I enclose herewith for your records the completed section 106 agreement.

James
THIS AGREEMENT is made the 26th day of August 2016

BETWEEN THE DISTRICT COUNCIL OF TANDRIDGE of COUNCIL OFFICES,
STATION ROAD EAST, OXTED, SURREY RH8 0BT ("the Council") of the first part and
MOLE VALLEY HOUSING ASSOCIATION LIMITED a Registered Society registered under
the Co-Operative and Community Benefit Societies Act 2014 with number 30312R whose
registered office is at Two Pancras Square, King's Cross, London, N1C 4AG ("the Owners")
of the second part

WHEREAS

(1) THE Council is the Local Planning Authority for the purpose of the Town and Country
Planning Act 1990 as amended ("the Act") for the area within which the land hereinafter
referred to is situated

(2) THE Owners own the freehold interest in the land and buildings ("the Land") known
as land at 1-20 Ninehams Gardens, Caterham Surrey CR3 5LP shown edged red on the
plan annexed hereto ("the Plan") and registered at H.M. Land Registry with title absolute
under title number SY745754

(3) ON 27th November 2014 the Council as the then owners of the Land entered into an
agreement ("the 2014 Agreement") with Durkan Limited and Durkan Holdings Limited for the
sale and development of the Land. The interests of Durkan Limited and Durkan Holdings
Limited arising under the 2014 Agreement have now been acquired by the Owners.

(4) BY a decision notice dated 15 January 2016 reference TA/2015/1334 ("the Planning
Permission") the Council granted permission to develop the Land by the demolition of the
existing buildings and the erection of 18 flats and 17 houses ("the Development") all in
accordance with the plans submitted with the planning application. A copy of the Planning
Permission is annexed hereto.

(5) It is a condition of the Planning Permission (condition 20) that development is not to
commence until a Section 106 Agreement has been completed for the provision of
affordable housing as part of the Development.

NOW THIS DEED WITNESSETH as follows:

1. This Agreement is made pursuant to Section 106 of the Act and is a planning
obligation for the purposes of that Section and the Council is the local planning authority by
which the provisions of this Agreement are intended to be enforceable

2. This Agreement shall come into effect upon Commencement of the Development

3. The Owners hereby covenant with the Council for themselves and their successors in
title and all persons deriving title under them and with intent to bind the Land to observe and
perform the covenants restrictions and obligations set out in the Schedule hereto

4. The Owners hereby agree to produce a copy of this Agreement within three months
of the date hereof to H.M. Land Registry to enable the covenants restrictions and obligations
contained herein to be registered on the Charges Registers of the title number
SY745754and to provide the Council thereafter with evidence that such registration has
been completed

5. It is hereby agreed that the expressions “the Council” and “the Owners” shall include
their respective successors in title and assigns and as regards the Council shall include any
Local Authority successor

6. The Owners hereby covenant with the Council to pay on demand the Council’s
reasonable costs of and incidental to the preparation and completion of this Agreement
8. DEFINITIONS

In this Agreement the following words and expressions shall where the context so requires or admits have the following meanings:

"the Act" means the Town and Country Planning Act 1990 as amended

"Affordable Dwellings" means the units of Affordable Housing to be provided pursuant to paragraph 1 of the Schedule to this Agreement and the expression "Affordable Dwelling" shall be construed accordingly

"Affordable Housing" means residential accommodation transferred to or managed by an Affordable Housing Provider (as the Council may in writing approve) and provided with or without subsidy for people who are unable to resolve their housing requirements in the local private sector housing market because of the relationship between housing costs and incomes within the administrative area of the Council

"Affordable Housing Provider" means any one or more of the following to be approved by the Council:-
- a body which meets the definition of "Housing Association" as defined in Section 1(1)(a) of the Housing Associations Act 1985; or
- a Registered Provider of social housing registered with the Regulator of Social Housing under Section 111 of the Housing and Regeneration Act 2008; or
- any other body approved by the Homes and Communities Agency or any successor or other body having the same function as the Homes and Communities Agency whether solely or with other functions.

"Affordable Rent" means a rent not exceeding 80% of the open market rental value of the dwellings, as defined by the Homes and Communities Agency.

"Commencement of the Development" means the date of the implementation of the Permission by the commencement of a material operation as defined in Section 56(4) of the Act in relation to the Development but disregarding any of the following:-
- demolition
- decontamination treatment
- site remediation works
- site investigation works
- archaeological investigation
- ground works directly associated with decontamination treatment and site remediation works or archaeological investigation

and "Commence the Development" shall be construed accordingly.

"Dwelling" means a dwelling (including a house, flat or maisonette) to be constructed pursuant to the Permission and the expression "Dwellings" shall be construed accordingly

"Nomination Agreement" means an agreement to be agreed between the Developer and the Council to determine the occupancy of the Affordable Dwellings substantially in the form of the draft annexed hereto

"Occupation" means occupation for residential purposes but not including occupation by personnel engaged in construction, fitting or decoration or occupation for marketing or display or occupation in relation to security operations, and the word "Occupied" shall be construed accordingly

"Qualifying Person" means a person who is considered to be in need of Affordable Housing and be unable to afford suitable accommodation on the open market (whether by renting or purchasing)
On behalf of Ms. Jackie Strube

The TANDRIDGE DISTRICT COUNCIL as District Planning Authority under the provisions of Part III of the Town and Country Planning Act 1990 hereby GRANTS planning permission for: -

Demolition of existing dwellings. Erection of 18 flats and 17 houses.

At

1 to 20 Ninehams Gardens, Caterham CR3 5LP

in accordance with the application registered by the Council on the 13 August 2015 subject to the following conditions: -

1. The development hereby permitted shall be begun not later than the expiration of 3 years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. This decision refers to drawings numbered DAT/9.0, 5284-EX2, 5284-EX3, 5284-EX4, 5284-EX100, 5284-PR21, 5284-PR22 and 5284-PR23 scanned on 21 July 2015 and drawings numbered 5284-PR2-A, 5284-PR3-A, 5284-PR4-A, 5284-PR5, 5284-PR6-A, 5284-PR7-A, 5284-PR8-A and 5284-PR9-E scanned on 12 August 2015 and drawings numbered 5284-PR1-L and 5284-PR24-A scanned on 20 October 2015. The development shall be carried out in accordance with these approved drawings. There shall be no variations from these approved drawings.

Reason: To ensure that the scheme proceeds as set out in the planning application and therefore remains in accordance with the Development Plan.

3. Before any works thereby affected start samples or details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the District Planning Authority. The development shall be carried out in accordance with these approved details.

Reason: To enable the District Planning Authority to exercise control over the type and colour of materials, so as to enhance the development and to ensure that the new works are appropriate to the character of the area in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policy DP7 of the Tandridge Local Plan Part 2: Detailed Policies 2014.
4. Within three months of the commencement of the development hereby approved details to confirm that the renewable energy technology hereby approved would meet the minimum 20% carbon dioxide emissions saving requirement have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the occupation of the development and shall thereafter be maintained as approved unless otherwise agreed in writing by the District Planning Authority.

**Reason:** To ensure that the renewable energy resources are implemented to enable the development to actively contribute to the regional renewable resources target as sought by Policy CSP14 of the Core Strategy DPD 2008.

5. Details of any external (directional/security) lighting shall be submitted to and approved by the District Planning Authority in writing prior to any such provision on the site. The details shall include luminance levels and light spread and specifications of the lighting units.

**Reason:** To ensure that the provision of any lighting on site minimises the impact on the character and appearance of the development and protects the amenities of existing and future occupiers of adjoining properties in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policy DP7 of the Tandridge Local Plan: Part 2: Detailed Policies 2014.

6. **Before any works thereby affected start** full details of both hard and soft landscape works have been submitted to and approved in writing by the District Planning Authority and these works shall be carried out as approved. These details shall include:

- proposed finished levels or contours
- means of enclosure
- car parking layouts
- other vehicle and pedestrian access and circulation areas
- hard surfacing materials
- minor artefacts and structures (e.g., furniture, play equipment, refuse or other storage units, signs, lighting etc.).

Details of soft landscape works shall include all proposed and retained trees, hedges and shrubs; ground preparation, planting specifications and ongoing maintenance, together with details of areas to be grass seeded or turfed. Planting schedules shall include details of species, plant sizes and proposed numbers/densities.

All new planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the completion or occupation of any part of the development (whichever is the sooner) or otherwise in accordance with a programme to be agreed. Any trees or plants (including those retained as part of the development) which within a period of 5 years from the completion of the development die, are removed, or, in the opinion of the District Planning Authority, become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the District Planning Authority gives written consent to any variation. The hard landscape works shall be carried out prior to the occupation of the development.

**Reason:** To maintain and enhance the visual amenities of the development in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policies DP7 and DP8 of the Tandridge Local Plan: Part 2: Detailed Policies 2014.

7. **No development shall start** until an arboricultural method statement, appropriate and specific to the approved scheme, to include details of all works within the root protection area, or crown spread whichever is greater, of any retained tree, has been submitted to and agreed in writing by
the District Planning Authority. Thereafter, all works shall be carried out and constructed in accordance with the approved details and shall not be varied without the written consent of the District Planning Authority.

Reason: To prevent damage to trees in the interest of the visual amenities of the area in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policy DP7 of the Tandridge Local Plan: Part 2: Detailed Policies 2014.

8. **No demolition, site clearance or building operations shall start** until tree protection details, relating to all stages of development, for the protection of all trees, hedges and shrubs to be retained on site has been submitted to and approved in writing by the District Planning Authority. These details shall observe the principles embodied within BS 5837:2012 (Trees in relation to design, demolition and construction – Recommendations), shall be implemented prior to any works commencing on site, shall be retained during the course of development, and shall not be varied without the written agreement of the District Planning Authority.

In any event, the following restrictions shall be strictly observed unless otherwise agreed by the District Planning Authority:

(a) No bonfires shall take place within the root protection area (RPA) or within a position where heat could affect foliage or branches.
(b) No further trenches, drains or service runs shall be sited within the RPA of any retained trees.
(c) No further changes in ground levels or excavations shall take place within the RPA of any retained trees.

Reason: To prevent damage to trees in the interest of the visual amenities of the area in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policy DP7 of the Tandridge Local Plan: Part 2: Detailed Policies 2014.

9. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no form of enlargement of the dwellings hereby permitted shall be carried out without the express permission of the District Planning Authority.

Reason: To control further development of the site in the interests of the character of the area and amenities of nearby properties, in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policy DP7 of the Tandridge Local Plan: Part 2: Detailed Policies 2014.

10. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no garages, sheds, greenhouses or other ancillary domestic outbuildings shall be erected apart from those expressly authorised as part of this permission without the express permission of the District Planning Authority.

Reason: To control further development of the site in the interests of the character of the area and amenities of nearby properties in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policies DP7 of the Tandridge Local Plan: Part 2: Detailed Policies 2014.

11. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no windows shall be inserted in the upper floor side flank elevations of the buildings hereby permitted apart from those expressly authorised as part of this permission which shall be obscure glazed and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.

12. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Order with or without modification) no windows/dormer windows shall be inserted into the roofs of the buildings hereby permitted.


13. The development hereby approved shall not be first occupied unless and until the applicant has applied to the National Casework Team for a Stopping Up Order for the area of Ninehams Gardens indicated on dwg. 11605-CIV-700 (Revised August 2015).

Reason: In order that the development should not prejudice highway safety nor cause inconvenience to other highway users in accordance with Policy CSP12 of the Tandridge District Core Strategy DPD 2008, Policy DP5 of the Tandridge Local Plan: Part 2: Detailed Policies 2014 and to meet the objectives of the NPPF 2012.

14. The development hereby approved shall not be first occupied unless and until the proposed modified vehicular / pedestrian / cycle access to Ninehams Road has been constructed in accordance with the approved plans and thereafter kept permanently clear of any obstruction measured 0.6m above the road surface.

Reason: In order that the development should not prejudice highway safety nor cause inconvenience to other highway users in accordance with Policy CSP12 of the Tandridge District Core Strategy DPD 2008, Policy DP5 of the Tandridge Local Plan: Part 2: Detailed Policies 2014 and to meet the objectives of the NPPF 2012.

15. The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for vehicles / cycles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning area shall be retained and maintained for their designated purposes.

Reason: In order that the development should not prejudice highway safety nor cause inconvenience to other highway users in accordance with Policy CSP12 of the Tandridge District Core Strategy DPD 2008, Policy DP5 of the Tandridge Local Plan: Part 2: Detailed Policies 2014 and to meet the objectives of the NPPF 2012.

16. No development shall start until a Construction Transport Management Plan, to include details of:

(a) parking for vehicles of site personnel, operatives and visitors
(b) loading and unloading of plant and materials
(c) storage of plant and materials
(d) programme of works (including measures for traffic management)
(e) provision of boundary hoarding behind any visibility zones
(f) HGV deliveries and hours of operation
(h) measures to prevent the deposit of materials on the highway
(k) on-site turning for construction vehicles
has been submitted to and approved in writing by the Local Planning Authority. Only the approved
details shall be implemented during the construction of the development.

Reason: In order that the development should not prejudice highway safety nor cause
inconvenience to other highway users in accordance with Policy CSP12 of the Tandridge District
and to meet the objectives of the NPPF 2012.

17. The development hereby approved shall not be first occupied unless and until the following
facilities have been provided in accordance with the approved plans for:

(a) The secure parking of bicycles within the development site,

and thereafter the said approved facilities shall be provided, retained and maintained to the
satisfaction of the Local Planning Authority.

Reason: In recognition of Section 4 'Promoting Sustainable Transport' of the National Planning
Policy Framework 2012

18. The development hereby approved shall be carried out in accordance with the recommendations
and mitigation measures set out in Section 5 of the Extended Phase 1 Habitat Survey: Ninehams
Gardens, Caterham, Surrey (Ref: LON-125-001) by ASG Ecology for Durkan Ltd. dated October
2014, Section 5 of the Reptile Survey Report: Nineham Gardens, Caterham, Surrey (Ref: LON-
125-002b) by ASG Ecology for Durkan Ltd. dated October 2014, Section 5 of the Bat Survey
Report: Nineham Gardens, Caterham, Surrey (Ref: LON-125-003); including the bat friendly
lighting measures, by ASG Ecology for Durkan Ltd. dated August 2015 and the supporting letter
in respect of reptiles and badgers by ASG Ecology for Durkan Ltd. dated 1 October 2015.

Reason: To ensure that the ecological interests of the site and any protected species are
adequately safeguarded throughout the development, in accordance with Policy CSP17 of the
Tandridge District Core Strategy 2008 and Policy DP19 of the Tandridge Local Plan: Part 2:
Detailed Policies 2014.

19. The development hereby approved shall not be first occupied unless and until surface water
drainage works have been implemented in accordance with details that have been submitted to
and approved in writing by the local planning authority. Before these details are submitted an
assessment shall be carried out of the potential for disposing of surface water by means of a
sustainable drainage system in accordance with the principles set out in Annex F of PPS25 (or
any subsequent version), and the results of the assessment provided to the local planning
authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

i. provide information about the design storm period and intensity, the method employed to delay
and control the surface water discharged from the site and the measures taken to prevent
pollution of the receiving groundwater and/or surface waters;

ii. include a timetable for its implementation; and

iii. provide a management and maintenance plan for the lifetime of the development which shall
include the arrangements for adoption by any public authority or statutory undertaker and any
other arrangements to secure the operation of the scheme throughout its lifetime.

Reason: To seek and secure opportunities to reduce the cause and impact of flooding through
the incorporation of Sustainable Drainage Systems, suitable to the scale and type of
development, in accordance with Policy DP21 of the Tandridge Local Plan: Part 2: Detailed
Policies 2014.
20. The development shall not start unless and until a scheme under an obligation under Section 106 of the Town and Country Planning Act 1990 for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme. The scheme shall include:

i. The numbers, type and location of the site of the affordable housing provision to be made;
ii. The timing of the construction of the affordable housing;
iii. The arrangements to ensure that such provision is affordable for both initial and subsequent occupiers of the affordable housing; and
iv. The occupancy criteria to be used for determining the identity of prospective and successive occupiers of the affordable housing, and the means by which such occupancy shall be enforced,
v. The nomination rights to be granted to the local housing authority.

Reason: To ensure that the scheme for the affordable housing provision is secured before the start of the development in accordance with Policy CSP4 of the Tandridge District Core Strategy 2008.

Informatives

1. Condition 2 refers to the drawings hereby approved. Non-material amendments can be made under the provisions of Section 96A of the Town and Country Planning Act 1990 and you should contact the case officer to discuss whether a proposed amendment is likely to be non-material. Minor material amendments will require an application to vary condition 2 of this permission. Such an application would be made under the provisions of Section 73 of the Town and Country Planning Act 1990. Major material amendments will require a new planning application. You should discuss whether your material amendment is minor or major with the case officer. Fees may be payable for non-material and material amendment requests. Details of the current fee can be found on the Council’s web site.

2. Due to the former land use, soil and/or groundwater contamination may exist at the site and the associated risks to controlled waters should be addressed by:

1. Following the risk management framework provide in CLR11, Model procedures for the management of land contamination


3. Further information may be found on the land contamination technical guidance pages on the direct.gov website
https://www.gov.uk/government/collections/land-contamination-technical-guidance

Waste to be taken off site:
Contaminated soil that is, or must be, disposed of is waste. Therefore it’s handling, transport and disposal is subject to waste management legislation which includes:
- Duty of Care Regulations 1991
- Hazardous Waste (England and Wales) Regulations 2005
- Environmental permitting (England and Wales) Regulations 2010
- The Waste (England and Wales) Regulations 2011
Developers should ensure that all contaminated materials are adequately characterised both chemically and physically in line with British Standard BS EN 14899:2005 “characterisation of waste” – sampling of waste materials – framework for the preparation and application of a sampling plan” and the permitting status of any proposed treatment or disposal activity is clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid delays on 03708 506 506 or enquiries@environment-agency.gov.uk for further advice and to discuss the issues likely to be raised. You should be aware that any permit may not be granted. Additional ‘Environmental Permitting Guidance’ can be accessed via the government website at: https://www.gov.uk/environmental-permit-check-if-you-need-one

If the total quantity of waste material to be produced or taken off site is hazardous waste and is 500kg or greater in any 12 month period the developer will need to register with us as a hazardous waste producer.

3. Where the developer proposes to discharge to a public sewer prior approval from Thames Water Developer Services will be required in order to ensure that the surface water discharge from the site shall not be detrimental to the existing sewerage system. Thames Water Developer Services can be contacted on 0800 009 3921.

4. The permission hereby granted shall not be construed as authority to carry out any works on the highway or any works that may affect a drainage channel/culvert or water course. The applicant is advised that a permit and, potentially, a Section 278 agreement must be obtained from the Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway. All works on the highway will require a permit and an application will need to submitted to the County Council’s Street Works Team up to 3 months in advance of the intended start date, depending on the scale of the works proposed and the classification of the road. Please see http://www.surreycc.gov.uk/roads-and-transport/road-permits-and-licences/the-traffic-management-permit-scheme The applicant is also advised that Consent may be required under Section 23 of the Land Drainage Act 1991. Please see www.surreycc.gov.uk/people-and-community/emergency-planning-and-community-safety/flooding-advice

5. The developer is reminded that it is an offence to allow materials to be carried from the site and deposited on or damage the highway from uncleared wheels or badly loaded vehicles. The Highway Authority will seek, wherever possible, to recover any expenses incurred in clearing, cleaning or repairing highway surfaces and prosecutes persistent offenders. (Highways Act 1980 Sections 131, 148, 149).

6. The developer is advised that as part of the detailed design of the highway works required by the above condition(s), the County Highway Authority may require necessary accommodation works to street lights, road signs, road markings, highway drainage, surface covers, street trees, highway verges, highway surfaces, surface edge restraints and any other street furniture/equipment.

7. The applicant is reminded of the need to ensure that the area retained provides good habitat for reptiles (preferably south facing) and enhance this area for these species. This area should not be over managed but subject to a ‘light touch’ management regime to prevent more invasive species such as bramble dominating the vegetation. It could be located within a ‘common’ part of the site, forming a discrete feature and could include:

- an interpretation board
- be sown with a wildflower mix which is managed with a conservation mowing regime; species-poor grassland can be augmented with wildflower plugs
- contain a wildlife-friendly pond
• include a log pile or partially-buried hibernacula made from felled/dead wood on site to provide habitat for Stag Beetles and other invertebrates, reptiles and amphibians

8. The provisions of The Party Wall Act etc 1996 may be applicable and relates to work on an existing wall shared with another property; building on the boundary with a neighbouring property; or excavating near a neighbouring building. Details of your obligations can be made available on request from the Building Control Section (01883 732871).

9. For the avoidance of doubt, the term 'affordable housing' means subsidised housing at below market prices or rents intended for those households who cannot afford housing at market rates. It is usually managed by a registered social landlord.

The development hereby granted has been assessed against Tandridge District Core Strategy Development Plan Document 2008 Policies CSP1, CSP2, CSP3, CSP4, CSP7, CSP11, CSP12, CSP14, CSP15, CSP17, CSP18, CSP19, CSP21, Tandridge Local Plan Part 2: Detailed Policies 2014 – Policies DP1, DP5, DP7, DP8, DP19, DP20, DP21 and material considerations, including third party representations. It has been concluded that the development, subject to the conditions imposed, would accord with the development plan and there are no other material considerations to justify a refusal of permission.

The Council confirms that in assessing this application it has worked with the applicant in a positive and proactive way, in line with the requirements of paragraph 186-187 of the National Planning Policy Framework.

Dated 15 January 2016

for P.W Mason
Chief Planning Officer

NB: Please also see attached notes
“Shared Ownership” shall mean the tenure of any residential unit that is part rented and part purchased under a shared ownership arrangement with an Affordable Housing Provider

“Scheme” means the scheme for the provision of Affordable Dwellings on the Property as referred to in paragraphs 1.1 and 1.2 of the Schedule hereto

9. **REVOCATION**

In the event that the Permission is quashed lapses or is revoked or otherwise withdrawn or modified this Agreement will cease to have any further force or effect unless otherwise agreed in writing with the Council

10. **SUBSEQUENT PERMISSIONS**

In the event that a subsequent planning permission is granted and development thereunder is commenced which would be incompatible with all or any of the covenants hereinbefore contained the said covenants shall cease to have any effect on the date that such subsequent planning permission is granted, unless otherwise agreed with the Council.

11. **CURRENT OWNERS**

No person shall be liable for any breach of an obligation under this Agreement committed after he shall have parted with all interest in the Land or the part thereof in respect of which such breach occurs (but without prejudice to liability for any breach subsisting prior to parting with such interest)

12. **PURCHASERS OF THE DWELLINGS**

The covenants and obligations shall not under any circumstances be enforceable against the purchasers or occupiers of the individual Dwellings comprised in the Development

13. **NO WAIVER**

No waiver (whether expressed or implied) by the Council of any breach or default by the Owners or the Developer in performing or observing any of the terms or conditions of Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing at any time any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owners

14. **NOTICES**

1. Any notice consent or approval required to be given under this Agreement shall be in writing and shall be delivered personally or sent by pre-paid first class post.

2. The address for service of any such notice consent or approval as aforesaid shall be the addresses given in the definition of the parties hereto or such other address for service as shall have been previously notified to the other party and all notices to be served on the Council shall (save where particular clauses specify otherwise) be marked for the attention of the Chief Planning Officer

3. A notice consent or approval under this Agreement shall be deemed to have been served as follows:
   a. if personally delivered at the time of delivery;
   b. if posted at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom
   c. and in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid first class envelope

4. Notices will not be sufficiently served if sent by email or fax
15. **DISPUTES**

All differences and disputes which may arise between the parties hereto concerning this Agreement may:

1. where the difference or dispute relates to the construction or interpretation of this Agreement be referred to the determination (as an expert and not as an arbitrator) of an independent leading conveyancing counsel agreed upon by the parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales on the application of any of the parties in dispute

2. where the difference or dispute relates to the carrying out of works or construction be referred to the determination (as expert and not as an arbitrator) of an independent Chartered Surveyor being a partner practising in Central London of a leading firm of surveyors and experienced in the matter in dispute agreed upon by the parties in dispute but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors on the application of any of the parties in dispute

3. If the parties in dispute shall fail to agree on the nature of the difference or dispute between them then any of them may apply to the President of the Law Society to appoint an independent solicitor being a partner in a leading firm of solicitors practising in Central London to decide (as expert and not as arbitrator) in relation to any such matter which of Clauses 15.1 or 15.2 is applicable hereto

4. Except as aforesaid any expert appointed pursuant to Clauses 15.1 or 15.2 or any other provision of this Agreement shall:
   a. on his appointment serve written notice thereof on the parties in dispute
   b. consider any written representations by or on behalf of those parties which are received by him within 20 working days of such service and to immediately forward a copy of the written representation of one party to the other party
   c. allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within fourteen days of receipt by the other party thereof
   d. have an unfettered discretion to determine the reference to him
   e. serve notice of his determination as soon as he has made it
   f. give full and clear reasons for his decision
   g. be paid his proper fee and expenses in connection with such reference by the parties in dispute in equal shares or in such shares as he may determine
   h. and his determination shall be final and binding on the parties in dispute (save in the case of manifest error) Provided that if any such expert shall die become insolvent or of unsound mind or if the parties in dispute shall serve on him written notice that in their opinion he has unreasonably delayed making his determination he shall be ipso facto discharged and be entitled only to his reasonable expenses prior to such discharge and another person shall be appointed in his place as such expert

16. **MORTGEE IN POSSESSION**

The provisions of Paragraph 1 of the Schedule to this Agreement shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver or administrator) 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 (each a Receiver)) of the whole or any part of the affordable dwellings or any persons or bodies deriving title through such mortgagee or chargee or receiver PROVIDED THAT such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention
to dispose of the affordable dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the affordable dwellings to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and -if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the affordable dwellings free from the affordable housing provisions in this Agreement which provisions shall determine absolutely;

17 INTERPRETATION

In this Agreement:

1. words importing the masculine gender include the feminine and the neuter and vice versa
2. words importing the singular include the plural and vice versa
3. references to persons include bodies corporate and vice versa
4. save where the context otherwise requires all obligations given or undertaken by more than one person in the same capacity are given or undertaken by them jointly and severally so as to apply and be enforceable against all both or any of such persons and their and each of their personal representatives
5. the clause headings shall not affect the construction of this Agreement
6. save where otherwise stated any reference to a numbered clause or schedule means the clause or schedule in this Agreement which is so numbered
7. every reference to any statute or any section of any statute shall be read and construed as including a reference to any statutory amendment modification or re-enactment thereof for the time being in force and to every instrument order direction regulation by-law permission licence consent condition scheme or other such matter made in pursuance of such statute
8. Nothing in this Agreement shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act or under any other Act PROVIDED ALWAYS THAT this Agreement shall remain in full force and effect notwithstanding the terms and conditions of any planning permission which may or have been at any time issued by the Agreement or any other appropriate person pursuant to the provisions of the Act

IN WITNESS whereof this Agreement has been executed in manner hereinafter appearing and delivered the day and year first before written

SCHEDULE

Covenants, restrictions and obligations regulating the use of the Land

The Owners and the Developer hereby covenant at their own cost and expense with the Council as follows:-

To inform the Council in writing of the occurrence of the Commencement of the Development within 14 days of its having occurred.

1. AFFORDABLE HOUSING

1.1 The Owners shall provide at least 12 Dwellings to be constructed on the Land as Affordable Dwellings for Affordable Rent as detailed in the Application and plans deposited therewith at a unit mix that is reasonably acceptable to the Council's Chief Housing Officer and to be carried out in accordance with the Scheme for the funding, management & maintenance and future Occupation of the Affordable Dwellings which shall be submitted to the Council for approval.

1.2 The Scheme shall provide inter alia as follows: at least 12 Dwellings all for Affordable Rent
1.3 The Owners shall not permit the purchase or rent of any Affordable Dwelling other than by a Qualifying Person in accordance with the allocation policy of the landlord and the Nomination Agreement.

1.4 Subject to the provisions of this paragraph the Affordable Dwellings shall not be Occupied other than on the basis of assured tenancies or assured shorthold tenancies shared ownership and/or shared equity leases Provided That in the event of any relevant legislation being altered so that such tenancies are no longer capable of being granted then the Council shall nominate such other categories of tenure to be as close as possible in character to those contained in this paragraph and which are approved by the Homes and Communities Agency or any successor or other body having the same function as the Homes and Communities Agency whether solely or with other functions.

1.5 Each Affordable Dwelling shall only be Occupied in accordance with the relevant tenancy agreement agreed between the occupant of each Affordable Dwelling and the Affordable Housing Provider.

1.6 The Scheme will be subject to the Nomination Agreement by which the Council receives 100% of initial nominations and 75% of subsequent vacancies, unless otherwise agreed with the Council in accordance with a subsequent nomination agreement or variation to the Nomination Agreement.

1.7 The Affordable Housing Provider will notify the Council's nominated representative in writing of each Dwelling for which the Council becomes entitled to nominate occupants and will ensure so far as it is able that the proposed occupant or occupants will accept the Dwelling upon the terms offered by the Affordable Housing Provider and in the event that the proposed occupant or occupants does or do not accept the Dwelling upon the aforementioned terms, the Council will then nominate another occupant or occupants until the same accept those aforementioned terms.

1.8 The Affordable Housing Provider will provide the Council upon request with such details of occupancy as the Council may reasonably require to ensure that the provisions of this Agreement are being complied with.

1.9 The Affordable Dwellings shall be constructed to a standard which complies with all standards of design, construction and energy efficiency that are required by the Homes and Communities Agency (or any successor or other body having the same function as the Homes and Communities Agency whether solely or with other functions) valid as at the date of the exchange of contracts for the sale of the Affordable Dwellings from the Owners to the Affordable Housing Provider.

THE COMMON SEAL of
THE DISTRICT COUNCIL OF TANDRIDGE
was hereto affixed in the presence of:-
EXECUTED as a deed by
Affixing the Common Seal of MOLE
VALLEY HOUSING ASSOCIATION
LIMITED in the presence of:

[Signatures]

Authorised Signatory

Authorised Signatory
Dated 26th August 2016

THE DISTRICT COUNCIL OF TANDRIDGE
And
MOLE VALLEY HOUSING ASSOCIATION LIMITED

DEED OF AGREEMENT

Under Section 106 of the Town and Country Planning Act 1990 relating to land at 1-20 Ninehams Gardens, Caterham Surrey

Clive Moore,
Assistant Chief Executive (Legal),
Tandridge District Council,
Council Offices,
Station Road East,
Oxted, Surrey RH8 OBT

Ref: JH/102-002938
Tel: 01883 732743