

DATED

(1) SPELTHORNE BOROUGH COUNCIL

(2) ANGLE PROPERTY (RLP SHEPPERTON) LLP

**PLANNING OBLIGATION BY DEED OF AGREEMENT
UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO
LAND KNOWN AS BUGLE NURSERIES, UPPER HALLIFORD ROAD,
SHEPPERTON, TW17 8SN**

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THIS DEED is made this

day of

2023

BETWEEN

PARTIES

- (1) **SPELTHORNE BOROUGH COUNCIL** of Knowle Green, Staines TW18 1XB (the "**Council**"); and
- (2) **ANGLE PROPERTY (RLP SHEPPERTON) LLP** (LLP Regn. No. OC418732) whose registered office is situated at Third Floor Queensbury House, 3 Old Burlington Street, London, W1S 3AE (the "**the Owner**")

RECITALS

- (A) The Council is the local planning authority for the purposes of the Act for the area within which the Site is situated and by whom the obligations in this Deed are enforceable.
- (B) The Owner is the freehold owner of the Site under HM Land Registry Title Numbers SY541778 and SY846713.
- (C) The Owner submitted the Application to the Council for planning permission for the Development on 21 November 2022.
- (D) The Owner submitted the Appeal on the basis that the Council failed to give notice of its decision within the relevant statutory period (non-determination).
- (E) The Owner and the Council have entered into this Agreement to secure the obligations contained in this Agreement in the event that the Appeal is allowed, and planning permission is granted for the Development.
- (F) The Owner requests that the Inspector has regard to the planning obligations in this Deed as considerations material to the determination of the Appeal.
- (G) The Parties are satisfied that the planning obligations secured by this Deed are necessary to make the Development acceptable in planning terms, are directly related to the Development and are fairly and reasonably related in scale and kind to the Development, as set out in the schedule.

NOW THIS DEED WITNESSES

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

For the purposes of this Deed (including the Recitals) the following expressions shall have the following meanings

"Act" means the Town and Country Planning Act 1990 (as amended).

"Appeal" means the appeal dated 10 July 2023 and given reference APP/Z3635/W/23/3325635 made by the Owner against the Council's non-determination of the Application.

"Application" means the application for outline planning permission with approval sought for scale, access and siting, with details of appearance and landscaping reserved submitted to the Council on 21 November 2022 for the Development and allocated reference number 22/01615/OUT.

"Borough" means the administrative area of the Council.

"Commencement Date" means the date on which Commencement of the Development takes place.

"Commencement" means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site survey, site clearance, all below ground works, demolition work, archaeological investigations for the purpose of assessing ground conditions, preparation work, remedial or remediation work in respect of any contamination or other adverse ground conditions diversion and laying or removal of services erection of any temporary means of enclosure including fences and hoardings, the temporary display of site notices or advertisements and **"Commence Development"** and

"Commencement" and **"Commence"** shall Mutatis Mutandis be construed accordingly.

"Development" means demolition of existing buildings and structures, removal of waste transfer facility and the redevelopment of the site for up to 80 residential units and the provision of open space and a play area, plus associated works for landscaping, parking areas, pedestrian, cycle and vehicular routes.

"Dwelling" means any dwelling to be constructed pursuant to the Planning Permission.

"Inspector" the inspector appointed by the Secretary of State for Levelling Up, Housing and Communities to determine the Appeal.

"Occupation" means physical use of the land or buildings for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and **"Occupied"** and **"Occupy"** shall mutatis mutandis be construed accordingly.

"Parties" means the parties to this Agreement.

"Planning Permission " planning permission for the Development granted by the Inspector pursuant to the Appeal.

"Site" means the land at Bugle Nurseries, Upper Halliford Road, Shepperton, TW17 8SN as shown edged red on the plan attached to this Agreement at Appendix 1 being the land registered at the Land Registry under title numbers SY541778 and SY846713.

"Working Days" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday and **"Working Day"** shall be construed accordingly.

1.2 Interpretation

- 1.2.1 Where in this Deed reference is made to any clause paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in this Deed.
- 1.2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeable in that manner.
- 1.2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 1.2.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it.
- 1.2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.
- 1.2.7 The headings and contents list are for reference only and shall not affect construction.
- 1.2.8 The words "including" and "include" shall be deemed to be followed by the words "without limitation".

2. LEGAL BASIS

- 2.1 This Deed is made pursuant to Section 106 of the Act. To the extent that they fall within the terms of Section 106 of the Act, the obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council in relation to the Site against the Owner and its successors in title.
- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained

in section 111 Local Government Act 1972, section 1 Localism Act 2011 and all other enabling powers.

3. CONDITIONALITY

3.1 Clauses 1, 2, 3 and 5 to 13 (inclusive) shall take effect on the date of this Agreement.

3.2 Clause 4.1 of this Deed is conditional upon the grant of Planning Permission.

3.3 In the event that the Inspector states in his decision letter either:

3.3.1 that a planning obligation contained in this Deed (or relevant part of a planning obligation) is not a material consideration in the granting of planning permission pursuant to the Appeal; or

3.3.2 that a planning obligation contained in this Deed (or relevant part of a planning obligation) does not meet any one or more of the tests for planning obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations 2020 and accordingly attaches no weight to that obligation in determining the Appeal;

then that planning obligation (or part of the planning obligation as appropriate) shall cease to have effect and the Owner shall not be required to comply with that obligation.

4. OBLIGATIONS OF THE OWNER

4.1 In the event that the Owner implements the Planning Permission, the Owner, so as to bind the Site, covenants with the Council to comply with the obligations set out in Schedule 1 of this Deed.

5. COVENANTS BY THE COUNCIL

5.1 The Council covenants with the Owner to comply with the respective obligations set out in the Schedule to this Deed and to act reasonably, properly and diligently in exercising their discretion and discharging their functions under this Deed. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Deed, the Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation.

5.2 The Council covenants with the Owner to provide written confirmation, upon written request of the Owner, of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed or otherwise discharged.

6. ENFORCEABILITY

6.1 No person will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs except to the extent that they have caused or contributed to that breach, but they will remain liable for any breaches of this Deed occurring before that date.

6.2 This Deed shall not be enforceable against:

6.2.1 owner-occupiers or tenants of Dwellings;

6.2.2 any service companies or statutory undertakings who purchase or take a lease or otherwise become proprietor of any land on the Site for the purpose of providing services or facilities in connection with the Development; and

6.2.3 any mortgagee of the Site (or any part thereof) unless they are a mortgagee in possession of the Site (or relevant part thereof).

7. COUNCIL'S COSTS

7.1 The owner shall pay to the Council on or before the date of this Deed:

(a) The Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed; and

(b) The sum of £350 as a contribution towards the Council's costs of monitoring implementation of this Deed.

8. MISCELLANEOUS

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

8.2 This Deed shall be registrable as a Local Land Charge by the Council.

8.3 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

8.4 Following the performance and full satisfaction of all the obligations contained in this Deed and upon a request in writing the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

8.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

- 8.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is quashed revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or if both expire prior to the Commencement of Development.
- 8.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 8.8 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 8.9 Representatives of the Council may enter upon the Site at any reasonable time subject to providing reasonable written notice to the Owner (and immediately in the event of an emergency) to ascertain whether the terms of this Deed are or have been complied with subject to complying with all health and safety requirements required by the Owner.
- 8.10 No variation to this Deed shall be effective unless made by deed and for the avoidance of doubt the consent seal signature execution or approval of a purchaser tenant or residential occupier of any Dwelling or their mortgagees shall not be required to vary any part of this Deed.
- 8.11 If any provision of this Deed is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Deed shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of this Deed without illegality provided that any party may seek the consent of the other or others to the termination of this Deed on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Deed.

9. WAIVER

- 9.1 No waiver (whether expressed or implied) by the Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council (or the Owner) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10. CHANGE IN OWNERSHIP

- 10.1 Otherwise than in relation to individual purchasers of Dwellings, Affordable Housing and transfers to the utility companies the Owner shall give to the Council within one month of

the Owner disposing of any part of the Site written notice of the name and address of the person to whom the Site or any part has been transferred.

11. VAT

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

12. DISPUTE PROVISIONS

- 12.1 Without prejudice to the rights of any party to this Deed to take alternative action save for matters of construction (which shall be matters for the Courts) any dispute or disagreement arising under this Deed including questions of value or any question of reasonableness may be referred at the instance of any party for determination by a single expert whose decision shall be final and binding on the parties.

- 12.2 The following provisions and terms of appointment shall apply to such disputes or disagreements and questions:

12.2.1 the expert shall have at least 10 years post qualification experience in the subject matter of the dispute;

12.2.2 the expert shall be agreed between the parties or appointed by the President of the Royal Institute of Chartered Surveyors at the request of any part to the dispute;

12.2.3 the persons calling for the determination shall make written submissions to the expert and the other parties within 10 working days of his appointment;

12.2.4 the other parties shall have 10 working days from the receipt of such written submission or such extended period as the expert shall allow to respond;

12.2.5 the expert shall disregard any representations made out of time and shall make his decision within 10 working days of receipt of the representations under sub clause 12.2.4 or if none the expiry of the period referred to in sub clause 12.2.3;

12.2.6 the expert's decision shall be in writing and give reasons for his decision; and

12.2.7 the expert's fees shall be met by the person calling for the determination unless the other party is found to have acted unreasonably in which case the other party shall meet such costs and reimburse any expert's fees already paid by the other party.

13. JURISDICTION

13.1 This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

14. DELIVERY

14.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

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

SCHEDULE 1 — OBLIGATIONS BINDING THE SITE IN RESPECT OF THE DEVELOPMENT

In the event that the Owner implements the Planning Permission, the Owner covenants with the Council as follows:

In this Schedule unless the context requires otherwise the following words and expressions shall have the following meanings:

"the 2008 Act"

the Housing and Regeneration Act 2008.

"Additional First Homes Contribution"

means in circumstances where a sale of a First Homes Dwelling other than as a First Home has taken place in accordance with paragraphs 7.8 or 7.9 of Part 3 of this Schedule, the lower of the following two amounts:

- (a) 30% of the proceeds of sale; and
- (b) the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Homes Dwelling under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Homes Dwelling

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the Disposal of the First Homes Dwelling other than as a First Home.

"Affordable Housing"

means housing designed to meet the needs of eligible households whose incomes are not sufficient to allow them to access decent and appropriate housing on the open market in the form of Affordable Rent Housing made available through a Registered Provider and First Homes.

"Affordable Housing Dwellings"

at least 50% of the Dwellings (rounded down to the nearest whole Dwelling) to be provided in accordance with the Affordable Housing Mix and the term **"Affordable Housing Dwelling"** shall be construed accordingly.

"Affordable Housing Mix"

means:

- (a) 75% of the Affordable Housing Dwellings to be provided as Affordable Rent Housing and
- (b) 25% of the Affordable Housing Dwellings to be provided as First Homes.

"Affordable Rent Dwellings"

means the Affordable Housing Dwellings to be provided as Affordable Rent Housing pursuant to the Affordable Housing Mix and **"Affordable Rent Dwelling"** shall be construed accordingly.

"Affordable Rent Housing"

means Affordable Housing to be provided at monthly rents (excluding service charges) not exceeding 80% of Market Rent.

"Armed Services Member"

means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Homes Dwelling, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service.

"Chargee"

any mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **"Receiver"**) of the whole or any part of the Affordable Rent Dwellings or any persons or bodies deriving title through such mortgagee chargee or Receiver.

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| "Cluster" | shall mean a group of First Homes Dwellings which does not have contiguous boundaries with another group of First Homes Dwellings. |
| "Compliance Certificate" | means written confirmation from the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 7.2 applies the Eligibility Criteria (Local). |
| "Contract" | a contract with the Registered Provider for the Owner to sell the freehold or grant a lease for a term not being less than 125 years of the Affordable Rent Dwellings. |
| "Development Standard" | <p>means a standard to fully comply with the following:-</p> <ul style="list-style-type: none"> (a) "Technical housing standards — nationally described space standards" published by the Department for Communities and Local Government in March 2015; (b) all national construction standards and planning policy relating to design which may be published by the Secretary of State or by the Council from time to time; (c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited; (d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings); <p>and the same may be amended by written agreement of the Parties in accordance with paragraph 6.1 of Part 3 of this Schedule.</p> |
| "Discount Market Price" | means a sum which is the Market Value discounted by at least 30%. |

"Disposal"

means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Homes Dwelling other than:

- (a) a letting or sub-letting in accordance with paragraph 8 of Part 3 of this Schedule;
- (b) a transfer of the freehold interest in a First Homes Dwelling or land on which a First Homes Dwellings is to be provided before that First Homes Dwelling is made available for occupation except where the transfer is to a First Homes Owner;
- (c) an Exempt Disposal;

and **"Disposed"** and **"Disposing"** shall be construed accordingly.

"Eligibility Criteria (National)"

means criteria which are met in respect of a purchase of a First Homes Dwelling if:

- (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and
- (b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National).

"Eligibility Criteria (Local)"

means criteria (if any) published by the Council at the date of the relevant disposal of a First Homes Dwelling which are met in respect of a disposal of a First Homes Dwelling if:

- (a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local) (if any); and
- (b) any or all of criteria (i) (ii) and (ii) below are met:

- (i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or
- (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or
- (iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker

it being acknowledged that at the date of this agreement the Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Homes Dwelling.

"Exempt Disposal"

means the Disposal of a First Home in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner;
- (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner;
- (c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order;
- (d) Disposal to a trustee in bankruptcy prior to sale of the relevant First Homes Dwelling (and for the avoidance of doubt paragraph 9 of Part 3 of this Schedule shall apply to such sale).

Provided that in each case other than (d) the person to whom the Disposal is made complies with the terms of paragraph 8.

"First Home"

means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap and **"First Homes"** shall be construed accordingly

"First Homes Dwellings"

means the Affordable Housing Dwellings to be provided as First Homes pursuant to the Affordable Housing Mix and **"First Homes Dwelling"** shall be construed accordingly.

"First Homes Owner"

means the person or persons having the freehold or leasehold interest (as applicable) in a First Homes Dwelling other than:

- (a) the Owner; or
- (b) another developer or other entity to which the freehold interest or leasehold interest in a First Homes Dwelling or in the land on which a First Homes Dwelling is to be provided has been transferred before that First Homes Dwelling is made available and is disposed of for occupation as a First Home; or
- (c) the freehold a tenant or sub-tenant of a permitted letting under paragraph 8.

"First Time Buyer"

means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003.

"Income Cap (Local)"

means £80,000 or such other local income cap as may be published from time to time by the Council and is in force at the time of the relevant disposal of the First Homes Dwelling.

"Income Cap (National)"

means:

- (a) in the case of a First Home situated within the administrative area of any London Borough Council (including the City of London), ninety thousand pounds (£90,000); and
- (b) in the case of any other First Home, eighty thousand pounds (£80,000).

or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home.

"Key Worker"

means a person employed or with a confirmed job offer in one of the following categories of employment:

- (a) Health and social care: doctors, nurses, midwives, paramedics, social workers, care workers and other staff employed within this sector who are critical to service delivery;
- (b) Education and childcare: childcare, teaching staff, specialist education professionals (including FE teachers and Early Years/nursery teachers), Local Authority Therapists (including Occupational Therapists and Speech and Language Therapists) and Local Authority Educational Psychologists;
- (c) Public safety and national security: Police personnel, Armed forces personnel, Fire and rescue service employees and Prison and probation staff;
- (d) Public sector and charity workers: staff of any organisation run and funded by tax-payers' or paid staff of any registered charity; and

other specialised services in exceptional circumstances can be assessed on merit and are to be agreed in writing by the Council's Group Head of Service of Community Wellbeing.

"Local Connection Criteria"

means such local connection criteria as may be designated and published by the Council from time to time as its "First Homes Local Connection Criteria" and which is in operation at the time of the relevant disposal of the First Homes Dwelling and for the avoidance of doubt any such criteria or replacement criteria in operation at the time of the relevant disposal of the First Homes Dwelling shall be the "Local Connection Criteria" which shall apply to that disposal it being acknowledged that at the date of this Deed the Council has not designated any criteria as Local Connection Criteria.

"Local People"

persons whose principal or only home is within the Borough.

"Market Rent"

the estimated amount for which an Open Market Dwelling could be leased or let at the date of valuation between a willing landlord and a willing lessee or tenant on an appropriate lease or tenancy terms after proper marketing where those parties have acted knowledgeably, prudently and without compulsion to be assessed in accordance with a property's size, location and individual characteristics and the RICS approved valuation methods or intended or established valuation custom and practice.

"Market Value"

means the open market value as assessed by a Valuer of a First Homes Dwelling as confirmed to the Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation.

"Mortgagee"

means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Homes Dwelling including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home.

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| "Nominations Agreement" | means an agreement entered into between the Owner and/or the Registered Provider with the Council detailing the process for nominating and selecting occupiers for the Affordable Rent Dwellings. |
| "Notice of Commencement" | the written notice advising of the proposed Commencement Date of the Development. |
| "Open Market Dwelling" | means a Dwelling which is not an Affordable Housing Dwelling and the term "Open Market Dwellings" shall be construed accordingly. |
| "Practical Completion" | the issue of a certificate of practical completion by the Owner's architect certifying the completion of any part of the Development so that such part can be used for the purpose and operate in the manner for which it was designed and "Practically Complete" and "Practically Completed" shall be construed accordingly. |
| "Price Cap" | means the amount for which the First Homes Dwelling is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State. |
| "Open Space" | the area of land to be provided within the Site as part of the Development as shown shaded green on the plan attached to this Deed at Appendix 2. |
| "Open Space Implementation and Maintenance Programme" | a programme for the provision, layout, access and maintenance of the Open Space which may be updated from time to time in writing by agreement between the Owner and the Council. |
| "Registered Provider" | means a body registered as a provider of social housing under the 2008 Act. |
| "SDLT" | means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect. |

"Secretary of State"

means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function.

"Valuer"

means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity.

PART 1 - NOTIFICATION

1. To provide a Notice of Commencement in respect of the Development to the Council no later than 20 Working Days prior to the Commencement Date of the Development.
2. To provide notice of Occupation of the first Dwelling within the Development no later than 10 Working Days prior to the Occupation of the first Dwelling within the Development.

PART 2 – AFFORDABLE RENT HOUSING

1. To construct the Affordable Rent Dwellings in accordance with the Affordable Housing Mix on the Site.
2. To procure that prior to Occupation of the Affordable Rent Dwellings a Nominations Agreement is entered into between the Council and the Registered Provider.
3. No more than 50% of the Open Market Dwellings shall be Occupied until 100% of the Affordable Rent Dwellings have been Practically Completed and made ready for Occupation and a Contract has been entered into with a Registered Provider.
4. Subject to paragraph 6 below, the Affordable Rent Dwellings shall be Occupied for no purpose other than as Affordable Rent Housing in perpetuity.
5. In relation to the Affordable Rent Dwellings only, the obligations and restrictions contained in Part 2 of this Schedule shall not bind a Chargee or receiver appointed by a Chargee who has first complied with the provisions of paragraph 6 below and any person or body deriving title through or from them.
6. In relation to the Affordable Rent Dwellings only, any Chargee claiming the protection granted by paragraph 5 above must first:

- (a) give not less than three months' written notice to the Council of its intention to dispose of the Affordable Rent Dwellings pursuant to any default under the terms of a mortgage or charge;
- (b) in the event that the Council responds within two months from receipt of the notice indicating that agreement for the transfer of the Affordable Rent Dwellings for a consideration not less than the amount due and outstanding to the Chargee under the terms of the mortgage or charge (including all accrued principal monies, interest, costs and expenses) can be made in such a way so as to safeguard them as Affordable Rent Dwellings then the Chargee(s) shall co-operate with the arrangements and use their reasonable endeavours to secure such transfer;
- (c) if the Council does not serve its response to the notice within two months then the Chargee shall be entitled to dispose free of the restrictions set out in Part 2 of this Schedule; and
- (d) if the Council or any other person cannot within one month of the date of service of its response under paragraph 6(b) above secure such transfer then provided that the Chargee shall have complied with its obligation to co-operate under paragraph 6(b) above then in such case the Chargee shall be entitled to dispose free of the restrictions contained in Part 2 of this Schedule.

PART 3 – FIRST HOMES

1. To construct the First Homes Dwellings in accordance with the Affordable Housing Mix on the Site.
2. No more than 50% of the Open Market Dwellings shall be Occupied until 100% of the First Homes Dwellings have been Practically Completed and made ready for Occupation.
3. Subject to the provisions of Part 3 of this Schedule below, the First Homes Dwellings shall be Occupied for no purpose other than as First Homes in perpetuity.
4. The obligations contained in Part 3 of this Schedule shall apply to the First Homes Dwellings only, save that:
 - (a) paragraphs 5 and 6 below shall not apply to a First Homes Owner;
 - (b) paragraphs 7 and 8 below apply as set out therein but for the avoidance of doubt where a First Homes Dwelling is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Homes Dwelling owned by that First Homes Owner; and
 - (c) paragraph 9 below applies as set out therein.
5. **Clustering**

- 5.1 The First Homes Dwellings shall not be visually distinguishable from the Open Market Dwellings based upon their external appearance.
- 5.2 The internal specification of the First Homes Dwellings shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Open Market Dwellings but, subject to that requirement, variations to the internal specifications of the First Homes Dwellings shall be permitted.
- 5.3 Clusters of houses shall not exceed 10 First Homes Dwellings.

6. Development Standard

- 6.1 All First Homes Dwellings shall be constructed to:-
- (a) the Development Standard current at the date of this Deed; and
 - (b) no less than the standard applied to the Open Market Dwellings.

7. Delivery Mechanism

- 7.1 The First Homes Dwellings shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:
- (a) the Eligibility Criteria (National); and
 - (b) the Eligibility Criteria (Local) (if any).
- 7.2 If after a First Homes Dwelling has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 7.1.(b) above shall cease to apply.
- 7.3 Subject to paragraphs 7.3 to 7.10 below, no First Homes Dwelling shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee.
- 7.4 No First Homes Dwelling shall be Disposed of (whether on a first or any subsequent sale) unless and until:
- (a) The Council has been provided with evidence that:
 - (i) the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 7.2 applies meets the Eligibility Criteria (Local) (if any);
 - (ii) the Dwelling is being Disposed of as a First Home at the Discount Market Price; and

(iii) the transfer of the First Homes Dwelling includes:

(A) a definition of the "Council" which shall be the same as the definition in this Deed;

(B) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in Part 3 of Schedule 1 of the S106 Agreement a copy of which is attached hereto as the Annexure";

(C) A definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between (1) the Council and (2) the Owner as defined in this Deed;

(D) a provision that the First Homes Dwelling is sold subject to and with the benefit of the First Homes Provisions and the transferee acknowledges that it may not transfer or otherwise Dispose of the First Homes Dwelling or any part of it other than in accordance with the First Homes Provisions;

(E) a copy of the First Homes Provisions in an Annexure.

(b) The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 7.3 and 7.4(a) have been met.

7.5 On the first Disposal of each and every First Homes Dwelling to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

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

7.6 The owner of a First Homes Dwelling (which for the purposes of this clause shall include the Owner and any First Homes Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

(a) the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 7.1 and 7.2 (and in the case of a first Disposal the six (6)

months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 7.3 and 7.4(a); or

- (b) requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 7.6(a) above before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship.

7.7 Upon receipt of an application served in accordance with paragraph 7.6 above the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price.

7.8 If the Council is satisfied that either of the grounds in paragraph 7.6 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph (d)(vi) above that the relevant Dwelling may be Disposed of:

- (a) to the Council at the Discount Market Price; or
- (b) (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 7.10 below which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home.

7.9 if the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 7.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 7.6 above serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of the Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 7.6 above following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.

7.10 Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 7.8 or 7.9 above the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.

7.11 Upon receipt of the Additional First Homes Contribution the Council shall:

- (i) within 28 working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 7.5 above where such restriction has previously been registered against the relevant title; and
- (ii) apply all monies received towards the provision of Affordable Housing in the Borough.

7.12 Any person who purchases a First Homes Dwelling free of the First Homes restrictions in Part 3 of this Schedule pursuant to the provisions in sub-paragraphs 7.9 and 7.10 shall not be liable to pay the Additional First Homes Contribution to the Council and for the avoidance of doubt the First Homes restrictions shall thereafter cease to apply to the relevant Dwelling.

8. Use

8.1 Each First Homes Dwelling shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs (a)-(d) below.

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

(b) A First Homes Owner may let or sub-let their First Homes Dwelling for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (i) — (vi) below:

- (i) the First Homes Owner is required to live in accommodation other than their First Homes Dwelling for the duration of the letting or sub-letting for the purposes of employment;
- (ii) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
- (iii) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;

- (iv) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
 - (v) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
 - (vi) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- (c) A letting or sub-letting permitted pursuant to paragraph (a) or (b) above must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Homes Dwelling on terms which expressly prohibit any further sub-letting.
- (d) Nothing in this paragraph 8 prevents a First Homes Owner from renting a room within their First Homes Dwelling or from renting their First Homes Dwelling as temporary sleeping accommodation provided that the First Homes Dwelling remains at all times the First Home Owner's main residence.

9. **Mortgagee Exclusion**

9.1 The obligations in sub-paragraphs 1-8 above of Part 3 of this Schedule in relation to the First Homes Dwellings shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Homes Dwelling or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:

- (a) such Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Homes Dwelling; and
- (b) once notice of intention to Dispose of the relevant First Homes Dwelling has been given by the Mortgagee or Receiver to the Council the Mortgagee or Receiver shall be free to sell that First Homes Dwelling at its full Market Value and subject only to sub-paragraph (c) below;
- (c) following the Disposal of the relevant First Homes Dwelling the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution;
- (d) following receipt of notification of the Disposal of the relevant First Homes Dwelling the Council shall:
 - (i) forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in sub-paragraph 7.5

above and for the avoidance of doubt the First Homes provisions in this Schedule shall thereafter cease to apply to that First Homes Dwelling; and

- (ii) apply all such monies received towards the provision of Affordable Housing in the Borough.

PART 4 – OPEN SPACE

1. Prior to Occupation of the Development, to submit the Open Space Implementation and Maintenance Programme to the Council for approval.
2. Not to Occupy the Development until the Open Space Implementation and Maintenance Programme has been approved by the Council.
3. To lay out, construct, complete and maintain the Open Space in accordance with the Open Space Implementation and Maintenance Programme unless otherwise agreed with the Council.

APPENDIX 1 – Site Plan

APPENDIX 2 – Open Space Plan

EXECUTED as a DEED when the seal)

of **SPELTHORNE BOROUGH COUNCIL**)

was affixed in the presence of:)

Authorised Signatory

EXECUTED as a Deed by)

ANGLE PROPERTY (RLP SHEPPERTON) LLP)

Acting by a Member)

Member:

In the presence of:

Signature of witness_____

Name of witness_____

Address of witness_____