; and
- (ii) where any of the Units are either flats, maisonettes or apartments the same may not be included within a Cluster unless all of the remaining dwellings within the same building as the Units in question and the entirety of the building containing the Units are all

Practically Completed (as such term is defined in this Agreement).

CML	means the Council of Mortgage Lenders.
Contract Rate	means 3% over the base rate of Barclays Bank Plc from time to time.
Contractor	means any person appointed or otherwise acting as building contractor for the purposes of the Development which may be the Seller or (subject to the prior written approval of the Buyer, not to be unreasonably withheld or delayed) such other reputable company as may be nominated by the Seller and the expression "Contractors" shall be construed accordingly.
Completion Date	means the 20th Working Day after the date of the issue of the Agents Certificate for the affordable housing on the relevant Cluster.
Cover Note	means the New Homes Warranty Provider's Cover Note.
Defects Liability Period	means twenty four months from and including the Completion Date of the relevant Unit.
Deposit	means the sum of £1.00 (one pound)
Development	means the development of the Infrastructure and the Affordable Housing in accordance with the terms of this Agreement.
Drawings	means the drawings prepared by the Seller and annexed at Schedule 1.
Estate Road	means all of the roads and footpaths to be constructed on the Site and which are to provide pedestrian and vehicular passage between the Property or part thereof and the existing public highway.
Estate Sewers	means all the foul and surface water and storm water, drains, channels, wires and watercourses to be constructed at the Site to connect the sewers and drains serving the Property to the public sewerage and drainage system, relevant drainage (but this term does not include any extent of a

drain or sewer that serves only a single dwelling and does not traverse any Estate Road).

Expert

means an expert more particularly defined in clause 17 of this Agreement.

Handover Documents

means the documents and items listed in Part 2 of Schedule 5.

Handover Procedure

means the procedure for handover of possession of the Property or the relevant Cluster as contained in clause 15.

Infrastructure

means the Estate Road to be constructed together with footpaths lighting verges sewers and landscaped areas as the same are to be approved and adopted by the local authority and the Service Media including the Estate Sewers with sufficient capacity necessary to serve the Property and any other land facility structures or amenities within the Site required to be delivered pursuant to the terms of the Planning Permission or the Section 106 Agreement which will not be adopted by the local authority the arrangements for the management of which will be undertaken by a management company or otherwise as the Seller shall specify.

Longstop Date

means [] subject to extension under clause 13.2 of this Agreement.

Necessary Consents

means the Planning Permission, building regulations and any additional planning permissions and all the other consents, licences, permissions, certificates, permits and approvals whether of a public or private nature (including the Section 106 Agreement, technical approval and adoption agreements) which are necessary for the lawful carrying out and completion of the Building Works and occupation of the Units.

New Homes Warranty Provider

means NHBC or such other reputable new homes warranty provider as is appointed by the Seller and has been previously approved by the Buyer.

New Homes Warranty Provider Cover Note

means the confirmation issued by the New Homes Warranty Provider to confirm that the relevant Unit has received a

satisfactory final inspection by the New Homes Warranty Provider and that the New Homes Warranty Provider will issue Warranty Documentation for the relevant Unit.

Plan

means the plan annexed to this Agreement at Schedule 2 and if numbered Plans are attached any reference to a numbered Plan is to the attached Plan so numbered.

Planning Obligation

means an obligation under section 106 of the 1990 Act, section 33 of the Local Government (Miscellaneous Provisions) Act 1982, sections 38 or 278 of the Highways Act 1980 or sections 98 or 104 of the Water Industry Act 1991 or any similar agreement with any competent authority or body.

Planning Permission

means the [outline / full] planning permission dated [] (reference) and the reserved matters decision and any renewal or extension of the same or any subsequent amendment or variation thereto.

Practical Completion

means, in relation to the Affordable Housing, agreement between the Agent and the Seller or determination by the Expert pursuant to clauses 16 and 17 (as the case may be) that the Units on the relevant Cluster are complete in accordance with the terms of this Agreement and ready for immediate use and occupation as residential dwellings including the installation of boundary fences, walls, hardstandings, pathways, garages, garage doors and gates and the car parking areas are completed (to wearing course level) and marked out and that all the drives and pathways and parking areas (including visitors' parking spaces) to serve the Units have been laid to wearing course and the Estate Road which serves the Units has been completed to at least base course level (with raised ironworks protected) and all necessary street lighting has been provided and made operational and that permanent safe and convenient vehicular and pedestrian access is available from the public highway to all of the Units in the

Cluster (but not necessarily the turfing of any lawn has been completed where this is prevented by adverse weather or the season being inappropriate for the laying of turf SAVE IT IS hereby agreed that the Seller shall forthwith thereafter complete all outstanding matters) and all of the permanent Service Media to serve the Cluster (including the Estate Sewers) has been completed to the requirements of the competent authority ready for use and at depths and of capacities sufficient to serve the Units and all required Service Media is provided as to serve each Unit for the supply of services free of cost to the Buyer including the standard connection charges (save for the connection charges for the supply of telephone services) so as to be available for the Units and the Handover Documents have been provided to the Buyer for the Cluster in question and Practically Completed shall be construed accordingly.

Prescribed Rate

means interest at the rate of 4% above the base lending rate for the time being of Barclays Bank PLC.

Property

means the Affordable Housing, comprising part of the land registered at the Land Registry under title number []

Purchase Price

means the sum of []

Commented [JQM3]: This is to be determined per Unit based on the Affordable Housing Values table appended to the main sale contract

Retention

means an amount of £1,000 per Unit

Section 106 Agreement

means a planning agreement dated [] and any variation or supplemental agreement to the same.

Seller's Solicitors

means []
(Ref -)

Service Media

means pipes, meters, sewers, attenuation systems, pumping stations, drains, mains, ducts, gutters, watercourses, wires, cables, channels, flues and all other conducting media serving the Affordable Housing and includes any fixing louvres, cowls and any other ancillary apparatus or other service media from time to time substituted thereof for the transmission of

foul and storm water, sewerage, gas, electricity, mains water and telecommunications.

Site

means the land within title number [] shown edged green on the Plan.

Commented [JQM4]: This must be the "Property" as developed under the Sale Contract

Snagging Items

means defects which individually and/or collectively are of a minor nature and which do not prevent the beneficial and quiet use and occupation of a Unit.

Specification

means the specification(s) annexed at Schedule 3 and any variations as may be agreed between the parties in writing.

Standard Conditions

means the Standard Conditions of Sale (Fourth Edition).

Statutory Requirements

means any statute, statutory instrument, regulation, rule or order made under any statute or directive which affects the Building Works (including for the avoidance of doubt any building regulations relevant to the Building Works), or the performance of any obligations under this Agreement and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Building Works.

Unit

means any individual dwelling comprised in the Affordable Housing and the words "Units" shall be construed accordingly.

VAT

means Value Added Tax or any like tax.

Warranty Documentation

means the form of warranty issued by the New Homes Warranty Provider not being merely the New Homes Warranty Provider Cover Note in respect of the construction of the Units as Affordable Housing to include 12 years' cover, professional fees, insolvency, loss of rental income, standard excess and contamination cover.

Working Days

means any day upon which the London clearing banks are open for business (but this does not include 22nd, 23rd, 24th, 27th, 28th, 29th, 30th or 31st December or 2nd or 3rd of January in any year).

2 INTERPRETATION

- 2.1 Words importing gender include any other gender and words importing the singular where the context so admits include the plural and vice versa.
- 2.2 The clause headings shall not affect the construction of this Agreement.
- 2.3 References to statutory provisions shall be construed as references to those provisions amended or re-enacted or modified from time to time.

3 ENFORCEABILITY

This agreement comes into force on the date that first appears on page 1.

4 RESTRICTIONS ON DEALING WITH THIS AGREEMENT

The Seller may not assign the burden or benefit of this agreement without the prior written consent of the Buyer (given in the Buyer's absolute discretion).

5 AGREEMENT FOR SALE OF THE PROPERTY

- 5.1 Subject to clause 5.2.2, the Seller agrees to sell and the Buyer agrees to purchase the Property for the Purchase Price with vacant possession on the terms and conditions contained in this Agreement.
- 5.2 It is agreed that:
 - 5.2.1 The assurance of the Property or the assurance of the relevant Cluster shall be in the form of the Assurance. The Parties acknowledge that the form of Assurance assumes that the whole of the Property will transfer under one assurance and consequently where there is to be an assurance of a Cluster or Clusters the form of the assurance shall be the Assurance with such amendments as are necessary and agreed between the parties (who shall each act reasonably and without delay) to take account of whether the assurance relates to the Property, a Cluster or Clusters.
 - 5.2.2 The Buyer must on the date hereof pay the Deposit to the Seller's Solicitor as stakeholder by means of a telegraphic transfer or direct transfer to the Seller's Solicitor's Bank Account.
 - 5.2.3 On completion of the Assurance, the pro rata proportion of the Deposit (i.e. the sum of [] per Unit) shall be credited against the Purchase Price or credited against the relevant portion of the Purchase Price attributable to the relevant Cluster.
 - 5.2.4 If the Completion Date does not occur before the Long Stop Date the Agreement may be terminated in accordance with clause 26.2 or 26.3 and the Deposit will be repaid to the Buyer within 5 Working Days of such termination and in all circumstances any interest accrued on the Deposit shall belong to the Buyer.

6 COMPLETION OF THE SALE OF THE PROPERTY

- 6.1 Completion of the Property and / or the relevant Cluster (as such Cluster is nominated in

accordance with clause 15) shall be at the offices of the Seller's Solicitors or where they may reasonably direct on the Completion Date whereupon:

6.1.1 the Buyer shall pay to the Seller either:

6.1.1.1 (where completion relates to the Property) the Purchase Price less the Deposit and the Retention; or

6.1.1.2 (where completion relates to a Cluster) the proportion of the Purchase Price attributable to the relevant Cluster less the pro rata proportion of the Deposit in respect of the Units comprised in the relevant Cluster and less the pro rata proportion of the Retention in respect of the Units comprised in the relevant Cluster; and

6.1.2 the Seller shall complete the Assurance of the Property or the relevant Cluster to the Buyer (in each and every case with full title guarantee).

provided that the Buyer will not be required to accept service of the notice referred to in clause 15.2 in respect of the transfer of a Unit within the period from and including the 7 December to and including the 7 January in each year during the term of this Agreement and any Completion Date which would have fallen within that period shall be postponed until the first Working Day after the ending of the before mentioned period.

7 CAPACITY

The Seller shall sell with full title guarantee.

8 TITLE

8.1 The title to the Site is registered at the Land Registry with title number [].

8.2 The Buyer's Solicitors having been supplied with copies of the Seller's registered title as at [] in respect of [] the Buyer is deemed to purchase with full knowledge of the contents of those documents and is not entitled to raise objections or requisitions in relation to them except in relation to matters revealed by the Buyer's usual pre-completion searches.

9 INCORPORATION OF STANDARD CONDITIONS OF SALE

The Standard Conditions shall apply to this Agreement insofar as they are applicable to a sale by private treaty and are not inconsistent with any other terms of this Agreement and shall be amended as follows:-

9.1 Condition 1.1.1(m) shall have added to it the words "and such working days shall expire at 4.00 p m"

9.2 Condition 1.3.4 – insert after the word "delivered" the words "subject to contrary proof"

9.3 Conditions 2.2 and 5 shall not apply

10 MATTERS AFFECTING THE PROPERTY

10.1 The Property is sold subject to and together with the benefit of as the case may be the rights easements covenants agreements declarations exceptions reservations and other

matters contained or referred to in the documents and registers of title mentioned in clause 8 insofar as they still subsist are capable of being enforced and relate to the Property or contained or referred to in the Assurance.

10.2 The Property is sold subject to:-

- 10.2.1 all local land charges whether registered or not before the date of this Agreement and all matters capable of registration as local land charges whether or not actually registered;
- 10.2.2 all notices served and orders financial or other demands proposals or requirements made by any local public or other competent authority whether before or after the date of this Agreement;
- 10.2.3 all actual or proposed notices orders restrictions agreements conditions contraventions or other matters arising under the enactments relating to Town and Country Planning;
- 10.2.4 all easements quasi easements rights exceptions or other similar matters whether or not apparent on inspection or disclosed in any of the documents referred to in this Agreement;
- 10.2.5 all charges rates and other outgoings as may now affect or be charged to the Property except the Charge;
- 10.2.6 any unregistered interests which fall within any of the paragraphs of Schedule 3 of the Land Registration Act 2002 and such unregistered interests as may affect the Property to the extent and for so long as they are preserved by the transitional provisions of Schedule 12 of the Land Registration Act 2002 rights exceptions liabilities to repair or contribute to the repair of sewers drains pipes party structures and other like matters whether or not apparent on inspection;
- 10.2.7 all other matters whatsoever affecting the Property which are capable of discovery by searches enquiries inspections and surveys made by or on behalf of a prudent buyer whether or not such searches enquiries inspections and surveys have been made by or on behalf of the Buyer; and
- 10.2.8 all matters apparent upon inspection of the Property

and the Seller warrants that it has disclosed all matters to which the Property is subject to under this clause 10 of which it is aware other than those disclosed by searches in public registers that a prudent buyer would have made before entering into such an agreement as this.

11 ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and may only be varied in writing under the hands of the parties to this Agreement.

12 VAT

All sums made payable under this Agreement are deemed to be inclusive of VAT.

13 THE SELLER'S OBLIGATIONS

The Seller agrees with the Buyer to do the following:-

13.1 Commencement of Development

- 13.1.1 The Seller will as soon as reasonably possible after exchange of this Agreement (unless prevented by any act, matter or thing beyond the reasonable control of the Seller) diligently procure the construction and completion of the Building Works with all practicable speed in a thoroughly sound, proper and good and workmanlike manner and with good-quality, new, sound materials sufficient and proper of their several kinds and in conformity in every respect and complying with any applicable British Standards and Codes of Practice and (save only as hereinafter mentioned) with the Specification, Necessary Consents, Approved Plans, the Planning Permission, requirements of the New Homes Warranty Provider and the Section 106 Agreement and otherwise in accordance with this Agreement and in conformity with all regulations or requirements of the local and all other statutory authorities (including the CDM Regulations) and in compliance with any other approvals required under this Agreement as appropriate so as to render the Affordable Housing fit for residential use and occupation.
- 13.1.2 The Seller warrants that it will exercise all reasonable skill care and diligence in constructing the Affordable Housing and the Estate Road, Estate Sewers and Service Media and shall not use any deleterious materials.
- 13.1.3 For the avoidance of doubt the Estate Roads and the Estate Sewers and all other Service Media shall be designed and constructed to adaptable standards.

13.2 Construction of the Affordable Housing

- 13.2.1 Subject to the provisos to this clause the Seller shall procure that the Affordable Housing is Practically Completed as soon as is reasonably practicable with a target date for completion of:

13.2.1.1 A Cluster comprising [] plots - [];

13.2.1.2 A Cluster comprising [] plots – [];

13.2.1.3 A Cluster comprising [] plots - [];

PROVIDED THAT the Seller shall in any event achieve Practical Completion of all Units to be developed on the Property by the Long Stop Date and PROVIDED FURTHER THAT if Practical Completion of all Units to be developed on the Property is delayed on one or more occasions in consequence of one or more of the following events (subject to the Seller taking all reasonable steps to minimise such delays):

13.2.1.4 force majeure;

13.2.1.5 exceptionally inclement adverse weather conditions;

Commented [JQM5]: The Developer will need to confirm its reasonable proposals here but note the references below to the Long Stop Date.

- 13.2.1.6 civil commotion local combination of workmen strike or lockout affecting any of the trades employed upon the Development or any of the trades engaged in the preparation manufacture or transportation of any of the goods or materials required for the Development;
- 13.2.1.7 destruction of or damage to the Development by any insured risk in respect of which the Seller has complied with its obligations under clause 13.4;
- 13.2.1.8 local authority or statutory undertaker carrying out work in pursuance of its statutory obligations in relation to the Development or failing to carry out such work;
- 13.2.1.9 any labour goods or materials required for any of the Development being unavailable due to any circumstances beyond the direct control of the Seller and its Contractors;
- 13.2.1.10 any other circumstances beyond the reasonable control of the Seller or its contractors which are not reasonably foreseeable at the date of this Agreement and which cause delay to the Building Works which could not reasonably have been avoided;
- 13.2.1.11 any delay occasioned by any direct act or omission of the Buyer

then the Longstop Date shall be extended by such reasonable period as may be necessary to make due allowance for such delay and any dispute shall be referred to an Expert for determination in accordance with clause 17 provided always that the Longstop Date for the Property or last Cluster (as appropriate) shall not be extended beyond **[insert date being three years from the date of this Agreement]**.

- 13.2.2 In the event of any extension of time being required under the provisions of clause 13.2.1 above, the Seller shall promptly notify the Buyer of the delay event that has arisen (promptly after the delay has passed) and the reasonable period or extension requested.

13.3 Comply with Statutes, Regulations, Etc

Until completion of an Assurance in respect of the Property or a Cluster to do or to procure the doing of all acts and things in the completion of the Affordable Housing on land that has not previously been the subject of an Assurance required by law (including the CDM Regulations) and to procure the carrying out of the Development in conformity in all respects with the Planning Permission any relevant planning agreement and the provisions of the applicable statutes and with the by-laws, regulations and proper requirements of the relevant local authority and all public utility undertakings respectively and to pay all proper claims for the fees, charges, fines, penalties and other similar payments which during the progress of the Development may become payable or be properly or lawfully demanded by any competent authority in respect of the Development.

13.4 Insurance

- 13.4.1 Until the earlier of Practical Completion of the relevant Cluster or Practical Completion of the Development of the Affordable Housing to insure with an

insurance company of repute the same or such parts thereof as shall not have been sold in a sum sufficient to cover the cost of completely reinstating the same in the event of total destruction together with professional fees and other expenses incidental thereto against loss or damage by fire and any third party or other risk usually insured against in respect of a development of this nature ("Insured Risks") and to pay all premiums and other monies necessary for this purpose and to produce to the Buyer on completion of this agreement and on any renewal the policy or policies of insurance maintained by the Seller under the provisions of this sub-clause.

13.4.2 If the Building Works are damaged or destroyed by any of the Insured Risks, the Seller will:

13.4.2.1 make all claims for and seek and use reasonable endeavours to recover the insurance proceeds due under that insurance; and

13.4.2.2 apply the insurance proceeds received towards reinstating the relevant damage or destruction and will procure that there is reinstatement or replacement is carried out diligently and with all reasonable speed and make good out of its own funds any deficiency in the insurance money.

13.4.3 the Seller will upon reasonable request provide to the Buyer written evidence of the policy of insurance maintained under this clause 13.4 and the payment of any premiums in respect of that insurance policy;

13.4.4 The Seller shall at the Buyer's written request:

13.4.4.1 increase the amount of cover for the Property or a Cluster under the terms of the Seller's insurance policy or extend the risks covered by it, subject to the insurer being willing and able to do so and subject to the Buyer paying the Seller on demand any additional premium due for the increased or extended cover; and

13.4.4.2 obtain or consent to an endorsement on the Seller's insurance policy for the Property or a Cluster of the Buyer's interest, subject to the insurer being willing to make the endorsement.

13.4.5 The parties mutually agree not knowingly to do or permit anything to be done which may render an insurance policy void or voidable.

13.5 Inspection of Affordable Housing

To permit the Buyer and/or the Agent to enter on the Property at reasonable times after reasonable prior notice to view the state and progress of those parts of the Affordable Housing which have not been subject to an Assurance and to inspect the material and workmanship for the purpose of ascertaining generally that all the obligations of the Seller under this Agreement are being duly observed and performed and for any other reasonable purpose Provided That the person so permitted shall not interfere with the carrying out of the Development or impede its progress and may make representations regarding the progress of the Building Works to the contractors on site but subject to this shall refer all matters whether of complaint or otherwise to the Seller or the Seller's representative and shall comply with all statutory health and safety regulations and any similar regulations imposed by the Seller.

13.6 Restrictions on Use

Not to use or permit or suffer to be used the Property or any part thereof for any purpose other than that of carrying out the Development.

13.7 New Homes Warranty

The Seller confirms that it is registered with the New Homes Warranty Provider and will provide evidence to the Buyer that it has registered the Affordable Housing with and paid all fees due for registration to the New Homes Warranty Provider in accordance with the New Homes Warranty Provider's requirements and the Seller shall prior to and as a precondition of Completion supply the Warranty Documentation for the relevant Unit to the Buyer.

13.8 Roads and Sewers

13.8.1 As soon as reasonably practicable to:

13.8.1.1 enter into or to procure the entering into of any agreement or agreements pursuant to Section 38 of the Highways Act 1980 with the local highway authority in respect of the Estate Road and will pay or procure the payment of any cash deposit or provide any bond or surety required by the local highway authority to secure that the Estate Road is adopted and maintainable at public expense and shall advise the Buyer's Solicitors when the agreement or agreements have been completed and provide a copy of the completed agreement to the Buyer or the Buyer's Solicitors within 10 Working Days of their request; and

13.8.1.2 enter into or to procure the entering into of an agreement or agreements pursuant to Section 104 of the Water Industry Act 1991 with the relevant sewerage undertaker (including arrangements under Section 97 of the Water Industry Act 1991) in respect of the foul and storm water sewers and surface water sewers to be constructed and laid within the Site (being the Estate Sewers) to their outfall into foul and storm water and surface water sewers adopted and maintainable at public expense and will provide such bond or surety as may be required by the sewerage undertaker for the purpose of ensuring that the foul and storm water sewers are adopted and maintainable at public expense and shall advise the Buyer's Solicitors when the agreement or agreements have been completed and provide a copy of the completed agreement to the Buyer or the Buyer's Solicitors within 10 Working Days of their request.

13.8.2 That it will construct to base course level as soon as reasonably practicable those parts of the Estate Road leading to the Units in the next Cluster that the Seller is developing. Thereafter as soon as reasonably practicable following construction of the last unit on the Site the Seller will surface and maintain (or procure the maintenance of) the Estate Road and the Estate Sewers so far as necessary and shall comply with the said Section 38 and Section 104 agreements until such time as they shall be adopted and will indemnify the Buyer against all costs charges claims and demands in respect of any failure to do so (except any arising as a result of damage caused by the Buyer their

agents and licencees). The Seller will further indemnify the Buyer in respect of all public compensation liabilities and indemnities imposed upon the Buyer should the Buyer be required to enter into a road or sewer adoption agreement.

13.9 Adoption of Estate Road and Sewers

- 13.9.1 That it will comply or procure the compliance in all respects with the Agreements pursuant to Section 38 of the Highways Act 1980 and Section 104 of the Water Industry Act 1991 referred to in clause 13.8 and shall in any event bring the Estate Road to base course standard with the Service Media thereunder to the extent that the Estate Road leads from the highway maintainable at public expense to the relevant Cluster by the date of Practical Completion of the relevant Cluster.
- 13.9.2 If any Infrastructure intended for adoption passes through any unbuilt part of the Property the Buyer will if reasonably requested by the Seller and subject to obtaining any required consents enter into any documents (including without limitation any agreement pursuant to the Highways Act 1980 Water Industry Act 1991 and/or any deed of easement) reasonably required by the relevant statutory authorities or supply companies to procure the maintenance and (if applicable) adoption of the Infrastructure,. The Seller is to procure that any such documents do not impose on the Buyer any obligation to execute works or expend money or which adversely affect the enjoyment of any Unit and the Seller will meet the Buyer's reasonable and properly incurred legal and surveyors' costs in relation to every such document.
- 13.9.3 The Seller is to use all reasonable endeavours to procure that the Estate Roads and Estate Sewers are adopted by the relevant authority within 36 months of the date of this Agreement.
- 13.9.4 The Seller is also to use all reasonable endeavours to procure that all intended landscaped and amenity areas within the Site are practically completed and turfed in accordance with the provisions of this Agreement within 36 months of the date hereof.

13.10 CDM Regulations

The Seller and the Buyer hereby agree that the Seller shall act as the only client in respect of the Development until Practical Completion of the Property or the relevant Cluster and that the Seller shall be responsible for performing all the duties of the client pursuant to the CDM Regulations. The Seller hereby undertakes to comply with the CDM Regulations and to procure that third parties employed by it in connection with the Development are competent in terms of the CDM Regulations and that they continue to comply with the CDM Regulations.

13.11 Contractor

Where the Seller and the Contractor are not the same company the obligations in this clause 13 shall be obligations of the Contractor and the Seller agrees with the Buyer to procure compliance with those obligations.

14 VARIATION OF APPROVED PLANS

- 14.1 The Seller may not make any variation to the Approved Plans so far as they relate to the

Affordable Housing or the Specification without the prior written consent of the Buyer and any variation requested by the Seller shall be undertaken at the cost of the Seller.

14.2 The Buyer shall be entitled to request a variation to the Specification at any time prior to Practical Completion. Where the Buyer requests such a variation, the Seller shall only be obliged to implement such a variation to the Specification if:

- 14.2.1 the Buyer accepts the Seller's estimated cost for such variation including any delay and/or disruption costs and any fees expenses and disbursements of any professionals arising in connection with such works and any additional preliminary or management costs and expenses associated with such a variation;
- 14.2.2 in the Seller's opinion the variation will not adversely affect or require any variation of the existing Planning Permission and/or Section 106 Agreement;
- 14.2.3 in the Seller's reasonable opinion the variation will not cause material delay in achieving Practical Completion of the Affordable Housing having regard to the build stage reached when the variation is requested and the timeframe for carrying out such a variation is agreed in writing between the Seller and the Buyer;
- 14.2.4 any extension to the Long Stop Date required by the Seller in order to effect any such variation is agreed in writing between the Seller and the Buyer;
- 14.2.5 the cost proposed by the Seller and agreed by the Buyer for any variation pursuant to this clause shall be added to the Purchase Price and shall be paid by the Buyer to the Seller at any time after the variation request within ten (10) Working Days of the date of any invoice raised by the Seller for such variation.

15 PRACTICAL COMPLETION/HANDOVER PROCEDURE

- 15.1 The Seller shall give the Buyer notice of the intended date of Practical Completion of the Property or the relevant Cluster at 12 and 8 weeks in advance of the intended date of Practical Completion provided always that the delivery of the Affordable Housing shall not be by more than one Cluster.
- 15.2 The Agent and a representative of the Seller will agree a reasonable date and time not more than 10 Working Days after the date of issue of the Cover Note to inspect the Property or a relevant Cluster so the Agent can consider (acting reasonably) whether or not the relevant Units are Practically Complete.
- 15.3 If following inspection of the Property or a relevant Cluster pursuant to clause 15.3 the Agent issues an Agent's Certificate, completion shall occur in accordance with clause 6 of this Agreement.
- 15.4 If the Agent (acting reasonably) does not certify that the Property or a Cluster has been Practically Completed, the Seller will procure the carrying out of the necessary outstanding works and / or obtain all outstanding documentation within 10 Working Days and the parties will repeat the procedure in this clause 15 until the Agent acting reasonably issues an Agent's Certificate.
- 15.5 If an Agent's Certificate is issued subject to the remediation of Snagging Items:

- 15.5.1 completion shall occur in accordance with clause 6 of this Agreement;
- 15.5.2 the parties shall agree and sign a list of the Snagging Items and the Seller shall remediate the same within 10 Working Days of the Completion Date subject only to an extension of time for delays caused by matters beyond the Seller's reasonable control to the reasonable satisfaction of the Agent.
- 15.6 The Buyer shall be under no obligation to pay the Purchase Price or take handover of either part of or the whole of the Affordable Housing on a day which is not a Working Day and any payment due within such period shall be made on the next Working Day to occur.
- 15.7 Any dispute relating to the certification of the Property or a relevant Cluster as Practically Complete shall be determined in accordance with clauses 16 and 17.
- 15.8 Without prejudice to the above Practical Completion shall be deemed not to have occurred and the Buyer will not be required to complete the purchase of the Property or a relevant Cluster unless:
- 15.8.1 the Seller has provided all of the Handover Documents to the Buyer in respect of the Property or relevant Cluster; and
- 15.8.2 the Seller has provided evidence satisfactory to the Buyer that the pre-commencement and pre-occupation planning conditions under the Planning Permission and Section 106 Agreement or other infrastructure agreements have been discharged or complied with (as appropriate) but to the extent that there are any conditions which are yet to be discharged by the local planning authority or in respect of compliance is an ongoing requirement the Seller agrees to use all reasonable and commercially sensible endeavours to obtain from the local planning authority (which may be by email) and Practical Completion shall not be deemed to have occurred unless either;
- 15.8.2.1 confirmation has been provided in writing from the local planning authority of compliance with ,all such conditions in so far as they may affect the enjoyment or occupation of the Units in the Cluster; or
- 15.8.2.2 the local planning authority has confirmed that it will not seek to enforce the conditions against the Buyer
- provided that the Buyer shall not be required to complete its purchase if the Buyer can evidence that it is reasonably likely that occupation of the Property would not be permitted by the local planning authority.
- 15.9 Without prejudice to the terms of this Agreement the parties will follow the processes set out in the Buyer's Hand Over Process and to the extent this shall conflict with the terms of this Agreement the terms of this Agreement shall take precedence.

16 DISPUTES RELATING TO PRACTICAL COMPLETION

If there is a dispute between the parties as to whether the Property or the relevant Cluster is Practically Complete the matter shall be referred to an Expert pursuant to clause 17 whose decision shall be final and binding on the parties hereto and the following shall apply:-

- 16.1 if the Expert determines that construction of the Property or the relevant Cluster has been achieved Practical Completion shall be deemed to have occurred on the date ten Working Days after receipt of the Expert's written determination.
- 16.2 if the Expert shall determine that construction of the Property or the relevant Cluster has not been achieved the Seller shall carry out such works required by the Expert and upon completion of such works to the reasonable satisfaction of the Expert construction of the Property shall be deemed to have occurred on the date ten Working Days after receipt of the Expert's written confirmation that construction of the Property or the relevant Cluster has been achieved.
- 16.3 the determination of the Expert as to whether an item is a defect falling to be rectified pursuant to clause 20 shall be binding upon the parties except in the case of manifest error or fraud.

17 EXPERT DETERMINATION

In the event of any dispute arising under this Agreement the following provisions shall apply:-

- 17.1 either party can refer the dispute to an Expert of determination to the dispute may request the appointment of an Expert after the expiry of a period of fourteen days after one
- 17.2 the parties shall jointly appoint an expert who shall:-
- 17.2.1 in the case of an dispute relating to Practical Completion be a member of the Royal Institution of Chartered Surveyors; or
 - 17.2.2 in the case of an dispute relating to planning matters be a Chartered Town Planning Consultant; or
 - 17.2.3 in the case of any dispute relating to taxation matters be a member of The Institute of Chartered Accountants; or
 - 17.2.4 in the case of any other dispute be a member of the Bar Council and shall be leading Counsel;
 - 17.2.5 in each case have not less than ten years standing and experience of the subject matter of the dispute and shall be an expert in such matters;
 - 17.2.6 in each case practice on a regular basis from an office or offices within a 25 mile radius of the Property;

("the **Expert**")

- 17.3 be appointed jointly by the parties but if the parties are unable to agree as to the appointment of an Expert within 10 Working Days of either party giving the other written notice requesting them to confer on the appointment of the Expert then either party may apply to the President of the Royal Institution of Chartered Surveyors (or any successor Institute) to nominate the Expert;
- 17.4 the Expert appointed shall act as an expert and not as an arbitrator;
- 17.5 the parties shall use all reasonable endeavours to procure that the Expert shall give his determination and the reasons for his determination in writing as speedily as reasonably

practicable;

- 17.6 the Expert shall give notice in writing of his nomination to both the Seller and the Buyer inviting each of them to submit to him within a specified period (which shall not exceed fifteen Working Days) a statement of reasons accompanied by a valuation (if desired) and shall consider any reasons and valuation submitted to him within (but not after the expiration of) fifteen Working Days but he shall not in any way be limited or fettered by any valuation and/or statement of reasons submitted to him and he shall determine the issues in accordance with his own judgement and opinion and shall notify his determination and the reasons for his decision to the Seller and the Buyer in writing as soon as is practicable after his appointment;
- 17.7 unless the Expert has failed to observe the procedures specified in this clause then save in the case of manifest error or fraud his determination shall be final and binding on the parties;
- 17.8 If the Expert shall die or unreasonably delay or become unwilling to act or incapable of acting the President (or failing him the person designated to act in his place) for the time being of the Royal Institution of the Chartered Surveyors shall at the request of either the Seller or the Buyer by writing discharge the Expert and nominate another person to act in his place who shall proceed as if there had been no prior nomination
- 17.9 The fees and expenses of the Expert shall be paid in the proportions or shares determined by the Expert and if not so determined by the Seller and the Buyer in equal shares and if either of them shall pay the share properly payable by the other of them (in order to procure the issue of the notice of the determination of the Expert) the amount so paid shall be repayable on demand with interest at the Contract Rate from the date of payment to the date of repayment calculated from day to day and compounded with monthly rests and shall be recoverable action with interest (as well as before any judgement)

18 NON-MERGER

This Agreement shall remain in full force and effect insofar as anything remains to be performed and observed pursuant to it after the transfer of the last of the Units to the Buyer or after Practical Completion of the last Unit referred to in this Agreement.

19 NOTICES

- 19.1 Any notice or notification or acknowledgement required to be given hereunder to the Seller or the Buyer:-
- 19.1.1 shall be in writing to be sent by personal delivery, document exchange or recorded delivery and shall be deemed to have been received simultaneously with delivery if by personal delivery and if sent by document exchange or recorded delivery the same shall be deemed to have been received on the second Working Day following the date of despatch or posting;
- 19.1.2 may be given to or by the Seller's Solicitors or the Buyer's Solicitors respectively;
- 19.1.3 shall in the case of the Seller be served on the Seller at its registered office marked for the attention of [] or to such other address or addresses and/or marked for the attention of such other person as was last notified in writing by the Seller to the Buyer or the Buyer's Solicitors;

- 19.1.4 shall in the case of the Buyer be served on the Buyer at its registered office (marked for the attention of [] or to such other address or marked for the attention of such other person as was last notified in writing by the Buyer to the Seller or the Seller's Solicitors;
- 19.1.5 shall if required to be given by a fixed date or before the expiry of an identified period it must be validly served by 5:00 pm on such fixed date or on the last Working Day within such identified period (as applicable) and in the event that the time at which a letter containing a notice would in the ordinary course be delivered is not on a Working Day the notice shall be deemed to have been served on the next following Working Day

20 DEFECTS LIABILITY PERIOD

- 20.1 Save as referred to in clause 20.2 the Seller shall procure that any Defects (as defined in Schedule 4) excluding normal wear and tear arising through usage of the Units in the Affordable Housing notified in writing to the Seller by the Buyer before or during the Defects Liability Period are made good as soon in accordance with to the timescales set out in paragraph 2 of Schedule 2 depending on the nature of the defect notified to the Seller .
- 20.2 Notwithstanding the generality of clause 20.1 the Seller shall comply with the requirements set out in Schedule 4.
- 20.3 The Buyer shall allow the Seller the facilities reasonably necessary and full access to the Property to enable defects properly to be repaired (taking into account that the Properties may be occupied) and the Seller shall take all reasonable steps to carry out any works sensitively taking into account the occupation of the residents.
- 20.4 On or before the date 12 months from the Completion Date the Seller and the Buyer will meet at the Property to jointly inspect the Building Works and ascertain whether all Defects have been made good AND if agreed the Agent will notify the Buyer who will release the remainder of the Retention to the Seller net of any sums deducted pursuant to Schedule 4 but if the Agent (acting reasonably) is unable to notify that this is the case then the Retention or a reasonable proportion thereof will be released to the Buyer to enable it to make good such outstanding Defects with the balance to be released to the Seller (but without prejudice to the Seller's obligations arising under clause 20.1 above).
- 20.5 When any defects or other faults which the Buyer may have required to be made good under clauses 20.1 and 20.2 shall have been made good the Seller shall notify the Buyer and the Buyer shall issue if it so agrees acting reasonably a notice to that effect which notice shall not be unreasonably delayed or withheld (provided that in the event of any dispute in this regard the matter may be referred by either party for determination pursuant to the provisions of clause 17).

21 THIRD PARTY RIGHTS

A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement SAVE THAT a person who is entitled to have the benefit of this Agreement assigned to him may enforce the benefit so assigned. This clause does not affect any right or remedy of any person which exists or is available other than pursuant to that Act.

22 NO PARTNERSHIP

Nothing in this Agreement or arising through any of the documents referred to in this Agreement shall constitute a partnership between the Seller and the Buyer and neither shall act as agent of the other.

23 PLANNING CONDITIONS AND SECTION 106 AGREEMENT

- 23.1 The Seller covenants with the Buyer to pay any CIL due in respect of the Development and to observe and perform the provisions of the Section 106 Agreement and the Planning Permission in accordance with the timescales provided for in each such document (and it is understood that the Affordable Housing Obligations bind the Buyer only from the Completion Date) and the Seller hereby indemnifies the Buyer from and against all costs expenses claims demands proceedings and other liabilities arising as a result of or in consequence of any breach non-observance or non-performance of this covenant.
- 23.2 The Seller shall not seek any variation amendment or replacement of the Planning Permission and/or Section 106 Agreement in so far as the same gives rise to any variation of the Specifications, the Approved Plans, the design, amenity, value or use of the Affordable Housing .
- 23.3 The Seller will provide the Buyer with such information and assistance as the Buyer may reasonably require in connection with the construction of the Property and the Seller shall ensure that any matters which require to be approved under the Section 106 Agreement or the Planning Permission relating to the construction of the Property which have to be approved before commencement of the Development or occupation of the Affordable Housing can take place and which remain to be approved are approved as soon as reasonably practicable.
- 23.4 Without prejudice to the generality of clause 23.1 above the Seller hereby agrees that prior to the Completion Date it will pay to the local planning authority the contributions payable thereto in respect of CIL Liabilities AND under the terms of the Section 106 Agreement which are attributable to each and every Unit in the Property or relevant Cluster (as appropriate) and will request reasonable evidence of such payment (which may be an email from the local planning authority) to the Buyer prior to the Completion Date.
- 23.5 From the date of Completion the Buyer shall indemnify the Seller from and against all costs expenses claims demands proceedings and other liabilities arising as a result of or in consequence of any future breach non-observance or non-performance of the Affordable Housing Obligations which relate to the use and occupation of the Units actually acquired by the Buyer.
- 23.6 The Seller indemnifies the Buyer from and against all costs expenses claims demands proceedings and other liabilities arising as a result of or in consequence of any breach non-observance or non-performance of the Planning Permission and of the Section 106 Agreement other than the Affordable Housing Obligations.

24 PLANS

- 24.1 The Seller shall not without first obtaining the written consent of the Buyer prior to Practical Completion vary the boundaries of the Affordable Housing.
- 24.2 In the event of any variation to the Approved Plans relating to the Affordable Housing being required after the Completion Date arising out of any requisition raised by the Land

Registry then:

- 24.2.1 the parties hereto shall at the Seller's cost agree to a revised plan being annexed to the Assurance by way of a Deed of Variation and/or Deed of Rectification and shall execute and complete the same for registration at the Land Registry as soon as is reasonably practicable but so that the area and/or use and enjoyment of the Units within the Affordable Housing is not noticeably diminished and any such variation shall not give rise to any claim for compensation; and
- 24.2.2 the Buyer hereby grants to the Seller an irrevocable right for no further consideration to enter upon that part of the Property comprising the relevant Unit together with workmen equipment and materials to remove the existing boundary fences and re-erect the boundary fences on the revised boundary line PROVIDED THAT the Seller shall:
- 24.2.3 give reasonable prior notice to the Buyer to enter upon that part of the Property comprising the Affordable Housing;
- 24.2.4 only enter upon such part of the Property comprising the Affordable Housing as is reasonably necessary to exercise the right granted by this clause 24.2 of this Agreement;
- 24.2.5 cause as little inconvenience to the Buyer and as little damage to the Property as is reasonably possible; and
- 24.2.6 as soon as is reasonably practicable at its own expense make good any damage so caused to the Property to the reasonable satisfaction of the Buyer.

25 GRANT

- 25.1 The Seller confirms and warrants to the Buyer that it is not in receipt of nor shall it apply for any grant funding or grant allocation from Homes England/ the Homes and Communities Agency in relation to the acquisition of the Site or the development of the same or any part or parts thereof

26 DETERMINATION

- 26.1 Without prejudice to any other rights or remedies which the Buyer may possess:
 - 26.1.1 if the Seller is in material and continuing breach of its obligations under clause 13; or
 - 26.1.2 in the event of the liquidation of the Seller (otherwise than by way of amalgamation or reconstruction) or its having application made under the Insolvency Act 1986 to the court for the appointment of an administrator or having a winding up order made or for voluntary winding up passed or having a provisional liquidator receiver or manager of its business or undertaking duly appointed or having an administrative receiver as defined in the Insolvency Act 1986 appointed or having possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge or entering into an arrangement with any of its creditors provided that this shall not apply in the event of any solvent reorganisation of the Seller;

then the Buyer may, by notice in writing to the Seller, determine this Agreement with immediate effect **PROVIDED FURTHER** that the Buyer shall only be entitled to serve notice to determine this Agreement pursuant to clause 26.1.1 above if prior to serving such termination notice on the Seller the Buyer has:

- (i) served written notice on the Seller specifying that it considers the Seller to be in material and continuing breach of its obligations under clause 13; and
- (ii) afforded the Seller an opportunity to remedy such breach which is reasonable in the circumstances of the breach; and
- (iii) the Seller has failed (in the reasonable opinion of the Buyer) to remedy such breach.

and in the event of termination pursuant to the provisions of this clause 25 the Seller shall forthwith repay to the Buyer the Deposit with such accrued interest as has been earned.

26.2 Without prejudice to any other rights or remedies which the Buyer may have, if the Seller has not commenced construction of the Property by the Longstop Date the Buyer may give written notice to the Seller terminating this Agreement whereupon this Agreement shall end with immediate effect and the Seller shall forthwith repay to the Buyer the Deposit with such accrued interest as has been earned.

26.3 Without prejudice to any other rights or remedies which the Buyer may have, if the Seller has not achieved Practical Completion by the Longstop Date but construction of the Affordable Housing has commenced the Buyer may serve notice on the Seller requiring that Practical Completion be effected in accordance with this clause and upon service of such notice as aforesaid it shall become and be an item of this agreement in respect of which time shall be of the essence that the Seller shall effect Practical Completion within twenty-eight days after service of the notice and in the event that the Property has not achieved Practical Completion within the twenty eight day period referred to the Buyer may at any time thereafter by service of written notice determine this Agreement and the Seller shall forthwith repay to the Buyer the Deposit with such accrued interest as may have been earned.

26.4 Determination under this clause shall be without prejudice to either parties' accrued rights against the other arising out of any antecedent claim or breach of obligation under this Agreement.

27 **EXECUTION OF COUNTERPARTS**

27.1 If requested so to do by the Seller the Buyer shall execute counterparts or duplicates of any deed required to be executed pursuant to this Agreement.

28 **[CHARITY STATEMENT]**

Upon completion the Property will be held by the Buyer, an exempt charity and the Assurance will contain a declaration to this effect.]

29 **WAIVER**

No failure or delay by the Buyer or the Seller to exercise any right, power or remedy is to operate as a waiver of the same, nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy.

30 **CIL**

- 30.1 For the purposes of this clause **CIL Regulations** means the Community Infrastructure Levy Regulations 2010/948 (as amended by the Community Infrastructure Levy (Amendment) Regulations 2011/987, the Community Infrastructure Levy (Amendment) Regulations 2012/2975, the Community Infrastructure Levy (Amendment) Regulations 2013/982, the Community Infrastructure Levy Amendment (Regulations) 2014/385; and the Localism Act 2011) and **CIL Regulation** means a CIL Regulation contained in the CIL Regulations;
- 30.2 The Seller shall indemnify and keep indemnified the Buyer in respect of any and all costs claims losses damages expenses actions proceedings or liabilities arising directly or indirectly and/or incurred by any failure of the Seller to comply with its obligations to discharge any Community Infrastructure Levy payable in respect of the Development (and any variation thereto) and in respect of the development of the estate of which the Property forms part; and
- 30.3 The Seller shall be responsible for claiming all social housing relief in respect of any chargeable development and shall not make the application for social housing relief or for any other type of relief without the Buyer's prior approval to the form of the application including (without limitation) the relief assessment required in accordance with CIL Regulation 51 which must identify the Property as qualifying dwellings and/or qualifying communal development for the purposes of CIL Regulation 51; and
- 30.4 The Seller shall not at any time withdraw or transfer or permit to be withdrawn or transferred any assumption of liability made in accordance with the CIL Regulations.

31 **SIGNAGE**

The Buyer shall be permitted to erect signage at the Site for the purpose of promoting its presence at the Site, such signage to be erected in a position to be agreed with the Seller acting reasonably (such signage in any event to comply with Homes England and local housing authority requirements).

32 **ANTI-CORRUPTION**

The Seller undertakes that it shall comply with the Anti-Bribery Policy during the performance of its obligations under this Agreement.

**SCHEDULE 1
THE DRAWINGS**

**SCHEDULE 2
PLAN 1**

**SCHEDULE 3
APPROVED PLANS (INC EMPLOYERS REQUIREMENTS) AND SPECIFICATION**



Commented [JQM6]: SEE COMMENYS ABOVE
REGARDING EMPLOYERS REQUIREMENTS

Section 106

Development Agreement Requirements & Specification

For

TorVista Homes

October 2020

Document Control		
Stage	Details	Signature / Comments
Prepared by		
Checked by		
Status		

Revision History		
Date Revised	Revision Detail	Details / Comments

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Section 1 – Variation Tracking Sheet

Employers Requirements Variation Tracking Sheet

Name & Address of Scheme: *Insert as applicable*
 Developer: *Insert as applicable*
 Employers Requirements version: *Insert as applicable*
 Contract Type (JCT / Development Agreement) *Insert as applicable*

ER Clause No.	Proposed Variation	Implications Risks and costs	Comments	Approved
				Y/N

Signature of Officer:

Date:

Checked by Manager:

Date:

Signed by Assistant Development Director
 – Construction and Technical:

Date:

■ Section 2 – Project Particulars

Development Agreement Information

As a minimum, the development agreement shall include:

Employer: []
[Insert Address]

Schedule of Accommodation:

Schedule of accommodation including the following as a minimum:

Number	Tenure	Unit Type/Ref	Beds	Persons	Area (m2)

List of Drawings:

List of drawings including the following information as a minimum:

Consultant	Drawing No.	Revision	Description	Planning approved?

■ Section 3 – Warranties and Statutory Requirements

Home Warranty Cover

3.01 Home Warranty Cover is required in respect of all dwellings. The Developer must be registered with the National House Building Council (NHBC) or similar and construct all dwellings to their prescribed standards and pay all charges in connection with the provision of the following: -

- i) Enter into an NHBC Buildmark Choice Agreement to include all additional cover under Options 1 and 2 (Insolvency Cover before Practical Completion and Professional Fees) and with a policy excess of £950.
- ii) Provide the Employer with a copy of the forms and an NHBC Invoice/Receipt which will confirm that the appropriate cover is in place prior to certification of the first application for payment.

3.02 CDM Regulations

The Developer shall be named as the Client for the purposes of the CDM 2015 regulations and shall be responsible for the appointment of the Principle Contractor and Principle Designer and comply with all requirements of the regulations.

The Developer must provide written evidence that the F10 notification and construction phase health and safety plan has been approved by the Principle Designer prior to Start on site. The Developer shall provide evidence that the Health & Safety files have been reviewed and approved by the Principle Designer prior to handover.

3.03 Adoption Agreements

In each instance the Developer shall be responsible in all respects for completing bonds, deposits and warranties necessary until adoption takes place and for all costs and charges whatsoever including commuted sums arising under the adoption process. Until full adoption is achieved under each separate Agreement the Developer shall be responsible for all maintenance obligations and associated costs in respect of the areas in question. The Developer shall provide written confirmation from the Local Highways Authority that they are happy for dwellings to be occupied should a part 1 certificate for S.38 works not be in place.

3.04 Party Wall Agreements

The Developer shall provide proof of sign-off of any party wall awards which are relevant to the S.106 dwellings.

■ Section 4 – Handover Process

4.01 Refer **appendix B** for handover process and information requirements

4.02 The Health and Safety File. The Developer shall provide evidence that the Health & Safety files have been reviewed and approved by the Principle Designer prior to handover.

- 4.03 A standard Home User Guide (HUG) can be found in **appendix D** and shall be amended by the Developer to include scheme specific information.

■ Section 5 – Defects Liability Period

- 5.01 Refer **appendix C** for response times and categories.
- 5.02 The Developer must provide a sign off sheet to the Employer to prove completion of the works within this timescale. Failure to provide sign off will result in retention monies being used by the Employer to remedy a reported defect that falls outside these timescales. The Developer should be aware that the Employer is liable for compensation to our customers for defects that are not corrected in the specified timescale.

■ Section 6 – Retention

- 6.01 Retention monies will be held at the rate of:
- £1000 per unit until certificate of making good defects
 - £500 per unit for section agreements that the client is party to.

■ Section 7 – Insurances

- 7.01 Current insurance will be required to the following levels:

Insurance	Level
Public Liability Insurance	£5,000,000.00 (five million pound) minimum
Employers Liability Insurance	£5,000,000.00 (five million pound) minimum
Professional Liability Insurance	£5,000,000.00 (five million pound) minimum

■ Section 8 – Monitoring Progress

- 8.01 Site meetings will be held at least monthly. At each site meeting the Developer shall present a written report.
- 8.02 The Developer shall ensure the availability of accommodation at the time of such site meetings.
- 8.03 If applicable, applications for Interim Payments are to be prepared in conjunction with the Employer's Agent.

■ Section 9 – Information Requirements

Information required prior to Certification of the first interim/stage application for payment
Confirmation that Building Regulation approval subject to conditions has been obtained.
Written confirmation of discharge of pre-commencement conditions from the Local Planning Authority.

The Developer must provide written evidence that the construction phase health and safety plan has been approved by the Principle Designer prior to start on site.
Confirmation of registration of the scheme with the NHBC showing that the appropriate cover is in place, including all Options as required.

Items for the Employers Approval: The Developer shall allow 2 weeks in the construction programme for these approvals to be obtained and approved by the Employer

Layout of all electrical points (power and lighting), heat source and radiator positions, boiler positions, mechanical extract vents;

Kitchen unit layouts and colour choices (minimum 5 style options) for worktops, door frontals and handles for all tenures. Note: Shared Ownership units to be offered with upgrade choice.

Sanitaryware choices including taps and showers

Range and colour choices for vinyl flooring, ceramic wall and floor tiling, or other finishes as maybe specified for homes and communal areas

Internal wall decoration colours- homes and communal areas

Location of communal satellite dish in blocks of flats

Location of site signboards

Section 10 – Postal Addresses

- 10.01** The Developer, in consultation with the Employer and the Local Authority, will be responsible for obtaining street names and postal numbering for the completed development and for providing appropriate street signs. The Developer shall provide to the Employer a full schedule of postal addresses against plot numbers.

Section 11 – Inspections

- 11.01** The Employer has a designated Clerk of Works who will visit site on a regular basis and access must be allowed at any time, reasonable notice will be given. No instructions issued by the Clerk of Works or Employer shall deemed to be a change unless the Employer's Agent issues a written instruction to the same effect.

Section 12 – Site Signboard

- Within 4 weeks of the execution of the contract the Developer shall supply, erect in a prominent position and maintain a scheme signboards.
- Prior to erection the Developer shall make application for and obtain any Planning Approval which may be required for the position of the signboard.
- Sign boards shall be obtained from the client: A typical signboard layout will be provided by the client. The scheme signboard shall include the following details as appropriate;
 - Project title and description of the works
 - Details and logo of the Employer
 - Details and logo of any Funding Authority as required.

Section 13 – Specification for Affordable Rented Homes

13.01 Core Design Standards

Core Design Standards	
SAP Rating B - SAP 2012 Version	To meet Building Regulations.
Lifespan of Components	60 years required overall.
Floor Areas	Refer to table at 13.02
Internal Storage	Refer to table at 13.03
CDM Regulations	Current 2015 regulations.

Note: Where S.106 agreements or planning requirements dictate higher requirements to that shown above then this is to be recorded on the ER variation tracking sheet in section 1.

13.02 Floor Areas

The following is intended as a guide. Any deviation from the following floor areas must be approved by the client.

Floor Areas (sq.m)		
1 bed space	1b1p house or flat	30 sq. m
2 bed spaces	1b2p house or flat	45 sq. m
3 bed spaces	2b3p house or flat	57 sq. m
4 bed spaces	2b4p flat	67 sq. m
	2b4p house	
	3b4p flat	
	3b4p house	
5 bed spaces	3b5p flat	75 sq. m
	3b5p house	82 sq. m
	4b5p house	82 sq. m
	3b5p house (3 storey)	85 sq. m
	4b5p house (3 storey)	85 sq. m
6 bed spaces	3b6p house	95 sq. m
	4b6p house	95 sq. m
	4b6p house (3 storey)	100 sq. m

13.03 Storage Requirements

General Storage Requirements (sq.m)		
1 bed space	1b1p house or flat	1.5 m2
2 bed spaces	1b2p house or flat	1.5 m2
3 bed spaces	2b3p flat	2.25 m2
	2b3p house	
4 bed spaces	2b4p flat	3.0 m2
	2b4p house	
	3b4p flat	
	3b4p house	
5 bed spaces	3b5p flat	3.75 m2
	3b5p house	
	4b5p house	
	3b5p house (3 storey)	
	4b5p house (3 storey)	
6 bed spaces	4b6p house	4.5 m2
	4b6p house (3 storey)	

13.04 Layout Requirements

Layout
<ul style="list-style-type: none"> • WCs not to be directly accessed off kitchen or living rooms. • Primary access to garden not to be through bedroom. • Rooms either side of party walls and floors to be the same use (as far as possible). • Kitchen layouts to meet internal storage tabled above. Note: Kitchen layouts must include of 1nr full drawer unit to approval of the client.

13.05 Specification Requirements

Superstructure
<ul style="list-style-type: none"> • Blocks of flats of 3 or more storeys are not to be constructed using timber frame methods. • Flat roofs, GRP dormers and chimneys to be provided with guarantee of 20 yrs minimum and where available insurance backed. • Fascias and soffits to be Upvc. • Windows (and roof lights) and glazing units to be provided with manufacture guarantee. • Upper floor windows to be fitted integral with child restrictors easy clean hinges. • All windows to be lockable (excluding egress windows for fire escape) • All front doors (including flats) to be fitted with chrome numerals, security chain, viewer, letter flap or post box if not provided to flats. • A door entry system must be provided to communal flat entrances. Note: Fob operated door entry systems will not be permitted and must be to the approval of the client. • Sound testing required minimum 2 tests (by UKAS approved consultant) per 10 dwellings in a group or sub-group to meet Building Regulations standards in Approved Document E.

Finishes
<ul style="list-style-type: none"> Flats: Communal floors and stairs in flats to be finished in Heckmondwike Supacord (or equivalent as agreed by the client). Flats: Burmatex 7700 grime buster (or equivalent) barrier matting to be fitted full width of corridor and 2m deep at all entrance doors. Pre-cast concrete flooring system designed to appropriate loadings for residential use complying with building regulations (to include system to prevent noise transfer through airborne or impact sound). Noise insulation will be incorporated between unit wall and floors at least to the requirements of the Building Regulations, and that services stacks and extractors will be suitably insulated against noise. Kitchen, WC and wet rooms to be finished in non-slip vinyl sheet which passes beneath the units/sanitaryware. Tiling to kitchen to be from worktop to underside of wall unit for entire length of fittings and to the same height in cooker and fridge/freezer spaces, all window cills to be tiled. Tiling to bathroom to be full height around tap end of bath and long return wall, reducing to 3 courses for other enclosing wall. Any boxing and window cills to be tiled. Tiling to cloakroom to be 300mm above washbasin. Window cills to have 25mm thick x 219/244mm wide. MDF moisture resistant, bullnosed on front edge and returns, painted white, will be provided to all windows, except when located within the bathroom which will be tiled. Flats: Communal walls to be finished in flame retardant Crown Timonox paint. All painted wall and ceilings shall receive 1 x mist coats and 2 x full coat.

Fittings
<ul style="list-style-type: none"> Bath - 140Ltr steel bath with anti-slip and twin chrome grips, styrene bath panel, Blender valve. Thermostatic shower to be provided above bath- Bristan Artisan exposed bar in chrome (or equivalent). Shower curtain rail to be provided (not telescopic). Kitchens to be BS certified with 18mm carcass and 38mm worktops. A range of at least 5 door fronts and 5 worktops must be available and up to 3 different schemes may be chosen across the site. Minimum 500mm worktop to be provided either side of the cooker space in rented units. 75 x 50 mm curtain battens to be provided to all window and patio/French door openings to affordable rented plots (curtain battens are not required to shared ownership plots). Door stops to be provided. Statutory and directional signage shall be fitted in blocks of flats. In addition a Fire Notice sign and 'No Smoking' signed found in Appendix E & F are to be supplied and fitted by the Developer.

Mechanical and Electrical

- Pipework to be concealed and visible tails to be copper.
- Gas boilers shall be SEDBUK efficiency Band A rated condensing boiler with dry NOx level of not exceeding 40 mg/kWh and registered by the Energy Saving Trust. **Note:** Where ideal boilers are supplied an **Ideal System Filter** is to be installed to extend manufactures warranty.
- Combi boilers systems to be provided for all units of 3 bedrooms or fewer, cylinder systems to be considered for 4 bedrooms or more.
- Gas and electric points to be supplied to cooker points (where available).
- Thermostatic shower to be provided above bath in all bathrooms. Shower curtain rail to be provided (not telescopic) to rented and screen to shared ownership homes.
- Anti-scald devices need to be fitted to all hot water outlets in rented units only (not required for Shared Ownership units).
- Thermostatic controls to baths to limit the temperature to 48degrees are required to all plot tenures.

Electrical provision to meet following requirements:

Provision	Living	Dining	Kitchen	Bedrms	Bathrm	Hall	Store
Double Switched Sockets	3	2	4	2 in each		1	1
Kitchen Appliance Spurs			2-3				
TV Aerial Links	1	plus secondary TV point to one bedroom					
Phone/Data points	1			1		1	
Shaver socket (only)					1		

- Broadband/Data Points: BT Openreach system (or similar) to be provided with equipment & router positioned in under stairs cupboard or hall cupboard. External cable to blank plate in hall then fibre cable wired to router that feeds CAT 5e sockets in each habitable room.
- Socket and light positions to be approved by the Employer prior to 1st Fix.
- Track lighting with LED bulbs to be provided in rented units.
- One lockable double electrical socket to be provided on every communal landing, and every 10m run of communal corridors.
- Mains wired Carbon Monoxide detectors to be provided near any potential sources of CO.
- Mains wired smoke/heat detectors (with battery back up) to be provided on every storey.
- Houses: Where Virgin fibre cabling is available on the development the external cable should feed to hallway within the property and pre-wired with specific virgin cable to all habitable rooms with master point in the lounge.
- Flats: To be fitted with communal Sky system (consideration to be given to current Sky options required wiring- currently Sky Q) with dish positioned to the Employers approval.
- Flats: Electric meters to be located within cupboard internal to flats and not to be located within communal cupboards,
- Where renewable technologies are installed these must be designed and installed by an approved Renewable Energy Association (REA) and Microgeneration Certification Scheme (MCS) installer and allow the Employer to benefit from any tariffs available through the Clean Energy Cash back schemes, such the Feed in Tariff. Rainwater harvesting and NIBE air source heat pumps are not preferred solutions.

External Works
<ul style="list-style-type: none"> • All public areas to be adopted. • As a minimum, fences between back gardens must be 1.8m Close Boarded Fence. • Fencing between private and public areas must be 1.8m close boarded timber. • All rear gardens to be accessible without having to go through the house with path leading from patio to rear garden gate. • Front and rear gardens shall be turfed with a minimum 150mm clean stone free topsoil. • Communal bin stores and bike stores should be fitted with a keypad lock. • Communal parking to be lit adequately to provide a safe area. • In terms of drainage, distribution roads, main footpaths and parking areas these will be as per the approved layout. • 450 x 450 slabs (900 min wide) laid butt jointed on cement/sand dabs to provide access to unit.

Section 14 – Additional Requirements for Shared Ownership Homes

- 1 All of the specification items above apply and in addition the following
4.01 enhancements are required:

<ul style="list-style-type: none"> • Enhanced range of kitchens, handles and worktops required for kitchen with end panels to match doors. Option for worktop upstand in lieu of wall tiles to be provided. Stainless steel splashback to be provided between hob/extract space. Mitred worktops to be provided in all plots in lieu of metal joint strips
<ul style="list-style-type: none"> • Enhanced choice of wall tiles required for kitchen, bathrooms, cloakrooms.
<ul style="list-style-type: none"> • Enhanced range of floor coverings required, including ceramic tile option if required by Sales.
<ul style="list-style-type: none"> • Chrome track lighting to kitchens to be provided with a minimum 3 spotlights (or recessed if appropriate).
<ul style="list-style-type: none"> • Enhanced ranges of kitchen, bath and basin taps to be provided. Bowl and half stainless-steel sink with pillar taps to be provided.
<ul style="list-style-type: none"> • Bath/Shower screen to be fitted to baths where an over-bath shower has been fitted.
<ul style="list-style-type: none"> • Built-in stainless-steel oven, hob and hood to be provided.
<ul style="list-style-type: none"> • Where extract hood is vented externally separate extract fan in not required.

**SCHEDULE 4
DEFECTS LIABILITY PERIOD PROVISIONS**

- 1 At any time or times during the Defects Liability Period the Agent shall inspect the relevant Unit to ascertain whether any defects have appeared which are due to unfinished works, faults attributable to materials workmanship design method of construction or that are otherwise necessary to be made good for the Seller to comply with its construction obligations under this Agreement ("Defects")
- 2 The Agent shall give the Seller notice of its findings in accordance with paragraph 1 and shall also state and categorise each defect or alleged Defect as follows :-
 - 2.1.1 **Emergency** – requires **IMMEDIATE** response
 - Gas Leaks
 - Dangerous electrical faults
 - Complete lighting failure
 - Serious water leaks
 - Dangerous structures
 - 2.1.2 **Priority** - requires rectification within **24 HOURS**
 - Fire alarm failure
 - Public area lighting failure
 - Public Road lighting failure
 - Defects which prejudice tenants' security
 - Failure of hot/cold water services
 - Blocked drains
 - 2.1.3 **Urgent** – requires rectification within **3 DAYS**
 - Roof Leaks
 - General electrical faults
 - General plumbing faults
 - Boiler or central heating plant malfunctions (which shall be categorised as Priority between 1 November and 30 April)
 - Replacement of unsound flooring
 - 2.1.4 **Routine** – requires rectification within **20 WORKING DAYS**
 - All faults/defects not classified under 2.1.1 to 2.1.4 above.
- 3 The Seller shall use all reasonable endeavours to make good the Defects without expense to the Buyer and should the Seller fail to make good the Defects within the timescale specified above the Buyer may after:
 - 3.1 After 12 hours' after the expiration of the timescale specified above in respect of Defects categorised as Emergency
 - 3.2 After 6 hours' after the expiration of the timescale specified above in respect of Defects categorised as Priority

- 3.3 After 0.5 hours after the expiration of the timescale specified above in respect of Defects categorised as Urgent
- 3.4 and in the case of Routine on having given the Seller not less than 7 Working Days' notice of the same or such notice as is practicable in the circumstances
- employ and pay such other person to carry out such works (or if carried out by the Buyer's employees shall be entitled to an allowance for such works) and all reasonable costs incurred with such employment or a reasonable allowance (as the case may be) shall deducted from the Retention. If the reasonable costs incurred or the reasonable allowance exceeds the Retention for that Unit the Seller shall pay to the Buyer the difference on demand.
- 4 For Defects under categories Emergency Priority or Urgent notification may be by telephone but will be subsequently confirmed in writing – by post or email to []. A note of time, date and person accepting the message will be taken and the time of the telephone message and the timescale specified above in respect of Defects shall commence from the time of the telephone message.
- 5 If it is discovered that works are carried out by the Seller to the Unit which are not wholly or in part attributable to defects the Buyer shall reimburse to the Seller the costs incurred by the Seller in carrying out such works to the extent that they are not attributable to defects and such sums shall be recoverable by the Seller as a debt due under the terms of this Agreement.
- 6 Upon the Seller making good Defects in accordance with paragraph 3 and notifying the Buyer of such fact the Agent shall (subject to the defects having been made good to its reasonable satisfaction) so certify in writing to the Seller without delay.

SCHEDULE 5

Commented [JQM7]: See comment above

PART 1 – BUYER'S HAND OVER PROCESS

PART 2 – HANDOVER DOCUMENTS

Handover documents must include:

- (a) Building Regulation Final Inspection Certificate (plus the initial Building Control approval);
- (b) Energy Performance Certificate in respect of each Unit;
- (c) Predicted EPC (required 4 months before Practical Completion of each Unit)
- (d) Ventilation equipment testing and commissioning certificates;
- (e) Gas boiler testing and commissioning certificates;
- (f) An electrical test certificate in respect of all electrical appliances within the relevant Unit properly completed and signed by an approved electrician and (if applicable) the relevant certificate in respect of fire detection properly completed and signed by an approved electrician;
- (g) A Landlord gas safety test certificate in respect of all gas appliances (if any) within the relevant Unit and Gas Installation Log Book, properly completed and signed by an approved engineer;
- (h) Three sets of properly labelled keys to all doors and windows or such number of keys delivered to the Seller by the supplier;
- (i) Guarantees and warranties for components where identified within the outline specification;
- (j) Where applicable such Instruction/installation/operation manuals as may be supplied to the Seller by the manufacturer or supplier for all installations (e.g. boiler, fans, cooker, washing machine etc.);
- (k) A CD-ROM copy of the Health & Safety File
- (l) A Traffic Management Plan approved by the Principal Designer;
- (m) Gas meter box key (if applicable);
- (n) Shed lock key (if applicable);
- (o) Postal addresses of the Units;
- (p) a CD-ROM with the appropriate as built drawing on it;
- (q) Defects reporting procedure and out of hours contact details;
- (r) Completed Section 38 Agreements in respect of the Estate Road and Section 104 Agreements in respect of the Estate Sewers (including plans) together with a copy of a supporting Bond from a reputable UK based financial institution in relation to the obligations contained in each such Agreement (unless the NHBC or other surety approved by the Buyer has been joined as a party to the each such Agreement as surety);
- (s) The following certifications:-
 - (i) NHBC Final Certificates (not just Cover Notes) for all Units in the Cluster;
 - (ii) the documentation referred to in clause 15.8.2 above; and
 - (ii) receipts from the Local Planning Authority for the discharge of all CIL liabilities in relation to the Building Works
- (t) the Health & Safety File which shall comprise the following items:

- (i) the manufacturers' operating and maintenance manuals (where applicable and available) and a full description of each of the systems installed, including the mode of operation, including in relation to:
 - (a) heating installations
 - (b) heating controls
 - (c) panel heater controls
 - (d) consumer unit
 - (e) extractor fans
 - (f) window installations
 - (g) front and rear doors
 - (h) installed appliances
 - (i) showers (if installed)
 - (j) Gas boiler and programmer
 - (k) Fire alarm (if any)
 - (l) Electric gates (if any)
 - (m) Door entry (if any)
 - (n) Warden call (if any)
 - (o) TV Aerial
 - (p) Consumer unit
 - (q) Out door lights (if any)
 - (r) Thermostatic Radiator Valves
 - (s) Radiators
 - (t) Bathroom and en-suite light fittings
 - (u) Internal doors
 - (v) Ironmongery
 - (w) Sheet vinyl
 - (x) Shower doors
 - (y) Sanitary ware
 - (z) Kitchen and bathroom taps
 - (aa) Kitchen units including worktops and plans
 - (bb) Smoke and heat detectors
 - (cc) Roof tiles
 - (dd) Facing bricks
 - (ee) Water butts / rainwater goods
- (ii) two sets of "as built" drawings including structural and drainage layouts.
- (iii) SAP – Energy Efficiency Ratings
- (iv) Energy Performance (EPC)

- (v) Gas Installation Certificates
- (vi) Electrical Installation and Test Certificates
- (vii) NICEIC Certificates
- (viii) the manufacturers' technical literature (where available) for all items of plant and equipment, assembled specifically for the project, including detailed drawings, electrical circuit details and operating and maintenance instructions.
- (ix) a copy of all Test Certificates for the installations and plant, equipment, valves etc used in the installations including but not limited to:
 - (a) SAP – Energy Efficiency Ratings
 - (b) Energy Performance (EPC)
 - (c) Gas Installation Certificates
 - (d) Electrical Installation and Test Certificates
 - (e) NICEIC Certificates
- (x) a copy of all manufacturers' guarantees or warranties (where available).
- (xi) emergency procedures, including telephone numbers for emergency services.
- (xii) Supplier and manufacturer contact details for kitchen, bathroom, shower, windows and doors, flooring etc.
- (xiii) Sub contractors' contact details.
- (xiv) Plan of roads/footpaths/lighting.
- (xv) Paint numbers for internal and communal areas if applicable.

SCHEDULE 6

PROVISIONS FOR INCLUSION IN EACH ASSURANCE

Each Assurance shall include:

- 1 all such easements for the Units within each Cluster over any adjoining or neighbouring land retained by the Seller as are reasonably required for the intended use of those Units as residential units (including in relation to the use of roads, footpaths, Service Media, Estate Sewers and in relation to visibility splays);
- 2 exceptions and reservations over the unbuilt on area of the Cluster for such retained land of the Seller and such land previously sold by the Seller on the Site as is identified by the Seller (together being hereinafter referred to as the **Excepted Land**) as reasonably required for the intended use of that land (including in relation to the use of (and making connections into) footpaths and Service Media);
- 3 such reasonable covenants on each party consistent with the residential use of each of the Cluster and the Excepted Land;
- 4
 - (a) covenants binding the Seller which are consistent with the Seller's development obligations contained in this Agreement;
 - (b) Step in rights for the Buyer to enter onto the Excepted Land to complete any outstanding Building Works on the Site that are not completed in accordance with the terms of this Agreement with provision for the Seller to reimburse the costs of the Buyer incurred in the rectification of all such breaches;
 - (c) provision for the registration of a Restriction against the Seller's title in order to prevent the disposal of any part of the remainder of the Site save for individual dwellings other than with the prior written consent of the Buyer;
- 5 without prejudice to the generality of paragraph 1 above also to include in the Transfer:
 - 5.1 a right of way in favour of all the Units in a Cluster for all purposes in connection with the use of the Units within the Cluster at all times over and along the Estate Roads as are constructed (or to be constructed) and give access to the nearest publicly maintained highway (and a right of access of all other driveways footpaths and other communal areas are intended for the use of more than one dwelling as appropriate and with or without vehicles as appropriate);
 - 5.2 a right to connect into and thereafter use the Service Media and Estate Sewers constructed to the boundaries of the Cluster for all purposes connected with the use of the Units with the Cluste; and

- 5.3 rights to use all of the intended amenity areas within the Site for quiet recreational purposes;
- 6 the easements, exceptions, reservations and covenants referred to in the preceding paragraphs above shall also extend to any easements, exceptions, reservations and covenants as may be required to be imposed by a relevant highway authority and by any utility provider;
- 7 such other covenants and regulations as shall be reasonably imposed by the Seller in the interests of good estate management;
- 8 provisions for all non-adoptable amenity areas and other non-adoptable facilities within the Site as are not acquired by the Buyer (to include the freehold reversion of buildings (and their curtilage) comprising flats and/or maisonettes) to be transferred to a Management Company established by the Seller but which is:-
- 8.1 to take a freehold transfer of all such amenity areas etc for a nominal consideration of one pound within 1 month of disposal (by way of freehold transfer or the grant of a lease exceeding 21 years) of the last unit to be constructed pursuant to the Planning Permission; and
- 8.2 which is to be (with effect from the date referred to in 8.1 above) wholly owned and controlled by the owners of the dwellings on the Site with each property owner being entitled to one ordinary share for each and every dwelling owned (the Memorandum and Articles of such company to be previously approved by the Buyer acting reasonably); and
- 8.3 which said Management Company is to assume responsibility for the repair, maintenance and upkeep of all non-adoptable amenity areas and other non-adoptable facilities within the Site as are not acquired by the Buyer (to include the structural and common parts and common areas of all buildings comprising flats and/or maisonettes as are transferred to the said Management Company);
- 9 an obligation on the part of the Buyer and its successors in title to contribute a reasonable fixed set percentage contribution towards the inspection, repair, maintenance, replacement, renewal, resurfacing, repainting, redecoration and cleansing of all landscaping amenity areas and other facilities either now or in the future within the Site the use of which shall be shared between the Units and any other part or parts of the Site (and which said facilities are not intended for adoption by a Relevant Authority) the said contribution to be apportioned equitably between the units on a the Site depending on the facilities that each shall unit benefit from/ have the use of;
- 10 the covenant referred to in sub-clause 9 above shall include a contribution towards any sinking fund to be established by the Management Company as a future fund towards major works;
- 11 the obligations referred to paragraphs 9 and 10 above shall be secured by way of a separate restriction to be registered against each Unit in the Buyer's title so as to ensure

that the Buyer (and its successors in title and their respective chargees) will not be able to dispose of any Unit without previously procuring a deed of covenant (in favour of the aforementioned Management Company) to abide by the covenants referred to in paragraphs 9 and 10 above with effect from the date of any freehold transfer of any such Unit by the Buyer or its successors;

- 12 an obligation on the part of the Seller to procure that similar covenants to those imposed on the Buyer are also imposed upon the purchasers of the remainder of the Site to include the payment of contributions of the nature referred to in paragraphs 9 and 10 above to the intent that the costs incurred by the said Management Company (and its appointed managing agents if any) are covered in full;
- 13 an obligation on the part of the Seller to make up any shortfall in the funding of the Management Company's obligations in the Assurance as a result of any dwellings on the Site remaining unsold AND a further obligation on the part of the Seller to take over the responsibilities of the Management Company in the event of the Management Company ceasing to exist or (if requested to do so by the Buyer acting reasonably) in the event of the Management Company failing to carry out its duties.

SIGNED as a deed by _____
[_____]
acting by _____

EXECUTED as a deed by
[]
by affixing the Common Seal
in the presence of:

Authorised Signatory

Authorised Signatory