

DATE:

2007

(1) MEDWAY COUNCIL

and

(2)

and

(3)

AGREEMENT
Town and Country Planning Act 1990
Section 106
Land Kent

Deborah Upton
Assistant Director Legal and Contract Services
Medway Council
Civic Centre
Strood
Kent ME2 4AU

Ref : .../PL02.....

THIS DEED is made the

day of

1 PARTIES

- 1.1 MEDWAY COUNCIL (“the Council”) whose address is Civic Centre, Strood, Rochester, Medway, Kent, ME2 4AU
- 1.2 (“the Developer”) (Company Registration number) whose registered office is at / of
- 1.3 (“the Owner”) (Company Registration Number) whose registered office is at / of
- 1.4 (“the Mortgagee”) (Company Registration Number) whose registered office is at / of

2 DEFINITIONS AND INTERPRETATION

- 2.1 In this Deed the following words and phrases shall have the following meanings:

“Affordable Housing” means dwellings for either rent or sale at a discount compared to open market value and which discount is by an agreement made under Section 106 of the Act given and remains for the period of years specified in a related nomination agreement to persons identified by the Council as being in housing need

“the Affordable Housing Land” means the land and dwellings including associated garden areas and parking spaces forming 25% of the total number of dwellings comprised within the Development and which are to be constructed on the Site in locations to be approved by the Council [as part of the Reserved Matters Application and (as appropriate) any subsequent

	Reserved Matters Application] whose types and tenures are to be agreed by the Council to meet the housing needs in the Council's area and which are for Occupation by persons deemed to be in need of Affordable Housing
"The Affordable Housing Units"	XX units to be constructed on the Affordable Housing Land to the Housing Corporation's to the Housing Corporation's Design and Quality Standards (April 2007) as set out in the [] Schedule or in accordance with any equivalent replacement standards of the Housing Corporation in force at the date of construction
"the Council's Costs"	means the sum of £ being the agreed contribution to the Council's proper and reasonable costs in the preparation execution and registration of this Deed
"Commencement of the Development"	means commencement of the Development on the Site by the carrying out of a material operation within the meaning of section 56(4) of the Planning Act
"the Contributions"	means any or all of the sums set out in the First Schedule
"the Development"	The development of the Site by and for the use in the manner set

	out in the Planning Application
“the Disputes Resolution Procedure”	means the procedure referred to in clause 6.9 and set out in the Third Schedule hereto
“the Draft Conditions”	means the draft conditions to be attached to the Permission set out in the Fourth Schedule to this Deed.
“Indexation”	means the increase of any sum in accordance with the formula set out in clause 6.11
“the Inflation Index”	means the “all Items” index figure of the Index of Retail Prices published by the Office for National Statistics or such other index as the Council may reasonably nominate in the event that the Index of Retail Prices shall no longer be published or its name or methodology be materially altered
“Lifetime Home Standards”	means the schedule of design features and standards developed by the Joseph Rowntree Foundation the achievement of which leads to new homes being designated Lifetime Homes
“Monitoring Officer Costs”	means the sum of £..... being the agreed contribution to the Council’s proper and reasonable costs in monitoring compliance with the obligations and requirements contained in this Deed to be paid in accordance with clause 5.1.7

“Nominations Agreement”

means the agreement between the Council and the Registered Social Landlord by which the occupation of the dwellings on the Affordable Housing Land are approved by the Council which shall, where the Affordable Housing Units are to be Social Rented Accommodation, be in the form appended hereto at Appendix 1 and, where the Affordable Housing Units are to be for any other tenure, be in a form approved by the Council, such approval not to be unreasonably withheld or delayed

“Occupation”

means physical occupation for any purpose but does not include occupation by personnel engaged in the construction fitting-out or decoration or management of any part of the Development and for the avoidance of doubt in the case of a sale of a freehold or long leasehold interest to a third party Occupation commences the date of legal completion of the sale rather than exchange of contracts and "Occupy" "Occupier" "Occupiers" and "Occupied" shall be construed accordingly

“the Permission”

means the planning permission to be granted by the Council pursuant to the Planning Application

“the Plan”	means the plan annexed to this Deed
“the Planning Act”	means the Town and Country Planning Act 1990 as amended
“the Planning Application”	means the application for planning permission to carry out the Development on the Site and given the Council’s reference number MC.....
“Private Housing Units”	means the residential units forming part of the Development but excluding the Affordable Housing Units
“Registered Social Landlord”	means a body registered with the Housing Corporation as a social landlord pursuant to the provisions of the Housing Act 1996 and a housing association within the meaning of the Housing Associations Act 1985
“Shared Ownership Accommodation”	means a residential unit within the Development which is occupied by a person who is part renting and part purchasing or otherwise sharing the equity of that dwelling under shared ownership terms as defined in Section 2(6) of the Housing Act 1996 with a Registered Social Landlord where that person has the opportunity to purchase all of the equity to be procured at a later date

“the Site”	means the land known as and more particularly delineated edged red on the attached Plan
“Social Rented Accommodation”	means a residential unit within the Development that is available to rent from a Registered Social Landlord on an assured tenancy at no more than the Housing Corporation’s target rent (as may be set from time to time)
“the Sum”	the sum payable by the Registered Social Landlord for the Affordable Housing Land (which said land the Owner shall have at its own cost: (i) remediated in accordance with all necessary consents and statutory requirements and (ii) cleared and levelled and (iii) provided with all necessary services including gas telecommunications water foul and surface water drainage highways and electricity to render the said land fit for use (once developed) for residential purposes and without requiring plant or equipment to provide services) which shall be [%] of the Housing Corporation's TCI current at the date of payment (and is deemed to be inclusive of any on- costs) for each of the Affordable

Housing Units constructed or to be constructed on the Affordable Housing Land

“TCI”

means the Total Cost Indicator that is a nationally established matrix of total scheme cost norms commissioned and held by the Housing Corporation that takes into account scheme type and geographical variables save that if such total cost indicator system is replaced or if it is not possible to calculate the total cost indicators then TCI shall mean such figure as is equivalent to the last published Total Cost Indicator cost figure possible to establish plus an amount equal to the difference between such figure and any increase over it arrived at by applying the figure to the percentage increase in the Index between the quarterly index number immediately preceding the date the figure is established and the quarterly index number of the quarter immediately preceding the date of exchange of contracts with the Registered Social Landlord

“Trigger Date”

means each date upon which an event occurs that triggers a payment of any sum by the Owner or the Developer and/or the coming

into effect of any other obligation
under this Agreement

- 2.1 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 to the body or bodies (as appropriate) having statutory responsibility for the relevant function in replacement for the Council
- 2.2 In the absence of any contrary provision any reference to a statute shall include any statutory extension modification or re-enactment of it and any statutory instrument direction order regulation or byelaw made or issued under the statute or deriving validity from it
- 2.3 Words importing the masculine gender shall include the feminine gender and vice versa
- 2.4 Words importing persons include companies and corporations and vice versa
- 2.5 Unless the context otherwise requires words importing the singular shall include the plural and vice versa
- 2.6 Headings are for ease of reference only and shall not be construed as part of this Deed
- 2.7 Reference to any recital clause schedule or paragraph (or any part of them) shall (unless the context otherwise requires) be reference to a recital clause schedule or paragraph (or any part of them) in this Deed
- 2.8 Wherever there is more than one person named as a party or where more than one party undertakes an obligation all their obligations shall be enforceable against all of them jointly and/or against each individually
- 2.9 Any covenant by a party to this Deed not to do an act or thing shall be deemed to include an obligation not to permit or knowingly suffer such act or thing to be done by any other person
- 2.10 The provisions contained in the Schedule shall not bind nor be enforceable against
- 2.10.1 Any mortgagee or chargee of a Registered Social Landlord to which the freehold legal estate in the Affordable Housing Land or any part or parts thereof has been transferred in accordance with the Schedule which mortgagee or chargee is in possession thereof and is exercising its power of sale or against a person deriving title from such mortgagee or chargee

4 STATUTORY PROVISIONS

- 4.1 This Deed is made pursuant to Section 106 of the Planning Act and to all other enabling powers to the intent that this Deed shall bind the Parties and their heirs and successors assigns and persons claiming under or through them
- 4.2 The restrictions and obligations contained in the First Schedule to this Deed are all planning obligations for the purposes of Section 106 of the Planning Act and are enforceable by the Council
- 4.3 The Council's Costs are payable pursuant to Section 106(1)(d) of the Planning Act

5 COVENANTS

5.1 The Developer/Owner's Covenants

The Developer and the Owner covenant with the Council

- 5.1.1 To observe the restrictions and perform the obligations set out in the First Schedule
- 5.1.2 At least 28 days before the Commencement of Development to notify the Council's Development Control Manager in writing of the date on which it is intended to commence work on the Site
- 5.1.3 Within 14 days after the Commencement of Development to notify the Council's Development Control Manager in writing of the date of the Commencement of Development
- 5.1.4 Within 14 days after any Trigger Date to notify the Council's Development Control Manager of the date and the event that occurred on the Trigger Date
- 5.1.5 To retain such records and information and within 14 days of a written request by the Council to provide the Council with such records and information as the Council request to enable the Council to satisfy itself that the Developer/Owner is complying with all its obligations under this Deed and the conditions to be attached to the Permission.
- 5.1.6 To pay the Council's Costs on the completion of this Deed
- 5.1.7 To pay the Monitoring Officer's Costs as follows:

5.1.7.1 the sum of £ (pounds) on completion of this Deed

5.1.7.2 the sum of £ (pounds) within fourteen days of Commencement of the Development

5.2 The Council's Covenants

The Council covenants with the Developer/Owner to perform the obligations set out in the Schedule

6. **DECLARATIONS AND AGREEMENTS**

6.1 Effective Date

The covenants contained in this Deed shall take effect on the date of this Deed other than those contained in the First Schedule and paragraphs 3 to 5 (inclusive) of the Second Schedule which shall take effect on the Commencement of Development or as otherwise stated in the aforementioned Schedules

6.2 Liability for Breach

No person shall be liable for a breach of a covenant contained in this Deed after they have irrevocably parted with all their interest in the Site or in the part of the Site in respect of which such breach occurs pursuant to a disposal at open market value to an unconnected third party but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest

6.3 Revocation Modification or Expiry of the Permission

This Deed shall determine and cease to have any further effect if the Permission is revoked or modified by the Council pursuant to the Planning Act without the written consent of the Developer/Owner or if the Permission expires before the Commencement of Development

6.4 Notices

Any notice consent or approval to be given under this Deed shall be in writing and shall be deemed to be served if delivered personally or sent by pre-paid first class recorded delivery or registered post to the address of the relevant party as described in Clause 1 or such other address as shall have been notified in writing to the party giving the notice consent or approval and in the case of a notice to be served on the Council addressed to the Development Control Manager

6.5 Approvals

Where any approval consent directions action or authority is required to be given by any of the Parties hereto such approval consent directions action or authority

shall (unless otherwise stated) not be unreasonably delayed or withheld and shall only be effective if given in writing signed by or on behalf of the relevant party and given for the purposes of this Deed

6.6 Severance

If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed thereby to be affected or impaired.

6.7 Waiver by the Council

No waiver (whether express or implied) by the Council of any breach or default by another Party in performing or observing any of the terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions which they are entitled to enforce or from acting upon any subsequent breach or default in respect thereto by that Party.

6.8 Registration as a Local Land Charge

This Deed is a Local Land Charge and shall be registered as such by the Council.

6.9 Disputes Resolution

6.9.1 Any dispute between the parties under the terms of this Deed may be referred to an expert under the Dispute Resolution Procedure set out in the Third Schedule

6.9.2 The decision of an expert appointed under the Dispute Resolution Procedure shall be final and binding on all of the parties to the dispute.

6.10 Overdue Payment

6.10.1 Payments required to be made under the terms of this Deed shall for the purposes of this clause be deemed to fall due and to be payable on the date specified for payment in the relevant clause or if no date is specified in the relevant clause then within 21 days after the occurrence of the Trigger Date.

6.10.2 In the event of any delay in making payment required under this Deed interest shall be payable on the amount payable at the rate of four per cent above the National Westminster Bank plc base lending rate from time to time in force from the date that the relevant payment falls due to the date of actual payment.

6.11 Indexation and VAT

6.11.1 Any sums which become payable under this Deed on a date more than twelve months after the date of this Deed by the [Developer or the Owner] to the Council other than the Council's Costs shall be subject to Indexation

6.11.2 Where a sum is subject to Indexation the actual sum due to the Council (“the Indexed Sum”) shall be calculated in accordance with the formula:

$$\textit{Indexed Sum} = \textit{Initial Sum} \times \frac{\textit{Inflation Index at Due Date}}{\textit{Inflation Index at Base Date}}$$

Where:

6.11.2.1 “the Initial Sum” is the original sum specified in this Deed

6.11.2.2 “the Due Date” is the date specified for payment in the relevant clause or if no date is specified in the relevant clause then 21 days after the occurrence of the event triggering the relevant payment and

6.11.2.3 “the Base Date” is the date of this Deed

PROVIDED THAT where payment is not made on the Due Date the provisions of clause 6.10.2 will have effect in relation to Indexed Sum

6.11.3 All sums due under this Deed are exclusive of VAT and the Owner shall pay to the Council in addition to such sums any VAT properly payable in respect thereof

6.12 No Fettering of Discretion

This Deed shall not fetter prejudice or affect the exercise of any statutory or regulatory power duty or discretion of the Council.

6.13 Variation

No variation or modification of this Deed shall be valid unless made by Deed and executed by all the Parties or their respective successors.

6.14 Receipt

The Council acknowledges receipt of the Council’s Costs

6.15 Contracts (Rights of Third Parties) Act 1999

This Deed does not nor is intended to confer any rights or benefit on a third party pursuant to the Contracts (Rights of Third Parties) Act 1999

6.16 Planning Permission

Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval

7. **MORTGAGEE’S CONSENT**

The Mortgagee hereby consents to the execution of this Deed and acknowledges that subject as herein provided its land shall be bound by the restrictions and

obligations in this Deed and hereby agrees to be bound by the said obligations only in the event that it becomes a mortgagee in possession and that such liability will cease once it has parted with its interest in the Site

IN WITNESS whereof this Deed has been duly executed as a Deed by the Parties the day and year first before written

FIRST SCHEDULE

The Owner for himself and his successors in title covenants with the Council as follows:

1. To pay the sum of
POUNDS (£) to the Council towards the provision of [*insert purpose of contribution*] prior to [*insert trigger e.g. Commencement of Development*]
2. To pay the sum of
POUNDS (£) to the Council towards the provision of [*insert purpose of contribution*] prior to [*insert trigger e.g. Commencement of Development*]
3. To pay the sum of
POUNDS (£) to the Council towards the provision of [*insert purpose of contribution*] prior to [*insert trigger e.g. Commencement of Development*]

SECOND SCHEDULE
Affordable Housing

The Owner for himself and his successors in title covenants with the Council as follows:

1. Not to use the Affordable Housing Land except for the provision of the Affordable Housing except that prior to the transfer of the Affordable Housing Land to a Registered Social Landlord in accordance with the terms of this Schedule the Affordable Housing Land may be used as a temporary compound or landscaping reserve land
2. Not cause nor permit the Occupation of any part of the Development until the Council approves in writing a Registered Social Landlord to undertake the management of the Affordable Housing Units
3. The Owner shall use its best endeavours to enter into a contract with a Registered Social Landlord for the transfer of the Affordable Housing Land.
4. Any transfer of the Affordable Housing Land shall contain such provisions as set out in paragraph 11 of this Schedule
5. Not to cause or permit the Occupation of more than [50]% of the Private Housing Units in the Development until the Affordable Housing Land has been transferred to the said Registered Social Landlord in accordance with this Schedule.
6. Not to transfer the Affordable Housing Land to a Registered Social Landlord without first procuring that such Registered Social Landlord has entered into a Nominations Agreement in favour of the Council.
7. The Owner shall transfer the Affordable Housing Land to the Registered Social Landlord with full title guarantee and with vacant possession
8. The Owner undertakes to use all reasonable endeavours to procure that of the total number of Affordable Housing Units to be constructed on the Affordable Housing Land the tenure distribution shall be:
 - (a) 60% Social Rented Accommodation (including up to 5% for disability and special needs) (or if such percentage does not result in a whole number of Affordable Housing Units then the number shall be rounded down) (which shall be comprised of x/four bedroom units, x/three bedroom units and x/two bedroom units)

- (b) 40% Shared Ownership Accommodation (including market and sub-market) (or if such percentage does not result in a whole number of Affordable Housing Units then the number shall be rounded down) (which shall be comprised of x/four bedroom units, x/three bedroom units and x/two bedroom units)
9. The Owner undertakes to use all reasonable endeavours to procure that of the total number of Affordable Housing Units to be constructed on the Affordable Housing Land at least 50% shall be to Lifetime Homes Standard
10. To ensure that the Affordable Housing Units are built to meet or exceed the core standards as set out in the Housing Corporation's Design and Quality Standards (April 2007) and in particular to ensure that:
- 10.1 The Housing Quality indicator ("HQI") minimum scores for the Affordable Housing Units are as follows:
- | | |
|---------------------------|----|
| Size | 41 |
| Layout | 32 |
| Noise, services and light | 22 |
- 10.2 In meeting the HQI minimum score for Layout, internal and external storage must meet the requirements for storage specified in the HQI guidance
- 10.3 The Affordable Housing Units achieve at least level 3 of the Code for Sustainable Homes and maximum points in the security section of such Code
- 10.4 The Affordable Housing Units score positive responses in at least 12 out of the 20 "Building for Life" criteria
11. The transfer of the Affordable Housing Land shall be first approved in writing by the Council (such approval not to be unreasonably withheld or delayed) PROVIDED THAT the Council shall be entitled to withhold its consent if such transfer does not ensure that the Affordable Housing Land shall only be used for the purposes of Affordable Housing in perpetuity or if the transfer does not contain the following provisions (unless evidence is produced to the Council, to its satisfaction, that the Registered Social Landlord has agreed otherwise):
- a. The value to be paid to the Owner for the Affordable Housing Units by the Registered Social Landlord shall be a shall be a value equivalent to the Sum for each Affordable Housing Unit (and is deemed to be inclusive of any on-cost)

- b. [If the transfer is by way of a lease then that lease shall be for a term of not less than 125 years and not therein to reserve a ground rent other than at the rate of one peppercorn per annum]
- c. the Owner shall grant to and may reserve from the Registered Social Landlord reasonable pedestrian and vehicular access to and egress from the Affordable Housing Land together with rights for all necessary services
- d. the Owner and the Registered Social Landlord shall bear their own costs in relation to the transfer.
- e. the disposal shall be free of all financial charges and of any restrictive covenants or other third party rights which would prevent the use of the Affordable Housing Land for the purpose for which it is transferred
- f. the disposal shall be subject to the Standard Conditions of Sale (Fourth Edition) or the Standard Commercial Property Conditions (First Edition) except insofar as they are inconsistent with the provisions of this clause or any other express provision of this Agreement
- g. the transfer shall contain a covenant by the Registered Social Landlord not to use the Affordable Housing Land otherwise than for the purposes of Affordable Housing

PROVIDED THAT for the avoidance of doubt the Owner may transfer the Affordable Housing to more than one Registered Social Landlord.

THIRD SCHEDULE
The Council's Covenants

1. To issue the Permission within fourteen days of the date of this Deed incorporating the conditions set out in the Draft Conditions
2. To co-operate insofar as is reasonable with the Developer/Owner in the performance of its obligations under this Deed
3. Not to use any Contribution other than for the purpose specified in this Deed in relation to that Contribution without the prior written consent of the Owner
4. At the Owner's request to return any part of the sums aforesaid which shall not have been used for the purposes set out above within a period of 10 years from the date of the payment of the last Contribution together with simple interest at the base rate prevailing from time to time of National Westminster Bank calculated from the date of receipt of the relevant sum by the Council as evidenced by the Council's official receipt provided that the Council shall not be obliged to return any part of any Contribution which has been spent or contractually committed prior to the date of the Owner's request
5. Upon receipt of any of the sums in the First Schedule hereto the Council shall if requested to do so supply its written receipt for the aforesaid contributions

FOURTH SCHEDULE
Dispute Resolution Procedure

1. General

All differences and questions that arise between the Parties arising out of or connected with this Deed may be referred to an expert

2. Choice of Expert

2.1 If the difference or question relates to the construction of rights and liabilities of any party or to the terms or conditions to be embodied in any deed or document appertaining thereto it shall be referred to a solicitor or barrister agreed upon by the parties but in default of agreement appointed at the request of any party by or on behalf of the Chairman from time to time of the Bar

2.2 If the difference or question relates to the occupancy or the terms of letting of any dwelling it shall be referred to a chartered surveyor agreed upon by the parties but in default of agreement appointed at the request of any party by or on behalf of the President from time to time of the Royal Institution of Chartered Surveyors

2.3 If the difference or question relates to the question of assessing a “low income” or otherwise to matters usually and properly within the knowledge of a chartered accountant agreed upon by the parties but in default of agreement appointed at the request of any party by or on behalf of the President from time to time of the Institute of Chartered Accountants in England and Wales

2.4 If the difference in question relates to matters usually and properly within the knowledge of a Member of the Chartered Institute of Housing it shall be referred to a member of the said Institute agreed upon by the parties but in default of agreement appointed at the request of any party by or on behalf of the President from time to time of the Chartered Institute of Housing

3. No Further Submissions

After delivery of counter submissions or (if none) after submission of written submissions no party shall be entitled to make any further submissions and the expert shall forthwith deliberate and deliver to every party to the dispute their decision in writing within a reasonable time of closing submissions or counter submissions

4. Restriction on Terms of Decision

The expert shall be restricted in settling the dispute to choosing between one of the proposals submitted by the parties or elements compatible with one another from the submissions of different parties to the dispute

FIFTH SCHEDULE

**The Draft Conditions to be attached to the
Permission**

The imposition of the conditions as set out in the draft Planning Decision, reference MC....., attached to this Deed

THE COMMON SEAL of MEDWAY)
COUNCIL was hereunto affixed to this)
Deed in the presence of:)

Authorised Signatory

THE COMMON SEAL of)
LIMITED was hereunto)
affixed to this Deed in the presence of:)

Director

Director/Secretary

SIGNED as a DEED by)
)
in the presence of:)

Witness Signature:

Witness Name:

Witness Address:

Annex 1

Nominations Agreement

DATED _____

200 _____

MEDWAY COUNCIL

- and -

(insert name)

HOUSING ASSOCIATION LIMITED

**AGREEMENT
FOR NOMINATION RIGHTS**

of dwellings at

(insert address)

BETWEEN

(1) MEDWAY COUNCIL of Civic Centre, Strood, Rochester, ME2 4AU (the Council") and

(2) (insert name) HOUSING ASSOCIATION LIMITED whose registered office is situate at ("the Association")

1. Recitals

1.1 The Land is registered at HM Land Registry under title number (insert title number) and the Association is/is entitle to be registered as registered proprietor thereof

1.2 The Affordable Housing Units are to be provided on the Land and it is intended that the Association will manage the Affordable Housing Units as low cost rented accommodation

1.3 The parties hereto have entered into this Agreement to regulate the occupation of the Affordable Housing Units

2. Definitions and Interpretation

In this Agreement the following expressions shall where the context admits have the following meanings:

2.1	"the Affordable Housing Units"	means the (insert number) units of affordable housing constructed/to be constructed on the Land and "Affordable Housing Unit" shall be construed as meaning any one individual dwelling comprised in the Affordable Housing Units
2.2	"the Association"	includes any of its successors in title to the Land

2.3	“the Commencement Date”	means the date of this Agreement or the date of the practical completion of the construction of the Affordable Housing Units whichever is the latter
2.4	“the Land”	means the land at <i>(insert details)</i>
2.5	“the Nomination Period”	means the period of <i>(insert number)</i> years from the Commencement Date
2.6	“Nominees”	means persons considered by the Council to be suitable to occupy and be granted a tenancy of an Affordable Housing Unit and nominated as such to the Association in accordance with clause 7.2
2.7	“Non-true Voids”	shall have the meaning ascribed to it in the Schedule to this Agreement
2.8	“the Plan”	means the Plan annexed to this Agreement
2.9	“True Voids”	shall have the meaning ascribed to it in the Schedule to this Agreement

2.10 words importing one gender shall be construed as importing any other gender

2.11 words importing the singular shall be construed as importing the plural and vice versa

2.12 the clause headings do not form part of this Agreement and shall not be taken in to account in its construction or interpretation

3. Nomination Rights

The Association so as to bind each and every part of the Land into whosoever hands the same may come hereby covenants with the Council:

3.1 That the Council shall have the right to nominate the initial tenant for each Affordable Housing Unit

3.2 That (subject to clause of this Agreement) the Council shall have the right to

nominate the tenant for *(insert percentage)*% of the Affordable Housing Units on any reletting during the Nomination Period

- 3.3 To comply with the nominations procedure set out in clauses 4 and 5
- 3.4 The nomination rights contained in clause 3.2 shall occur where an Affordable Housing Unit becomes vacant and therefore available for reletting (including all vacancies that occur through a True Void reason but excluding any that occur through a Non-True Void reason)

4. Initial Nominations Procedure

- 4.1 The Association shall give to the Council's Housing Strategy Manager or other nominated officer at least 20 working days' notice in writing of the date it expects to be able to grant an initial tenancy of each Affordable Housing Unit, together with details of proposed rental levels
- 4.2 The Council covenants that it shall within 10 working days of receipt of the notice referred to in clause 4.1 supply to the Association the name and address and contact telephone number (if available) of its Nominee for the Affordable Housing Unit to which the notice in clause 4.1 refers
- 4.3 The Association shall upon receipt of the notification referred to in clause 4.2 it shall forthwith make a written offer to the Nominee of a tenancy of the Affordable Housing Unit
- 4.4 If a Nominee fails to accept the offer referred to in clause 4.3 within 5 working days of the offer by the Association then the Association shall give written notice to the Council inviting the Council to make a further nomination such selection procedure to continue until such time as a Nominee accepts a tenancy of the Affordable Housing Unit save that once three Nominees have refused to accept offers (in respect of any one Affordable Housing Unit) the Association shall be entitled to grant a tenancy to whoever the Association wishes falling within the Association's aims and objectives provided that in doing so reasonable preference will be given to those having a local connection to the Council's administrative area by virtue of present or past residence and/or employment or a need to be in the said area to receive or provide support to relatives

5. Nominations Procedure on Reletting

- 5.1 The Association shall give to the Council's Housing Strategy Manager or other nominated officer no less than 10 working days' notice in writing of the date an Affordable Housing Unit becomes available and in a condition suitable for reletting
- 5.2 The Council covenants that it shall within 5 working days of the receipt of the notice referred to in clause 5.1 supply to the Association the name and address and contact telephone number (if available) of its Nominee for the Affordable Housing Unit to which the notice in clause 5.1 refers
- 5.3 The Association shall upon receipt of the notification referred to in clause 5.2 it shall forthwith make a written offer to the Nominee of a tenancy of the Affordable Housing Unit
- 5.4 If a Nominee fails to accept the offer referred to in clause 5.3 within 5 working days of the offer by the Association then the Association shall give written notice to the Council inviting the Council to make a further nomination such selection procedure to continue until such time as a Nominee accepts a tenancy of the Affordable Housing Unit save that once three Nominees have refused to accept offers (in respect of any one Affordable Housing Unit) the Association shall be entitled to grant a tenancy to whoever the Association wishes falling within the Association's aims and objectives provided that in doing so reasonable preference will be given to those having a local connection to the Council's administrative area by virtue of present or past residence and/or employment or a need to be in the said area to receive or provide support to relatives

6. Grant of Tenancies

The Association further covenants with the Council that any tenancies granted in accordance with this Agreement shall be periodic tenancies complying with any requirements or guidelines of the Housing Corporation at a rental consistent with the Association's aims and objectives

7. Disposal of the Land

- 7.1 The Association hereby covenants with the Council that it will not transfer the Affordable Housing Units or any of them or grant a lease of the Affordable Housing Units or any of them (other than a periodic tenancy) to any person without first ensuring that such person has executed or will contemporaneously execute a deed whereby such person covenants directly with the Council to observe and perform the covenants and provisions contained in this Deed Provided that the Association may transfer or lease any Affordable Housing Unit without the requirement for the purchaser/lessee to enter into such covenant if the transfer/lease is made under a right to acquire or right to buy made pursuant to the Housing Act 1985 the Housing Act 1988 the Housing Act 1996 or any statutory re-enactment or modification thereof and all successors in title to such person or persons
- 7.2 The parties hereto apply to the Chief Land Registrar to enter in the proprietorship register of the Land a restriction in the following terms:
“No disposition of the registered estate of *(insert title number)* (other than a charge) is to be registered without a certificate signed by Medway Council’s Assistant Director (Legal & Contract Services) that the provisions of clause 7.1 of the Agreement for Nomination Rights dated
made between Medway Council and
Housing Association Limited have been complied
with”

8. Declarations

IT IS HEREBY AGREED AND DECLARED that the provisions of this Deed shall not bind nor be enforceable against

- 8.1 any mortgagee or chargee of the Association’s legal interest in the Land or any part or parts thereof exercising its power of sale and all successor in title to such mortgagee or chargee

8.2 any person or persons acquiring an Affordable Housing Unit under a right to acquire or right to buy pursuant to the Housing Act 1985 the Housing Act 1988 the Housing Act 1996 or any statutory re-enactment or modification thereof and all successors in title to such person or persons

IN WITNESS whereof the Parties hereto have caused this Deed to be duly executed the day and year first before written

THE SCHEDULE

hereinbefore referred to

DEFINITION OF TRUE/NON-TRUE VOIDS

True Voids shall comprise:

- * voids within new build/newly rehabilitated schemes or newly acquired properties
- * voids created through tenant moves to landlords where no reciprocal arrangement exists
- * voids created through tenant transfers to another local authority
- * voids created by the death of a tenant where there is no statutory right to succession
- * voids created by tenants buying their own property in the private sector
- * voids created by eviction or abandonment of property
- * voids created by decants if the decanted tenant does not move back into the property

Non-true Voids shall comprise:

- * voids created through tenant transfers where tenants move within the local authority in which their original home was situated
- * voids created through rehousing via H.O.M.E.S or other mobility schemes where a reciprocal arrangement exists
- * voids created by decants who are returning from whence they were

decanted

* voids created by mutual exchanges

THE COMMON SEAL of MEDWAY)
COUNCIL was hereunto affixed in)
the presence of:-)

THE COMMON SEAL of)
HOUSING ASSOCIATION)
LIMITED was hereunto affixed in the)
presence of:-)

Date _____ 2007

(1) MEDWAY COUNCIL

(2)

AGREEMENT

pursuant to Section 106
Town and Country Planning Act 1990

Land at

Legal and Contract Services
Civic Centre
Strood
Rochester
Kent
ME2 4AU

.../PL02....