

Draft: 6 December 2018

**Lease for the construction and sale of dwellings [and other buildings] upon land at [\*\* ]**

**Dated**

**The Homes and Communities Agency (trading as Homes England)**  
(Homes England)

[\*\* ]  
(Developer)

[\*\* ]  
(Surety)



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Notes

Remove all note boxes when drafting – including this one.

**(Save where expressly mentioned below) you must NOT delete any of the prescribed clauses.**

**Lease**

**LR1. Date of lease**

**LR2. Title number(s)**

**LR2.1 Landlord's title number(s)**

.

**LR2.2 Other title numbers**

[None.]

**LR3. Parties to this lease**

**Landlord**

The Homes and Communities Agency (trading as Homes England) (**Homes England**) of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH

**Tenant**

[\*\* ] (**Developer**) [of/Company Registration Number \*\*  
whose registered office is at \*\* ]

**Other parties**

Do not amend the above headings of **Landlord** and **Tenant**, even if this is not how they are subsequently described in the remainder of the lease.

Delete **Other parties** if there are none or if the Surety is entering into a stand-alone deed of guarantee but leave the surety drafting in place as it will be needed if the building lease is assigned to a person for whom a surety is required.

[\*\* ] (**Surety**) [of/Company Registration Number \*\*  
whose registered office is at \*\* ]

**LR4. Property**

**In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.**

The land demised by this lease is known as [\*\* ], defined as the [Land] in Clause [1] and more fully described in [that definition].

**LR5. Prescribed statements etc.**

[None.]

**LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.**

[None.]

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**LR5.2 This lease is made under, or by reference to, provisions of:**

**LR6. Term for which the Property is leased**

The term as specified in this lease at Clause [3.1] .

**LR7. Premium**

[None.] [£\*\* plus VAT of £\*\* ]

If VAT is payable on the premium, it must be stated, including how much. State for example, " <i>£100,000 plus VAT of £20,000</i> " or " <i>£120,000 inclusive of VAT</i> ". Do NOT simply refer to VAT generally for example, " <i>£100,000 plus VAT</i> ".
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**LR8. Prohibitions or restrictions on disposing of this lease**

[This lease does not contain a provision that prohibits or restricts dispositions.]

OR

[This lease contains a provision that prohibits or restricts dispositions.]

You must include whichever of these two statements is appropriate. Do NOT refer to the relevant clauses in the lease.
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**LR9. Rights of acquisition etc.**

**LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land**

Refer to the clause numbers which contain any relevant provisions. NB any relevant title number should be into clause LR2.2 above.
--

[None.] [See Clause [\*\* ].]

**LR9.2 Tenant's covenant to (or offer to) surrender this lease**

[None.] [See Clause [\*\*                    ].]

**LR9.3 Landlord's contractual rights to acquire this lease**

[None.] [See Clause \*\*                    ].]

**LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property**

Refer to the clause numbers which contain the provisions. NB any relevant title number should be inserted into clause LR2.2 above.

[None.] [See Clause \*\*                    ].]

**LR11. Easements**

**LR11.1 Easements granted by this lease for the benefit of the Property**

[None.] [See [Schedule 1 Part1].]

Refer to the schedule number which sets out easements granted. NB all relevant burdened title numbers should be inserted into clause LR2.2 above.

**LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property**

[None.] [See [Schedule 1 Part 2].]

Refer to the schedule number which sets out easements reserved. NB all relevant benefiting title numbers should be inserted into clause LR2.2 above.

**LR12. Estate rent charge burdening the Property**

[None.] [See Clause \*\*                    ].]

Refer here only to the clause number which sets out the rentcharge.

**LR13. Application for standard form of restriction**

The full text of the standard form of restriction and the title against which it is to be entered must be set out (not forgetting to put any additional title number into clause LR2.2 above).

If more than one standard form of restriction is required, then use this clause to apply for each of them, repeating the introductory words below for each restriction.

If a non-standard form of restriction is required, this should NOT be referred to in this clause. A separate application must be made on Form RX1.

Clause LR13 may be deleted in its entirety if it is not relevant. But LR14 must not be renumbered.

[The Parties to this lease apply to enter the following standard form restriction against the title of the Property:

"No disposition of the registered estate 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 The Homes and Communities Agency of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH or their conveyancer that the provisions of a lease dated ■ and made between (1) Homes and Communities Agency [and] (2) [*developer*] [and (3) [*surety*]] have been complied with or that they do not apply to the disposition (Form L)".

**LR14. Declaration of trust where there is more than one person comprising the Tenant**

Clause LR14 may be deleted in its entirety if it is not relevant.

[The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants.]

OR

[The Tenant is more than one person. They are to hold the Property on trust for themselves as tenants in common in equal shares.]

OR

[The Tenant is more than one person. They are to hold the Property on trust (*insert here details of the trust*).]

OR

[Not applicable.]



## PARTICULARS

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**ESTATE NAME:** [\*\* ]

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**AREA:** [\*\* ] [hectares][acres] approximately

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**NUMBER OF DWELLINGS:** [\*\* ] Dwellings comprising:  
[\*\* ] Market Dwellings  
[\*\* ] Sale Flats  
[\*\* ] PRS Dwellings  
[\*\* ] Affordable Dwellings comprising:  
[\*\* ] Shared Ownership Units  
[\*\* ] Rental Units

n.b the number of Dwellings will reflect the Planning Permission

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**[NUMBER OF NON-RESIDENTIAL UNITS** [\*\* ] [Comprising up to [ ] square metres of gross internal floor area]

n.b the number or development area of Non-Residential Units will reflect the Planning Permission

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**PRICE:** £[\*\* ]

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**[SITE ACCESS:** The access road shown edged [\*\* ] on the plan marked ["Plan B"] forming part of **Annexure** 1 and such additional or alternative access roads as may from time to time be specified by Homes England.

## LEASE

**Dated**

**Between**

- (1) **The Homes and Communities Agency** (trading as **Homes England**) ("**Homes England**") (referred to in Clause LR3 as the Landlord) of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH; [and]
- (2) [**\*\***] (the **Developer**) (referred to in Clause LR3 as the Tenant) (Company Registration Number [**\*\***] ) whose registered office is at [**\*\*** ] [;and]
- (3) [**\*\***] (the **Surety**) (referred to in Clause LR3 as the Surety) (Company Registration Number [**\*\***] ) whose registered office is at [**\*\*** ] .

**It is agreed:**

### 1. DEFINITIONS

In this Lease the following definitions apply:

**Acceleration Date** means the twenty eighth day after service of written notice by Homes England on the Developer invoking the Acceleration Date which notice may be served following:

- (a) the service of an Insolvency Termination Notice under **Clause 16.1(a)** of this Lease; or
- (b) the service of a Breach Termination Notice under **Clause 16.1(b)**, **Clause 16.1(c)** or **Clause 16.1(d)** of this Lease.

**Act** means the Town and Country Planning Act 1990.

**Actual House Build Commencement Date** means the date on which the construction of the foundation (which includes the laying of the first foundation slab where appropriate) of the first Dwelling commences]

**Actual House Build Completion Date** means the date on which the issue of the CML Certificate has been achieved for all Dwellings forming part of the Development

**[Adjoining Land** means the land belonging to Homes England shown coloured [**\*\*** ] on the annexed plan marked ["**Plan [ ]**" forming part of **Annexure 1.** ]

**Adjusted Target House Build Commencement Date** means the Target House Build Commencement Date adjusted by the provisions in **paragraph 8.2** of **Schedule 2**

**Adjusted Target House Build Completion Date** means the Target House Build Completion Date adjusted by the provisions in **paragraphs 8.1** and/or **8.2** and/or **8.3** and/or **8.4** and/or **8.5** and/or **8.6** of **Schedule 2** and which is confirmed by a memorandum of agreement pursuant to **paragraph 8.8**

**Adjusted House Build Targets** means the House Build Targets adjusted by the provisions in **paragraphs 8.1** and/or **8.3** and/or **8.4** and/or **8.5** and/or **8.6** of **Schedule 2** and which is confirmed by a memorandum of agreement pursuant to **paragraph 8.8**

**Adoptable Common Services** means all Common Services which are intended to become adopted or maintainable at the public expense or by any public or statutory authority.

**Adoptable Highways** means Highways intended to be adopted as maintainable by the highway authority [being those Highways shown coloured [\*\* ] on the plan marked ["Plan [ ]"] forming part of Annexure 1.

**[Affordable Dwelling** means a Dwelling the freehold interest in which is to be disposed of by the Developer to the Registered Provider for further disposal by the Registered Provider under a Shared Ownership Lease or Tenancy Agreement [or on such other affordable terms as otherwise approved by Homes England (such approval not to be unreasonably withheld or delayed.)]

**[Affordable Flat** means any Flat comprised in an Affordable Leasehold Building [or Leasehold Building] and which is to be disposed of by the Registered Provider under a Shared Ownership Lease or Tenancy Agreement (or on such other affordable terms as otherwise approved by Homes England (such approval not to be unreasonably withheld or delayed).]

**[Affordable Leasehold Building**<sup>1</sup> means, [a building comprising entirely Affordable Flats (including any land forming the curtilage of the building)] [any of the buildings to be constructed on the land shown [\*\* ] on [\*\* ] annexed] the freehold of which is to be disposed of by the Developer to the Registered Provider.]

**[Agreement for Lease** means the agreement dated [\*\* ] made between Homes England (1) [and] the Developer (2) [and the Surety (3)] pursuant to which this Lease has been granted.]

**Approved Funder** means [ ]<sup>2</sup>.

**Approved Plans**) has the same meaning as in the Agreement for Lease and which plans as have been approved pursuant to and in accordance with the Agreement for Lease are set out in the Approved Plans Schedule

**Approved Plans Schedule** means the approved plans schedule at Annexure ■

**[Base Figure** means the mean monthly Total Sales Volume for the three month period in the [East Midlands][East of England][North East][North West][South East][South West][West Midlands][Yorkshire and the Humber] region most recently published before the date of completion of this Lease; this is [■sales]<sup>3</sup> ]<sup>4</sup>

**Base Value** means the base value attributed to each Dwelling (or type of Dwelling) as is set out in Annexure 3

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<sup>1</sup> This is intended to relate to buildings comprising entirely affordable housing.

<sup>2</sup> Insert the details of any funder who has been approved by Homes England at the date the Lease is entered into. Note the provisions of clause 12.8 which need to be satisfied for the funder to be approved.

<sup>3</sup> Figure to be inserted is to be calculated and inserted on the date of completion of the lease

<sup>4</sup> Definition only required if Market Downturn definition is included

**Breach Termination Notice** means a written notice served by Homes England on the Developer (and copied to each Permitted Chargee) as described in **Clause 16.1(b), 16.1(c) and 16.1 (d)** referring to the relevant clause and stating that failure to respond within 20 Working Days in the manner required by **Clause 18** of this Lease could lead to the termination of this Lease

**[Building Contract** means the construction contract or contracts (as the case may be) to be entered into by the Developer with the Building Contractor to carry out the Development.]

**[Building Contractor** means [[NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] or] such [other] reputable building contractor or building contractors who shall first be approved by Homes England (such approval not to be unreasonably withheld) appointed by the Developer for the purposes of the Development or any part of it]

**CDM** means the Construction (Design and Management) Regulations 2015 (as amended from time to time)

**CML Certificate** means the certificate issued by the Council of Mortgage Lenders (CML) to confirm that a Dwelling is practically complete

**CML Disclosure of Incentives Form** means the Disclosure of Incentives Form prepared by the Developer in respect of a sale of a Dwelling in the form available from the CML website <http://www.cml.org.uk/handbook>.

**[Common Areas** means:

- (a) those parts of the Land not included in any [Dwelling][Unit];
- (b) those Highways and Common Services not intended to be adopted as maintainable at public expense;
- (c) Open Space Land not intended to be transferred to the [Council]

and which it is intended shall be transferred to the Management Company [as shown on the Approved Plans.]

**Common Services** means sewers, drains, channels, pipes, watercourses, gutters, wires, cables, pillars, turrets, amplifiers, poles, soakaways and any other apparatus for the supply, transmission or distribution of water, gas, electricity, heat or telephone, radio or television signals or for the disposal of soil, foul water, effluent, rainwater or surface water[which are not to be adopted as maintainable at public expense].

**[Compliance Certificate<sup>5</sup>** means in relation to a Non-Residential Unit (or batch of Non-Residential Units as the case may be) a certificate given by the Compliance Inspector certifying that:

- (a) the Non-Residential Unit has been erected in accordance with the plans and specifications for the construction of the Non-Residential Unit contained in the Approved Plans; and

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<sup>5</sup> Definition not required of there are no non-residential units

- (b) that practical completion has been achieved as evidenced by the issue of a certificate of practical completion; and
- (c) that the Highways sewers drains and other services ancillary to and reasonably necessary for the proper enjoyment of the Non-Residential Unit have been completed commissioned and are ready for use by the Non-Residential Unit or occupiers thereof; and
- (d) In relation to the Non-Residential Unit there is no extant breach by the Developer of the terms of this Lease and/or the Agreement for Lease; and
- (e) That the Non-Residential Unit reaches the Performance Criteria[; and]
- (f) [other matters to be certified.]]

**Compliance Inspector** means a suitably qualified professional who is qualified to prepare the Monitoring Report and to certify matters required to be certified in the Compliance Certificate and who is appointed by the Developer from time to time with the approval of Homes England.

**Compliance Inspector Appointment** means the appointment by the Developer of the Compliance Inspector dated [ ] to provide the services detailed in the Compliance Inspector Brief.

**Compliance Inspector Brief** means the brief annexed to the Agreement for Lease.

**Considerate Constructors Scheme** means the Code of Considerate Practice promoted by the construction industry [a copy of which is annexed] [a copy of which is to be found on the Considerate Constructors Scheme website.]

**[Constraints Plan** means the constraints plan annexed hereto at Annex [ ].]

**Construction Related Deadline**<sup>6</sup> means any one or more of the following:

- (a) Start on Site has occurred on or before the Target Start on Site Date
- (b) The Actual House Build Commencement Date has occurred on or before the Adjusted Target House Build Commencement Date
- (c) [The issue of the CML Certificate in respect of a minimum of:
  - (i) [ ] completed Dwellings [*the house build target figure from the bid less 10%*] by month [ ] following the Actual House Build Commencement Date
  - (ii) [ ] completed Dwellings [*the house build target figure from the bid less 10%*] by month [ ] following the Actual House Build Commencement Date
  - (iii) [ ] completed Dwellings [*the house build target figure from the bid less 10%*] by month [ ] following the Actual House Build Commencement Date]<sup>7</sup>

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<sup>6</sup> Note: these deadlines are across all phases of the Development and are not to be broken down on a phase by phase basis

- (d) The issue of a CML Certificate in respect of a minimum of 90% of Dwellings by the Adjusted Target House Build Completion Date

All such dates being subject to any extensions permitted and granted pursuant to **paragraph 8 of Schedule 2**

**[Core and Shell Stage** means in the case of a Non-Residential Unit:

- (a) completion of the construction of the superstructure, roof, external and internal walls, floors and staircases;
- (b) the fitting of windows;
- (c) the completion of pre-skim, internal plaster boarding and external plastering rendering; and
- (d) the removal of scaffolding from around the Non-Residential Unit.]

**Council** means [ ].

**[Deed of Guarantee** means a deed made on the same date as this Lease between (1) Homes England (2) the Developer and (3) the Surety]

**Deleterious Materials** means any materials or substances which are not in accordance with the report entitled "Good Practice in the Selection of Construction Materials" (published under the auspices of the steering group representing the British Council for Offices and the British Property Federation and prepared by Ove Arup) at the date of this Lease and/or the relevant British and/or European Standards and/or codes of practice or which are generally known within the construction industry at the time of specification or use to be deleterious to the durability and/or to the health and safety of buildings and/or structures and/or finishes and/or plant and machinery in the particular circumstance in which they are specified to be used; or

**Developer's Group** means a group company of the Developer as defined in Section 42 of the Landlord and Tenant Act 1954

**[Developer's Infrastructure Works** means ]

**Development** means the erection and completion on the Land of all buildings, erections, structures, Highways, drainage, infrastructure and other works in accordance with the Planning Permission[, and] the Approved Plans [and the Constraints Plan], including site preparation and the demolition of any existing buildings to provide for the erection of the Number of [Dwellings] [Units] specified in the Particulars.

**Digital Plan** means a digital plan in both dwg and pdf format with a colour coded legend showing the following classes of disposal: (i) [Dwelling][Unit] transfers (ii) Leasehold Building Transfers (iii) Affordable Leasehold Building Transfers (iv) PRS Leasehold Building Transfers (v) transfers to the Council (vi) transfers to utility companies (vii) transfers to the Management Company (viii) other transfers and (ix) the Remainder Land

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<sup>7</sup> Construction Related Deadlines linked to House Build Targets are only appropriate if the total build period exceeds 18 months

**Disposal** means a disposition for value to a person who is not a member of the Developer's Group by sale, exchange, grant of an underlease for a premium, declaration of trust or otherwise and whether effected by one or more transactions and 'Dispose' and 'Disposed' shall be construed accordingly

**Dwelling** means any house, bungalow, Flat, maisonette or other single unit of residential accommodation constructed on the Land together with any land forming its curtilage and any other appurtenant structures.

**EIR** means the Environmental Information Regulations 2004 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

**EIR Exception** means any applicable exemption to EIR.

**Employment and Skills Plan**<sup>8</sup> means the employment and skills plan for the Development produced by the Developer and approved by Homes England incorporating the Method Statement and the Developer's Employment Commitments annexed to this Lease at Annexure [ ].

**Employment Commitments** means the employment and skills opportunities to be offered by the Developer during the course of the Development in satisfaction of the commitments made in the Employment and Skills Plan.

**Enactment** means statute, statutory instrument, statutory guidance, treaty, regulation, directive, byelaw, code of practice, guidance note, circular, common law and any notice, order, direction or requirement given or made pursuant to any of them for the time being in force.

**Energy Performance Certificate** means a certificate issued under the 2012 Regulations.

**Environment** means all or any of the following media, alone or in combination: the air (including the air within buildings and the air within any other natural or man-made structures above or below ground), water (including water under or within land or in pipes or sewerage systems), soil, land and any ecological systems and living organisms supported by those media and buildings.

**Environmental Law** means all European Community, national and local statutes, and the common law, from time to time in force concerning:

- (a) pollution of, damage to or protection of the Environment or health and safety and/or the provision of remedies in respect of or compensation for damage or harm to the Environment or to health and safety and/or
- (b) emissions, discharges, releases or escapes into the Environment or the presence in the Environment of Hazardous Substances or the production, processing, management, treatment, storage, transport, handling or disposal of Hazardous Substances

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<sup>8</sup> The Employment and Skills Plan should take account of Procurement Policy Note – Supporting Apprenticeships and Skills [Through Public Procurement Action Note](#) 14/15 27 August 2015 (as updated or replaced from time to time). This currently states that the Government's expectation is for contractors and consultants to aim for 3-5% of the workforce to be apprentices, sponsored students and/or on graduate programmes, with a focus on apprentices.

and any bylaws, regulations or subordinate legislation, judgments, decisions, notices, orders, circulars, codes of practice and permits from time to time issued or made thereunder having force of law.

**Estate Layout Plan** means a plan issued in both dwg and pdf format showing the layout and boundaries of the buildings to be comprised in the Development such plan being suitable for lodging as an estate plan at the Land Registry.

**Estate Management Scheme** means the scheme to secure the long-term stewardship and maintenance [by the Management Company] of the Common Areas and the Open Space Land [both within the Development or outside of the Development for the wider management scheme for ■ generally (“Wider Development”)] to address wider community responsibility and environmental objectives for the Development [and the Wider Development].

**Exempted Information** means any Information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions.

**Final Completion Certificate** means a certificate issued by the Compliance Inspector under **Clause 6.1** certifying completion of the Development.

**[Flat** means a single unit of residential accommodation (whether or not on the same floor) constructed on the Land which:

- (a) forms a part only of a building; and
- (b) is divided horizontally from some other part of that building.]

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

**FOIA Exemption** means any applicable exemption to FOIA.

**[Golden Brick** means the point in the construction of an [Affordable Dwelling][Affordable Leasehold Building][PRS Dwelling][PRS Leasehold Building] where such construction has clearly progressed beyond the foundation stage and which upon its transfer from Homes England to the Registered Provider or to the PRS Operator or the grant of a sublease by the Developer to the Registered Provider or to the PRS Operator would result in a zero-rated supply.]

**[Golden Brick Notice** means a notice given by the Compliance Inspector certifying that a particular Dwelling has achieved Golden Brick].

**Hazardous Substances** means any wastes, pollutants, contaminants and any other natural or artificial substance, including, for the avoidance of doubt, radioactive material (in each case whether in the form of a solid, liquid, gas or vapour, and whether alone or in combination) which is capable of causing harm or damage to the Environment or to the health and safety of persons.

**Highways** means roads, cycleways, footpaths, pavements, accessways, squares, courtyards, driveways, forecourts, entranceways and ancillary verges, landscaped areas, lighting, street furniture, drains, other utilities and associated works.



**Highways Technical Approval** means written approval by the competent highway authority of the Developer's detailed proposals for Adoptable Highways within the Development.

**Homes England** includes the person who is from time to time entitled to the reversion immediately expectant on the determination of this Lease.

**[Homes England's Infrastructure Works** means the infrastructure work to be carried out by Homes England outside the boundaries of the Land, more particularly described in Homes England's Infrastructure Works Specification.]

**[Homes England's Infrastructure Works Specification** means the annexed drawings and specifications annexed to this Leases as **Annexure [ ] .**]

**Homes England's Plot Sales Solicitors** means such firm of solicitors appointed by Homes England to act on its behalf on the disposal of the Dwellings as Homes England shall notify to the Developer from time to time

**Homes England's Representative** means the General Manager for the [*insert area*] region or such other individual as Homes England may notify to the Developer from time to time.] [any person nominated by Homes England from time to time and notified to the Developer in writing]

**Homes England's Solicitor** means [ ] or such other firm of solicitors as Homes England shall notify to the Developer from time to time

**[House Build Targets<sup>910</sup>** the rate of construction set out in the Developer's build programme contained in the Approved Plans Schedule and in accordance with the milestones set out below:

- (e) By month [ ] following the Actual House Build Commencement Date [ ] completed Units [; and]
- (f) By month [ ] following the Actual House Build Commencement Date [ ] completed Units[; and]
- (g) By month [ ] following the Actual House Build Commencement Date[ ] completed Units[; and]
- (h) By month [ ] following the Actual House Build Commencement Date [ ] completed Units]

### **Information**

- (a) in relation to FOIA has the meaning given under section 84 of the FOIA; and
- (b) in relation to EIR has the meaning given under the definition of "environmental information" in section 2 of EIR.

**Insolvency Event** means:

- (a) where the Developer or the Surety is a corporation:

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<sup>9</sup> The provisions regarding House Build Targets are only appropriate if the total build period exceeds 18 months

<sup>10</sup> Note: these targets are across all phases of the Development and are not to be broken down on a phase by phase basis

- (i) any step is taken in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developer or the Surety; or
  - (ii) an application is made for an administration order in relation to the Developer or the Surety; or
  - (iii) in relation to the Developer or the Surety, the appointment of an administrator, the filing of documents with the court for the appointment of an administrator or the giving of notice of intention to appoint an administrator by the Developer (or the Surety, as the case may be) or its directors, or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986); or
  - (iv) a receiver or manager is appointed in relation to any property or income of the Developer or the Surety; or
  - (v) a liquidator is appointed in respect of the Developer or the Surety; or
  - (vi) a voluntary winding-up order for the Developer or the Surety is commenced, except in the winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies; or
  - (vii) a petition is made for a winding-up order for the Developer or the Surety; or
  - (viii) the Developer or the Surety is struck-off from the Registrar of Companies; or
  - (ix) the Developer or the Surety otherwise ceases to exist;
- (b) where the Developer or the Surety is an individual:
- (i) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developer or the Surety; or
  - (ii) the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Developer or the Surety

and **Insolvent** and **Insolvency** shall be construed accordingly.

**Insolvency Termination Notice** means a written notice served by Homes England on the IP (copied to the Developer and the Permitted Chargee) as described in **Clause 16.1(a)** referring to that clause and stating that failure to respond within 20 Working Days in the manner required by **Clause 17** of this Lease could lead to the termination of this Lease

**Interest** means interest at the rate of four per cent per annum above the base lending rate from time to time of Barclays Bank PLC (or of such other UK clearing bank as Homes England may designate from time to time by giving notice to the Developer) both before and after any judgment, calculated on a daily basis from the date on which the payment is due under this Lease to the date on which such payment is made.

**IP** means any of a liquidator or administrator appointed to the Developer, or a fixed charge receiver appointed to the Lease of whom Homes England has written notice

**Land** means all that land situate at [\*\* ] which is [for the purpose of identification only] edged red on the annexed plan marked ["Plan A"] and comprised within [part of] title number(s) [ ] and known by the Estate Name (and references to "Land" shall include any part or parts of it).

**[Landscape Phasing Plan** means the phasing plan forming part of the Landscape Works Specification setting out the elements of landscaping [in relation to public open space] and adoption thereof to be achieved in relation to the number of [Dwellings] [Units] sold [let] (or agreed to be sold [let]).]

**[Landscape Works Specification** means the specification relating to landscaping annexed to this Lease as **Annexure [ ].**]

**Lease** means this Lease and any document supplemental to it or entered into pursuant to its terms.

**[Leasehold Building** means [a building comprising entirely of Sale Flats [(including any land forming the curtilage of the building)] [a building comprising Sale Flats and Affordable Flats] [(including any Non-Residential Units)] and any land forming the curtilage of the building).

**[Legal Charge<sup>11</sup>** means a charge by way of first legal mortgage (or second legal mortgage where this Lease has been charged to a Permitted Chargee by way of a first legal mortgage) entered into by the Developer in favour of Homes England substantially in the form set out in **Part 7 of Schedule 9** and naming the Homes and Communities Agency as the chargee]

**Local Planning Authority** means the Council or such other authority, as shall from time to time have authority to deal with town and country planning matters.

**Low Cost Rental Accommodation** means as defined in Section 69 of the Housing and Regeneration Act 2008.

**LTA 1954** means the Landlord and Tenant Act 1954

**[Management Company** means the management company established by the Developer [(or Homes England as the case may be] pursuant to **Clause 27** (or such other person from time to time nominated by Homes England to deal with the [Estate Management Scheme].]

**[Market Downturn** means that at any time the published Total Sales Volume has been at least 20% lower than the Base Figure for a period of three consecutive months<sup>12]</sup>

**Market Dwelling<sup>13</sup>** means a Dwelling the freehold interest in which is to be disposed of by the Developer to a Purchaser at full market value assessed in accordance with

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<sup>11</sup> Definition is only required if Homes England is taking a charge

<sup>12</sup> Only to be included in schemes with a build period in excess of 18 months

<sup>13</sup> Homes England's expectation is that all dwellings that are not flats will be sold freehold. If this is not the case additional wording will need to be included prohibiting the reservation of a ground rent (except a peppercorn) in the leases granted of the houses.

the RICS Valuation Global Standards 2017 plus UK 2014 (revised 2015) supplement (The Red Book))

**Material Breach** means a material breach of this Lease and/or the Agreement for Lease by the Developer

**Method Statement** means the method statement produced by the Developer for the Development which sets out in detail how the Developer will implement the Employment and Skills Plan.

**Modern Slavery Policy** means Homes England's modern slavery policy displayed on Homes England's web site as updated and amended from time to time

**Monitoring Report** means each monthly monitoring report issued by the Compliance Inspector pursuant to the Compliance Inspector Appointment

**[Non-Residential Unit** means any buildings and structures erected on or refurbished on the Land that are not Dwellings including but not limited to shops, offices and community facilities and their immediate curtilage and any garages, parking spaces, private spaces, private drives or forecourts relating to such buildings/structures.]

**[Open Space Land** means that part of the Land [being the open spaces, play areas, amenity areas and landscaping areas][identified as such in the Approved Plans Schedule] [for general public use].]

**Overage** means the overage payment (being Homes England's Adjusted Payment as defined in **Schedule 12**) calculated and payable by the Developer to Homes England in accordance with the provisions of **Schedule 12**.

**Overage Reduction** means a reduction of 10% of the Developer's Payment (as defined in **Schedule 12**) for each Reduction Event that is either unchallenged or that is agreed or determined pursuant to **Clause 19.6**

**Particulars** means the details appearing in the page of this Lease so headed.

**Party** means a party to this Lease and **Parties** means more than one Party.

**Performance Criteria** means:

- (a) Compliance with the Planning Permission and Reserved Matters Approval (as defined in the Agreement for Lease)
- (b) Compliance with building regulations
- (c) Compliance with the CDM regulations and all other relevant legislation
- (d) Compliance with the Approved Plans as bid by the Developer and attached as schedules to the Agreement for Lease and this Lease
- (e) Compliance with the Landscape Works Specification
- (f) Adopting a construction methodology and using only materials of a kind generally acceptable to CML mortgage lenders.

- (g) [NHBC 10 year buildmark warranty]<sup>14</sup> being available to every Purchaser with the Purchaser obliged to acquire it and the Developer never waiving this obligation

**Permitted Chargee** means any mortgagee of this Lease and/or holder of a floating charge over all or substantially all of the Developer's business and assets approved by Homes England pursuant to **Clause 12.7(b)** such approval being subject to the provisions of **Clause 12.8** and of whom Homes England has written notice

**Planning Acts** means all Enactments relating to town and country planning.

**Planning Agreement** means any agreement and/or undertaking required by the Local Planning Authority to be entered into as a condition of the grant or implementation of any planning consent, including [the Specific Section 106 Agreement, ]any agreement pursuant to any one or more of Section 38 or Section 278 of the Highways Act 1980, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982, Section 111 of the Local Government Act 1972, Section 106 of the Act (as amended by the Planning and Compensation Act 1991) or Section 104 of the Water Industry Act 1991 or any agreement with a water or sewerage undertaker or other appropriate authority as to water supply or to drainage or surface water and/or effluent from the Land or any provision of similar intent and any variation, amendment or modification thereof.

**Planning Permission** means the planning permission dated [ ] issued by [ ] under reference [ ].

**Plot Documentation Provisions** means the rights covenants declarations and obligations (particularly in respect of service charge management and occupiers covenants) as may be reasonably appropriate having regard to the Developer's standard plot documentation from time to time

**Principal Designer** means [[NAME] of [ADDRESS] or] such [other] person as may be appointed [as a replacement for the time being] by the Developer with the approval of Homes England to be the principal designer for the Development for the purposes of the Development and CDM.

**[PRS Dwellings means ■]**

**[PRS Leasehold Building** means [a building comprising entirely Flats (including any land forming the curtilage of the building)] [any of the buildings to be constructed on the land shown [\*\* ] on [\*\* ] annexed] the freehold of which is to be disposed by the Developer to the PRS Operator]

**[PRS Operator** means [■ ] or such other organisation approved by Homes England (such approval not to be unreasonably withheld or delayed)]

**Purchaser** means any person (including the Registered Provider or the PRS Operator) who shall take (or enter into a contract with the Developer to take) a transfer or lease (or any other disposal) of any Dwelling or any Affordable Leasehold Building or any PRS Leasehold Building.

**Reduction Event** has the meaning given to that term in **Clause 19.2**

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<sup>14</sup> This can be replaced by a similar product

**Reduction Notice** means a notification contained in a Monitoring Report that Homes England considers that a Reduction Event has occurred (as referred to in **Clause 19.3**)

**Registered Provider** means [ ] or such other independent housing organisation listed as a provider of social housing on the register maintained by the Regulator of Social Housing under Section 111 of the Housing and Regeneration Act 2008 and approved by Homes England (such approval not to be unreasonably withheld or delayed).

**Remainder Land** means those parts of the Land the freehold of which is still vested in Homes England and which is not at the relevant time the subject of another transfer under this Lease

**Remediation Notice** means a notice served by Homes England on the Developer [and copied to any Permitted Chargee] specifying:

- (a) that there has been a breach of this Lease and giving details of the breach; and
- (b) whether Homes England considers that the breach is remediable, and if it is, requiring the Developer to produce a Remediation Plan

**Remediation Plan** means a plan demonstrating (as appropriate) how the Developer will:

- (a) accelerate the pace of house build in order to catch up with the Constructed Related Deadline(s); or
- (b) remedy the breach described in a Remediation Notice

**[Rental Unit** means a Dwelling which is to be used as Low Cost Rental Accommodation).]

**Request for Information** shall have the meaning set out in FOIA or any request for information under EIR which may relate to the Land, this Lease or any activities or business of Homes England.

**[Sale Flat** means a Flat in respect of which a long lease for a term of [99][125] years at a premium and a peppercorn ground rent<sup>15</sup> is to be disposed of by the Developer to a Purchaser.]

**[Sale Report** means a report by the Developer's solicitors in the form set out in **Schedule 8** together (where the Purchaser acquired the Dwelling using mortgage funding) with a copy of the completed CML Disclosure of Incentives Form.]

**Sewers Technical Approval** means written approval by the competent water authority of the Developer's detailed proposals for adoptable foul and surface water sewers within the Development.

**[Shared Ownership Lease** means a lease of a Shared Ownership Unit granted on shared ownership terms substantially in the model form of lease produced by Homes

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<sup>15</sup> Homes England will not agree to the Developer imposing a ground rent on the sale of flats. This does not prevent the imposition of a service charge as part of an Estate Management Scheme.

England from time to time in accordance with “shared ownership arrangements” (as defined by Section 70(4) of the Housing and Regeneration Act 2008.)

**[Shared Ownership Unit** means a Dwelling for which a Shared Ownership Lease is to be disposed of by the Registered Provider to a Purchaser.]

**[Site Specific Obligations** means those matters set out in **Schedule 2 Part 2.**]

**Specific Section 106 Agreement** means the agreement dated [ ] made between (1) [ ] and (2) [ ].

**Start on Site** means when the first of the following events occurs in relation to the Development:

- (a) excavation for strip or trench foundations or for pad footings;
- (b) digging out and preparation of ground for raft foundations;
- (c) vibroflotation, piling, boring for piles or pile driving;
- (d) drainage work specific to the scheme/phase; or
- (e) infrastructure works and demolition.

**Suitable Substitute** means a person, firm or company, approved by Homes England (such approval not to be unreasonably withheld or delayed) with the technical ability, commercial expertise and adequate financial facilities to complete the Development on the terms contemplated by this Lease

**[Surety** means ■ (company registered number ■ ) whose registered office is at ■ .]<sup>16</sup>

**Target House Build Commencement Date** means [■ [specify date]]<sup>17</sup>

**Target House Build Completion Date** means the ■ anniversary of the Adjusted Target House Build Commencement Date

**Target Start on Site Date** means [■ [specify date]]<sup>18</sup>

**Term Commencement Date** means ■

**Terminate this Lease** means the exercise by Homes England of any of the rights listed in **Clause 16.2**; and **Termination of this Lease** shall be construed accordingly

**[Tenancy Agreement** means an agreement to let a Rental Unit under an assured tenancy [at an affordable rent] [at rent set at sub-market levels] [which should be no more than 80% of market rent] [in a form utilised by the Registered Provider for its Low Cost Rental Accommodation from time to time]

**Title Matters** means the matters contained or referred to [(1)] in (or in the documents contained or referred to in) the entries on the register of the title(s) under which

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<sup>16</sup> Include only if the Surety is entering into a stand-alone deed of guarantee

<sup>17</sup> To be determined by the application of the mechanism in the Agreement for Lease

<sup>18</sup> To be determined by the application of the mechanism in the Agreement for Lease

Homes England holds the Land [and (2) the following documents which the Land is sold subject to but are not contained or referred to on the entries on the register of the title(s) under which Homes England holds the Land being:

[■ ].

**[Total Sales Volume** means the record of total sales volumes in a calendar month for the [East Midlands][East of England][North East][North West][South East][South West][West Midlands][Yorkshire and the Humber] region published by the Ministry of Housing Communities and Local Government using Land Registry data and used to compile the UK House Price Index of average house prices ]<sup>19</sup>

**[Transfer (Affordable/PRS Leasehold Building)** means a transfer of an Affordable Leasehold Building or a PRS Leasehold Building (as appropriate) substantially in the form set out in **Part 4** of **Schedule 9** and subject to amendments as may be reasonably required so as to accommodate the Plot Documentation Provisions.]

**[Transfer (Affordable/PRS Dwelling)** means a transfer of an Affordable Dwelling or a PRS Dwelling (as appropriate) substantially in the form set out in **Part 3** of **Schedule 10** and subject to amendments as may be reasonably required so as to accommodate the Plot Documentation Provisions.]

**[Transfer (Leasehold Building)** means a transfer of a Leasehold Building substantially in the form set out in **Part 2** of **Schedule 9** and subject to amendments as may be reasonably required so as to accommodate the Plot Documentation Provisions.]

**[Transfer (Market Dwelling)** means a transfer of a Market Dwelling substantially in the form set out in **Part 1** of **Schedule 9** and subject to amendments as may be reasonably required so as to accommodate the Plot Documentation Provisions]

**[Transfer (Non-Residential Unit)** means a transfer of a Non-Residential Unit [substantially in the form set out in **Part 5** of **Schedule 9**] [in a form based on the Transfer (Leasehold Building) with such amendments as are agreed between the parties to such transfer (acting reasonably).]

**[Unit** means any Dwelling or Non-Residential Unit.]<sup>20</sup>

**VAT** means value added tax charged under the Value Added Tax Act 1994 and shall include any interest, fine, penalty or surcharge in respect of value added tax charged.

**Working Day** means any day except Saturday, Sunday or any public holiday in England.

**2012 Regulations** means the Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 2012/3118).

## 2. INTERPRETATION

2.1. Terms specified in the Particulars shall have the meanings there given to them.

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<sup>19</sup> Definition only required if Market Downturn definition is included

<sup>20</sup> Only include where the Development is mixed use. If it is purely residential, delete and use “Dwellings” instead.



- 2.2. Where a Party includes two or more persons, the covenants made by that Party are made by those persons jointly and severally.
- 2.3. Words implying one gender include all other genders; words implying the singular include the plural and vice versa and words implying persons include any person or entity capable of being a legal person.
- 2.4. A covenant by the Developer not to do any act or thing includes a covenant not to permit or suffer such act or thing to be done.
- 2.5. The term "Developer" includes every person who is a successor in title to the Developer named in this Lease
- 2.6. A reference to any Enactment includes all modifications, extensions, amendments and re-enactments of such statute in force for the time being and all instruments, orders, notices, regulations, directions, bye-laws, permissions and plans for the time being made, issued or given under them or deriving validity from them.
- 2.7. Provisions are to be construed independently and, if any provision is void or wholly or partly unenforceable, then that provision, to the extent that it is unenforceable, shall be deemed not to form part of this Lease, but the validity and enforceability of the remainder of that provision or of the Lease shall not be affected.
- 2.8. A reference to a numbered clause, schedule or paragraph is a reference to the relevant clause, schedule or paragraph in this Lease.
- 2.9. Headings to clauses, schedules and paragraphs are for convenience only and do not affect the meaning of this Lease.
- 2.10. The words including and in particular shall be construed as being by way of illustration or emphasis only and shall not limit the generality of the preceding words.
- 2.11. References to the completion of a transfer or other disposal mean the execution and delivery of the necessary documents, not their subsequent registration.
- 2.12. Any right or exception granted or excepted in favour of a Party shall be deemed to be granted or excepted in addition in favour of any other person authorised by that Party.
- 2.13. Where the consent or approval of Homes England is required such consent or approval must be in writing and be signed by the General Manager ■ (or such other officer as shall have been notified in writing by Homes England to the Developer as being the appropriate officer for such purposes).
- 2.14. [By virtue of
  - (i) the Housing and Regeneration Act 2008;
  - (ii) the Housing and Regeneration Act 2008 (Commencement No.1 and Transition Provision) Order 2008 (SI 2008 No. 2358 (c.103)) dated 2<sup>nd</sup> September 2008;
  - (iii) the Housing and Regeneration Act 2008 (Commencement No.2 and Transitional, Saving and Transitory Provisions) Order 2008 (SI 2008 No. c3068 (c.132)) dated 26<sup>th</sup> November 2008; and
  - (iv) the Homes and Communities Agency, Tenant Services Authority and the Welsh Ministers Transfer Scheme

all assets, liabilities and interests were transferred from Commission for the New Towns and The Urban Regeneration Agency to Homes England with effect from 1<sup>st</sup> December 2008.]<sup>21</sup>

- 2.15. Terms defined in the Agreement for Lease which are used in this Lease shall have the same meaning in this Lease as they do in the Agreement for Lease where they are not separately defined in **Clause 1** of this Lease.

### 3. DEMISE AND PRICE

- 3.1. For the Price [and Overage] payable by the Developer to Homes England (the payment details of which are set out in **Clause 3.2** [and **Clause 3.3**]) and any other sums payable under this Lease and the covenants on the part of the Developer contained in this Lease Homes England HEREBY DEMISES to the Developer with limited title guarantee ALL the Land [TOGETHER with the benefit of the rights set out in **Part 1** of **Schedule 1** (so far as Homes England can grant the same) and in common with Homes England and all others now or hereafter enjoying or entitled to the like rights but EXCEPT AND RESERVING to Homes England (and those authorised by Homes England) and its successors in title for the benefit of the Adjoining Land and the owners and occupiers thereof the rights, easements and privileges set out in **Part 2** of **Schedule 1** ]<sup>22</sup>TO HOLD the same unto the Developer from the Term Commencement Date for the term of ONE HUNDRED AND TWENTY FIVE YEARS (determinable nevertheless as hereinafter mentioned) SUBJECT to all Title Matters and to all rights, easements, quasi-easements and privileges affecting the Land or any part thereof PAYING THEREFOR the yearly rent of ONE POUND (if demanded) on the anniversary of the date of this Lease.]

- 3.2. The Developer shall pay to Homes England the Price as follows:

- (a) the sum of £[ ]<sup>23</sup> (which includes the deposit payable under the Agreement for Lease) on the date hereof (receipt of which Homes England acknowledges);
- (b) the sum of [ ] (£ [ ] ) on the [ ];
- (c) the sum of [ ] (£ [ ] ) on the [ ] ; and
- (d) on the Acceleration Date the Price less any payments made by the Developer to Homes England under this **Clause 3.2** in respect of the Price.

- 3.3. The Developer shall pay to Homes England the Overage (if any) calculated and payable in accordance with **Schedule 12**.

### 4. [UNIT][DWELLING] COMPLETION

- 4.1. The Developer covenants that when the construction of any Dwelling has been practically completed it will provide a copy of the CML Certificate for that Dwelling to Homes England and to the Compliance Inspector.
- 4.2. [When the construction of any Non-Residential Unit has been practically completed:

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<sup>21</sup> only required where title is registered to a predecessor organisation

<sup>22</sup> Include only where Homes England has Adjoining Land over which rights are to be granted or reserved

<sup>23</sup> Sum should be the aggregate of any deposit paid and any sums due on completion of the Lease

- (a) The Developer covenants that it will notify Homes England and the Compliance Inspector of practical completion of such Unit
- (b) The Developer covenants to procure that the Compliance Inspector:
  - (i) inspects the Non-Residential Unit within  $\square$  Working Days of the Developer's notification pursuant to **Clause 4.2(a)** to ascertain whether a Compliance Certificate can be provided for that Non-Residential Unit.
  - (ii) within  $\square$  Working Days of the inspection either issues the Compliance Certificate in respect of the Non-Residential Unit or otherwise informs the Developer what actions are required by the Developer to secure the issue of the Compliance Certificate.
- (c) If the Compliance Inspector does not issue the Compliance Certificate the procedure set out at **Clause 4.2(a)** and **4.2(b)(i)** and **(ii)** shall be repeated until the Compliance Certificate is issued by the Compliance Inspector

4.3. Provided that:

- (a) Homes England has received a copy of the CML Certificate for the Dwelling [or has received the Compliance Certificate for the Non-Residential Unit]; and
- (b) the Developer has obtained the Highways Technical Approval; and
- (c) the Developer has obtained the Sewers Technical Approval; and
- (d) the Developer has entered into any requisite agreement with the Council for the adoption by the Council of the Open Space Land [and SUDs features] required as a result of the practical completion of such Dwelling; and
- (e) Homes England has approved the Estate Layout Plan and the Developer has lodged this at the Land Registry

then (subject to **paragraph 3 of Schedule 3 [Paragraph 4 of Schedule 4<sup>24</sup>]**) Homes England shall release (or confirm in writing the release of) the transfer to the relevant Purchaser or issue the consent to lease (as appropriate) of the [Dwelling][Unit].

4.4. The Developer hereby covenants with Homes England:

- (a) not to dispose of houses other than through a freehold transfer and not to dispose of Flats other than through the grant of a long lease at a premium and a peppercorn rent;
- (b) not to send out any notice to a Purchaser requiring completion of the sale of a Dwelling unless and until Homes England has released (or confirmed in writing the release of) the transfer to the relevant Purchaser or has issued the consent to lease (as appropriate) of the Dwelling;
- (c) not to permit any person to occupy any Dwelling nor to purport to complete the sale of any Dwelling until and unless Homes England has released (or confirmed in writing the release of) the transfer to the relevant Purchaser or has issued the consent to lease (as appropriate) of the Dwelling

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<sup>24</sup> Reference to Sch 4 para 4 only where scheme is 100% affordable

- 4.5. The Developer shall procure that in any contract for the sale of a Dwelling there shall be inserted into such contract (in a type size and character no less prominent than the remainder of the contract) the following wording (as appropriate):

"The [Purchaser]/[Buyer] hereby acknowledges that the transfer of [*the Property*] (which is to be made by Homes England (the trading name of Homes and Communities Agency) ("Homes England")) will not be released by Homes England until satisfaction of the requirements set out in the building lease relating to the [Development] granted by Homes England to the Developer and that the [Purchaser] [Buyer] has been advised to obtain (before it completes the purchase of the [*Property*] from the Developer) written confirmation from the solicitors acting for the Developer that Homes England has released the said transfer";

## 5. DEVELOPER'S COVENANTS RELATING TO THE DEVELOPMENT

The Developer covenants with Homes England to comply with the Developer's obligations contained in **Schedule 2**.

## 6. FINAL COMPLETION CERTIFICATE

- 6.1. On achievement of the following by the Developer:

- (a) The issue of a CML Certificate for every Dwelling and the provision of a copy to Homes England
- (b) [The issue of a Compliance Certificate for every Non-Residential Unit and the provision of a copy to Homes England ]
- (c) substantial completion of the whole of the Development to the reasonable satisfaction of the Compliance Inspector in accordance with the Approved Plans and the Performance Criteria (having due regard to planting seasons and other matters beyond the Developer's reasonable control)
- (d) the adoption (or entering into of all necessary s.38 Agreements and/or s.104 Agreements to procure adoption) of all Adoptable Highways and Adoptable Common Services;
- (e) [the transfer of any Common Areas in accordance with the provisions of **Clause 8** of this Lease;]
- (f) the transfer to the Developer of the Remainder Land (or such parts thereof) as required by a notice served pursuant to **Clause 10.4** has been completed or it has been deemed pursuant to **Clause 10.5** that Homes England does not require the Developer to take a transfer of the Remainder Land or any part or parts of it prior to the issue of the Final Completion Certificate;
- (g) compliance by the Developer with the other terms of this Lease

the Developer shall procure that the Compliance Inspector issues to Homes England and to the Developer its certificate confirming such achievement and final completion of the Development ("**Final Completion Certificate**").

- 6.2. Without prejudice to the generality of **Clause 22.2** of this Lease it is agreed that the issue of a Final Completion Certificate shall not release the Developer from any obligations on its part in this Lease relating to the Development or the manner, nature or quality of construction or design, fitness for purpose or absence of defect of

anything upon the Development nor for the failure by the Developer to achieve any particular standard.

## **7. TRANSFERS OF [DWELLINGS] [UNITS]**

The Developer and Homes England covenant with each other to comply with their respective obligations contained in **Schedules 3, 4, 5 and 6**.

## **8. [TRANSFER OF COMMON AREAS**

- 8.1. Homes England may at any time require the Developer to receive a transfer of the whole or any part of the Common Areas the freehold of which is still vested in Homes England and which is not the subject of any other provision for transfer under this Lease Provided that (whether or not a Final Completion Certificate has been issued) Homes England may by notice to the Developer require the whole or any part of the Common Areas to be transferred to the Management Company.
- 8.2. The Developer shall co-operate in such transfer (which shall take place on the date stipulated in writing by Homes England (following not less than 20 Working Days' notice)) and shall execute the transfer either as transferee (where the transfer is to the Developer) or (where the transfer is to a third party) as tenant under this Lease (in order to consent to the transfer and agree to the surrender of that part of this Lease as comprises the land being transferred).
- 8.3. The transfer shall be in such form as Homes England shall reasonably require.]

## **9. TRANSFER ETC OF COMMON SERVICES AND HIGHWAYS**

The Developer covenants to enter into, at any time at Homes England's request, any leases, transfers, easements, licences, agreements or other document with any public or statutory authority in connection with any Common Services or Highways or matters ancillary thereto in such form as Homes England shall reasonably require (including any surrender of the Developer's interest in any land the subject of those documents).

## 10. TRANSFER OF REMAINDER OF LAND

- 10.1. Following completion of all of the Dwellings (evidenced by the issue of a CML Certificate for each Dwelling) [and the completion of all Non-Residential Units (evidenced by the issue of a Compliance Certificate for each Non-Residential Unit) ]the Developer shall serve written notice on Homes England in the form annexed at **Annexure** enclosing a Digital Plan and shall procure that the Compliance Inspector undertakes all necessary checks and inspections with a view to issuing the Final Completion Certificate.
- 10.2. The Developer shall procure that the Compliance Inspector acts promptly and diligently to inspect the Development and to obtain all necessary information to enable the Compliance Inspector to issue the Final Completion Certificate.
- 10.3. The Developer shall promptly provide the Compliance Inspector with all information requested by the Compliance Inspector to enable the Compliance Inspector to issue the Final Completion Certificate.
- 10.4. Within 10 Working Days of receipt of a notice served by the Developer pursuant to **Clause 10.1** Homes England shall serve written notice on the Developer confirming:
  - (a) which part or parts of the Remainder Land Homes England requires the Developer to take a transfer of prior to the issue of the Final Completion Certificate; and
  - (b) the date by which Homes England requires such transfer to complete.
- 10.5. If Homes England does not respond to the Developer within the 10 Working Days referred to in **Clause 10.4** then it shall be deemed that Homes England does not require the Developer to take a transfer of the Remainder Land or any part or parts of it prior to the issue of the Final Completion Certificate.
- 10.6. If Homes England does not require the Developer to take a transfer of the Remainder Land or any part or parts of it prior to the issue of the Final Completion Certificate or if Homes England does not respond to the Developer within the 10 Working Days referred to in **Clause 10.4** that shall not prejudice the right of Homes England to require the Developer to take a transfer of the Remainder Land or any part or parts of it pursuant to this **Clause 10** at a subsequent date.
- 10.7. If Homes England serves notice on the Developer requiring the Developer to Accept a transfer of the whole or any part or parts of the Remainder Land whether pursuant to **Clause 10.4** or otherwise the Developer and Homes England shall co-operate in such transfer which shall comply with the remaining provisions of this Clause and such transfer shall take place on the date stipulated by Homes England in the notice served by Homes England (whether pursuant to **Clause 10.4** or otherwise) (not being more than 20 Working Days following the date of such notice).
- 10.8. Homes England shall execute the transfer as transferor and the Developer shall execute the transfer as transferee.
- 10.9. The transfer shall be in such form as Homes England shall reasonably require.
- 10.10. Following completion of the transfer of the Remainder Land (or any part or parts of it) the Developer shall procure that such transfer is submitted to the land registry for registration promptly and will deal promptly with any requisitions raised by the land registry and procure that it is registered as proprietor of the Remainder Land (or the relevant part or parts of it) as soon as reasonably practicable.

## 11. GENERAL PROVISIONS RELATING TO TRANSFERS

Notwithstanding the completion of any transfer under this Lease, the provisions of this Lease shall remain in force in respect of anything remaining to be done by the Developer or Homes England. In particular, such completion is not to be treated as an acknowledgment by Homes England that all money due from the Developer to Homes England in respect of the transfer has been paid or that the Developer has complied with any other obligations on its part in this Lease.

## 12. DEVELOPER'S FURTHER COVENANTS

The Developer further covenants with Homes England as follows:

- 12.1. To pay (if demanded) the reserved rent on the days and in the manner aforesaid.
- 12.2. To pay Interest on any sum of money payable to Homes England by the Developer under this Lease which is not paid when payment is due.
- 12.3. To pay all rates, taxes, claims, assessments and outgoings whatsoever in respect of the Land (except in relation to any Dwelling or Non-Residential Unit which has been disposed of to a Purchaser or buyer/tenant) now or hereafter imposed or charged upon the owner or occupier.
- 12.4. To indemnify and keep indemnified Homes England from and against:
  - (a) all claims, demands and liabilities howsoever arising from the use or occupation of the Land or its condition (Homes England agreeing (i) to notify the Developer of any such claim received from a third party in reasonable detail (ii) not to make any admission of liability agreement or compromise in relation to such a claim without first having regard to any written representations made by the Developer within 5 Working Days of notification by Homes England, unless Homes England reasonably believes that failure or delay on its part to settle the claim would be prejudicial to Homes England in any material respect); and/or
  - (b) any breach by the Developer of the provisions of this Lease; and/or
  - (c) in respect of the design of the Development or any part thereof and the materials and workmanship used by the Developer in the Development or any part thereof; and/or
  - (d) any inaccuracies in the plan or other description of any Dwelling used in any transfer.
- 12.5. Not to use the Land other than for the Development.
- 12.6. Save as provided by **Clauses 12.7, 12.9, 17 and 18**, not to assign, underlet, transfer, charge, share or part with possession of or grant any licence or interest in respect of the Land or any part thereof.
- 12.7. The Developer shall be permitted with the prior written consent of Homes England (such consent not to be unreasonably withheld or delayed) to:
  - (a) grant leases or otherwise Dispose of parts of the Land to utility companies solely in connection with the provision of utilities to the Development
  - (b) charge this Lease to a Permitted Chargee providing the finance for the construction of the Development and in this context Homes England agrees that the Approved Funder is a Permitted Chargee

- 12.8. In relation to a Permitted Chargee it shall be a condition (without limitation to any other reasonable conditions) of Homes England's consent to the Permitted Chargee taking security over the Lease that the Permitted Chargee first covenants with Homes England that it shall not exercise any power of sale without first informing Homes England of its intention to do so (to enable Homes England to serve an Insolvency Termination Notice should Homes England choose to do so) and without the Permitted Chargee first covenanting for the benefit of Homes England that the Permitted Chargee (and its successors from time to time) shall only be entitled to exercise a power of sale by procuring the assignment of this Lease to a Suitable Substitute which has been approved by Homes England in accordance with the terms of this Lease.
- 12.9. [The Developer shall be permitted with the prior written approval of Homes England and subject to the provisions of **Clauses 12.10** and **12.11** to grant subleases to [the Registered Provider][the PRS Operator] of [so much of the land as the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Buildings][PRS Leasehold Buildings] are to be constructed on] at the point when such Dwellings have been constructed to Golden Brick and following the service of a Golden Brick Notice on Homes England.]
- 12.10. [Every sublease permitted pursuant to **Clause 12.9** must:
- (a) Be granted for a term not exceeding the term of this Lease less 5 days;
  - (b) Contain a covenant on the part of the Developer to build out the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building] concerned fully in accordance with the provisions of this Lease;
  - (c) Contain a right for Homes England to enter the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building] concerned to inspect and to remedy any breach of covenant of this Lease or the relevant sublease;
  - (d) Prohibit assignments and underlettings other than by way of assignment to another [Registered Provider][PRS Operator] approved by Homes England;
  - (e) Contain a covenant restricting the use of the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building] other than for the purposes of the Development;
  - (f) Prohibit occupation of any of the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building] prior to the transfer of the freehold interest to the [Registered Provider][PRS Operator];
  - (g) Contain a restriction on title in Homes England's favour in the following terms:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by Homes and Communities Agency of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH by their conveyancer that the provisions of [*details of underlease*] have been complied with or that they do not apply to the disposition (Form L)".]



- 12.11. [Prior to completion of any sublease permitted pursuant to **Clause 12.9** the [Registered Provider][PRS Operator] shall enter into a direct covenant with Homes England:
- (a) Not to use the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building] for occupation nor for any purpose other than to permit entry by the Developer or Homes England to build and construct the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building] in accordance with the Lease;
  - (b) Not to dispose of the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building];
  - (c) To observe and perform the terms of the sublease; and
  - (d) Not to charge the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building] other than as consented by Homes England.]
- 12.12. [Notwithstanding the Developer granting a sublease to the [Registered Provider][PRS Operator] the Developer shall remain primarily responsible for the performance of its obligations in respect of the construction of the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building] under this Lease.]
- 12.13. Within fourteen days after the date of every dealing charge or other devolution of this Lease to give notice thereof in writing to Homes England and produce to it a certified copy of the instrument effecting the devolution and pay Homes England's reasonable registration fee (being not less than £45 plus VAT) (and in the case of a Permitted Chargee, such notice shall contain an address for service within England and Wales for the chargee).
- 12.14. To pay all proper expenses (including solicitors' costs and surveyor's fees) incurred by Homes England of and incidental to and in connection with:
- (a) the preparation and service of any notice under Section 146 of the Law of Property Act 1925 and any proceedings under Sections 146 or 147 of that Act even if forfeiture is avoided otherwise than by relief granted by the Court; and
  - (b) any notices or consents required or given under this Lease.
- 12.15. On the receipt of any notice, order, direction or thing from any competent authority affecting or likely to affect the Land whether the same shall be served directly on the Developer or the original or a copy thereof be received from any other person whatsoever the Developer will:
- (a) so far as such notice, order, direction or other thing or the Act regulations or other instrument under or by virtue of which it is issued or the provisions hereof require it so to do comply therewith at its own expense; and
  - (b) forthwith deliver to Homes England a copy of such notice, order, direction or other thing.
- 12.16. At the end or sooner determination of the said term quietly to yield up the Land to Homes England in accordance with the covenants on the part of the Developer contained in this Lease.
- 12.17. Not to do anything on the Land which may be or become a nuisance or annoyance or cause damage or inconvenience to Homes England or to the owners or occupiers of

any adjoining or neighbouring land or cause or give rise to the significant possibility of significant harm to the health of living organisms and other interference with the ecological systems of which they form part or cause pollution of ground or surface water.

- 12.18. To comply with all Title Matters.
- 12.19. In the event of a default by the Developer to execute any documents required under this Lease, the Developer irrevocably and by way of security appoints Homes England as its attorney and in its name and on its behalf and as its act and deed and in such manner as the attorney may think fit to sign execute seal deliver and do all deeds instruments acts and things which it is required to do under this Lease. The Developer covenants immediately on the request of Homes England to ratify and confirm all deeds, instruments, acts and things signed, executed, sealed, delivered and done under that appointment.
- 12.20. To obtain at the Developer's cost and to make available to prospective Purchasers at the appropriate time and free of charge an Energy Performance Certificate.
- 12.21. To comply with the obligations of the Developer with regard to output data contained in **Schedule 13** and to use all reasonable endeavours to comply with any further requests from Homes England to provide such data and supporting evidence
- 12.22. If an Insolvency Event occurs in relation to a Surety, or if any Surety (being an individual) dies or becomes incapable of managing his affairs the Developer shall, if Homes England requests, procure that a person of standing acceptable to Homes England, within 28 days of that request, enters into a replacement or additional guarantee and indemnity of the Developer's covenants of this Lease in the same form as that entered into by the former Surety in [the Deed of Guarantee][**Schedule 11** of this Lease].

### 13. HOMES ENGLAND'S INFRASTRUCTURE COVENANTS

Homes England shall carry out and complete Homes England's Infrastructure Works in a good and workmanlike in accordance with [Homes England's Infrastructure Works Specification] and all Enactments with all practicable speed.]

### 14. HOMES ENGLAND'S [FURTHER] COVENANTS<sup>25</sup>

Homes England covenants with the Developer as follows:

- 14.1. That the Developer observing and performing the several covenants and stipulations on the part of the Developer herein contained shall peacefully hold and enjoy the Land during the said term without any interruption by Homes England or any person rightfully claiming under or in trust for it.
- 14.2. If requested by the Developer and at the Developer's expense (and provided that the Developer has provided any bond indemnity or guarantee required by the relevant authority), Homes England will enter into any of the agreements (excluding any bond indemnity or guarantee) referred to in **paragraph 1.2** of **Schedule 2** as landowner in so far as it is necessary to dedicate the land, sewer or other matter the subject of the agreement on terms approved by Homes England (acting reasonably) and subject to the Developer entering into an indemnity (in a form required by Homes England)

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<sup>25</sup> These clauses may need to be amended/adapted to refer to Site or Development specific matters

indemnifying Homes England against all liability for all costs, obligations and liabilities in connection or arising therefrom.

- 14.3. If requested by the Developer and at the Developer's expense Homes England as landowner will enter into any transfers, leases, easements, licences or other agreements with any public authority in connection with the Adoptable Common Services or any service media and any ancillary apparatus on terms approved by Homes England subject to the Developer entering into an indemnity (in a form required by Homes England) indemnifying Homes England against all liability for all costs, obligations and liabilities in connection or arising therefrom. [PROVIDED ALWAYS that this clause shall be subject to the overriding rights of Homes England to require transfers to be made to the [Management Company] [the relevant authority or the Developer] [pursuant to **Clauses 8, 9 and 10**].

## 15. FORFEITURE

If any monies payable by the Developer under this Lease shall be due but unpaid for fourteen Working Days after the same shall have become due or if there shall be a Material Breach or if an Insolvency Event occurs then in any such case (subject always to the provisions of **Clause 16**) it shall be lawful for Homes England or any person or persons duly authorised by Homes England to re-enter upon and take possession of the Land and all works and erections whatsoever thereon or any part thereof in the name of the whole with power to hold and dispose thereof whereupon this Lease shall absolutely cease and determine but without prejudice to any right of action or remedy which may have accrued to Homes England in respect of any antecedent breach of any of the covenants and provisions herein contained.

## 16. STEP- IN PROVISIONS

- 16.1. Homes England's remedies on breach

(a) **Insolvency event**

Where there is an Insolvency Event Homes England may serve an Insolvency Termination Notice and following service of any Insolvency Termination Notice under this sub-clause, the provisions of **Clause 17** shall govern the respective rights of Homes England, the Developer and the Permitted Chargee.

(b) **Failure to pay monies due**

Where any monies payable by the Developer under the terms of this Lease shall be due and unpaid fourteen days after the same shall become due Homes England may serve a Breach Termination Notice. Following the service of any Breach Termination Notice under this sub-clause, the provisions of **Clause 18** shall govern the respective rights of Homes England, the Developer and the Permitted Chargee

(c) **Material Breach**

Where there shall be a Material Breach, non-performance or non-observance of any of the terms herein contained and on the part of the Developer to be performed or observed then the Developer shall within 20 Working Days (time being of the essence) of receipt of a Remediation Notice produce a Remediation Plan demonstrating how the Developer will remedy the breach. If the breach is not capable of remedy (in the reasonable opinion of Homes

England) or if the Remediation Plan is not so produced or if the Remediation Plan is not satisfactory to Homes England (acting reasonably) then and in any such case Homes England may serve a Breach Termination Notice. Following the service of any Breach Termination Notice under this sub-clause, the provisions of **Clause 18** shall govern the respective rights of Homes England, the Developer and the Permitted Chargee.

(d) **Failure to meet Construction Related Deadline**

- (i) The Parties agree that each and every failure by the Developer to meet a Construction Related Deadline shall be a Material Breach
- (ii) If there shall be a Material Breach which is a failure to meet a Construction Related Deadline then the Developer shall within 20 Working Days (time being of the essence) of receipt of a Remediation Notice produce a Remediation Plan demonstrating how activity will be accelerated in order to catch up with the Construction Related Deadlines. If the Remediation Plan is not so produced or if the Remediation Plan is not satisfactory to Homes England (acting reasonably) then and in any such case Homes England may serve a Breach Termination Notice. Following the service of any Breach Termination Notice under this sub-clause, the provisions of **Clause 18** shall govern the respective rights of Homes England, the Developer and the Permitted Chargee.

16.2. Termination of the Lease

Homes England may not:

- (a) re-enter and take possession of the Land; or
- (b) commence legal proceedings to forfeit the Lease;

unless it has first either served notice on the Developer (copied to the Permitted Chargee) an Insolvency Termination Notice in accordance with the terms of **Clause 16.1(a)** or, as appropriate, a Breach Termination Notice in accordance with **Clause 16.1(b)**, **Clause 16.1(c)** or **Clause 16.1(d)** and provided further that the provisions of **Clause 17** or **Clause 18** (as appropriate) have been complied with.

16.3. Following Termination of this Lease (and for the avoidance of doubt the provisions of this **Clause 16.3** are intended to survive post Termination of this Lease):

- (a) to the extent that the beneficial ownership of copyright, design right and any other intellectual property right in any documents, reports, investigations and designs submitted and approved as part of the Planning Permission is vested in it, the Developer grants to Homes England, any IP and the Permitted Chargee a royalty free, non-exclusive and irrevocable licence to use and reproduce any and all of such documents and the designs contained in them in connection only with its ownership of the Development, any works carried out by the Developer and the Land and this licence shall be freely assignable to third parties and carry the right to grant sub-licences;
- (b) to the extent that the beneficial ownership of copyright, design right or any other intellectual property right in any documents referred to in **Clause 16.3 (a)** above is vested in any person other than the Developer including (without limitation) any consultants or the Contractor or other contractor or supplier the Developer shall use its reasonable endeavours to procure that the beneficial

owner of such rights grants to Homes England non-exclusive and irrevocable licence to use and reproduce all and any of the documents and the designs contained in them, for any of the purposes and on the same terms as set out in **Clause 16.3(a)** above;

- 16.4. Neither the Developer nor Homes England may vary or supplement (or attempt to vary or supplement) the Lease without the prior written consent of the Permitted Chargee, whose consent shall not be unreasonably withheld or delayed.
- 16.5. The provisions of Clause **20** (Disputes) shall not apply to this **Clause 16**

## **17. HOMES ENGLAND'S RIGHTS ON DEVELOPER'S INSOLVENCY**

17.1. Within 20 Working Days after the service of an Insolvency Termination Notice either:

- (a) the IP; or
- (b) the Permitted Chargee (if the Permitted Chargee has taken possession as mortgagee or is seeking to exercise its power of sale under the terms of its charge over the Lease)

shall confirm in writing to Homes England whether it:

- (i) proposes to complete the Development in accordance with the terms of this Lease; or
- (ii) proposes to seek a Suitable Substitute to complete the Development; or
- (iii) proposes not to complete the Development.

- 17.2. The IP or Permitted Chargee may (if either so wishes) indicate in a notice served under **Clause 17.1** that it proposes to take the action specified in **Clause 17.1(b)(i)** pending **Clause 17.1(b)(ii)** above. If the IP or Permitted Chargee has given such an indication and taken the action in **Clause 17.1(b)(i)** within the requisite time scale it will be entitled within a period of 3 months from the date of service of the Insolvency Termination Notice to seek a Suitable Substitute to complete the Development and the provisions set out in **Clause 17.4** (other than as to timescale where the provisions of this **Clause 17.2** will apply instead) will apply in relation to any Suitable Substitute proposed during that 3 month period.
- 17.3. Where the IP or Permitted Chargee informs Homes England in writing pursuant to **Clause 17.1(i)** that it will complete the Development then the IP (acting in its capacity for and on behalf of the Developer and without any personal liability) and/or the Permitted Chargee (as the case may be) shall be bound by the terms of this Lease from the date of that notification (and the Permitted Chargee shall take an assignment of both the benefit and burden of this Lease within a further 20 Working Days after serving that notification) and (subject to any arrangements for curing any antecedent breaches by the Developer with such extension of the programme (as contained in the Approved Plans) and of the Construction Related Deadlines and of the Target House Build Completion Date as is reasonable to permit completion of the Development as the IP or Permitted Chargee and Homes England shall agree, acting reasonably) (or in the absence of agreement as determined by an expert in accordance with **Clause 20**)) on any breach of the terms of this Lease by the IP or Permitted Chargee following that assignment Homes England's rights to Terminate this Lease as set out in this Lease will apply but not the obligations set out in **Clauses 17 and 18**.
- 17.4. Where the IP or Permitted Chargee indicates to Homes England in writing pursuant to **Clause 17.1** that it will seek a Suitable Substitute then within 3 months after serving that notification it must:
- (a) identify that Suitable Substitute;
  - (b) obtain Homes England's approval to that Suitable Substitute (such approval not to be unreasonably withheld or delayed); and
  - (c) procure that the Suitable Substitute enters into an assignment of this Lease with new arrangements for curing any antecedent breaches by the Developer and such extension of the programme (from the Approved Plans) and of the Construction Related Deadlines and of the Target House Build Completion Date as is reasonable in order to permit the completion of the Development as the Suitable Substitute and Homes England shall agree, acting reasonably (or in the absence of agreement as determined by an expert in accordance with **Clause 20**).
- 17.5. If:
- (a) the IP or Permitted Chargee fails to respond to an Insolvency Termination Notice within 20 Working Days of service; or
  - (b) their response indicates that they do not wish to complete the Development; or
  - (c) the Lease is not assigned within the timescale required by **Clauses 17.3** or **17.4** as the case may be;

then Homes England may following the earlier of:

- (d) (in the case of **Clause 17.5(a)**) the expiry of the 20 Working Day period; and
- (e) (in the case of **Clause 17.5 (b)**) receipt of the response; and
- (f) (in the case of **Clause 17.5(c)**) on expiry of the period for assignment;

respectively Terminate this Lease.

- 17.6. Where Homes England has received from the IP or the Permitted Chargee all the information that Homes England reasonably requires in order to decide whether or not to approve a person identified by the IP or the Permitted Chargee as a potential Suitable Substitute, and has not notified the IP or the Permitted Chargee within 30 days of receipt of a written request from the IP or the Permitted Chargee whether or not it approves the Suitable Substitute, then the period of three months referred to in **Clause 17.4** shall be extended by the number of days equal to the number of days by which Homes England's response time exceeds 30 days.
- 17.7. The provisions of **Clause 20** (Disputes) shall not apply to this **Clause 17** except where specific reference is made in this **Clause 17** to the provisions of **Clause 20**.

## **18. HOMES ENGLAND'S RIGHTS FOLLOWING MATERIAL BREACH OF THIS LEASE**

- 18.1. Within 20 Working Days after the service of a Breach Termination Notice the Permitted Chargee shall confirm in writing to Homes England whether it:
- (a) proposes to complete the Development in accordance with the terms of this Lease; or
  - (b) proposes to seek a Suitable Substitute to complete the Development; or
  - (c) proposes not to complete the Development.
- 18.2. Where the Permitted Chargee informs Homes England pursuant to **Clause 18.1** they propose to either seek a Suitable Substitute or to complete the Development, then (subject to the provisions of **Clause 18.9**), within 3 calendar months of service of the Breach Termination Notice the Permitted Chargee or its IP must either:
- (a) where they have indicated an intention to seek a Suitable Substitute:
    - (i) identify that Suitable Substitute;
    - (ii) obtain Homes England's approval to that Suitable Substitute; and
    - (iii) procure that the Suitable Substitute enters into an assignment of this Lease with such extension of the programme (as contained in the Approved Plans) and of the Construction Related Deadlines and of the Target House Build Completion Date as is reasonable in order to permit the completion of the Development and subject to any arrangements for curing any antecedent breaches by the Developer as the Suitable Substitute and Homes England shall agree acting reasonably (or in the absence of agreement as determined by an expert in accordance with **Clause 20**); or
  - (b) where they have indicated an intention to complete the Development enter into an assignment of this Lease with such extension of the programme (as

contained in the Approved Plans) and of the Construction Related Deadlines and of the Target House Build Completion Date as is reasonable in order to permit the completion of the Development and subject to any arrangements for curing any antecedent breaches by the Developer as the IP or Permitted Chargee and Homes England shall agree acting reasonably (or in the absence of agreement as determined by an expert in accordance with **Clause 20**).

- 18.3. Where the Permitted Chargee has responded within the period referred to in **Clause 18.1** confirming it will seek either a Suitable Substitute or will complete the Development, Homes England will not take any steps to Terminate the Lease for the reasons set out in **Clause 18.1** until after the expiry of the time periods permitted to allow for the assignment of this Lease set out in **Clause 18.2**.
- 18.4. Where the Permitted Chargee does not respond within the requisite period referred to in **Clause 18.1** or has replied indicating it will not be taking any action Homes England shall be entitled forthwith to Terminate the Lease.
- 18.5. If the Permitted Chargee fails to complete the assignment of the Lease directly to a Suitable Substitute in accordance with **Clause 18.2(b)** then subject to **Clauses 18.7 and 20** (which shall survive in the circumstances contemplated by **Clause 18.8**) Homes England may, without prejudice to any right of action or remedy which may have accrued in respect of any antecedent breach by either party of this Lease, Terminate this Lease without further notice.
- 18.6. Where there is no Permitted Chargee Homes England shall be entitled to Terminate this Lease on the expiry of 30 Working Days from the date of the Breach Termination Notice
- 18.7. If Homes England Terminates this Lease then it will have regard to its common law obligations to mitigate against its loss.
- 18.8. Pending completion of any assignment and or actual Termination of this Lease pursuant to this **Clause 18** the Developer shall remain liable for and shall continue to perform the provisions of this Lease unless Homes England otherwise directs.
- 18.9. Where Homes England has received from the IP or the Permitted Chargee all the information that Homes England reasonably requires in order to decide whether or not to approve a person identified by the IP or the Permitted Chargee as a potential Suitable Substitute, and has not notified the IP or the Permitted Chargee within 30 days of receipt of a written request from the IP or the Permitted Chargee whether or not it approves the Suitable Substitute, then the period of three months referred to in **Clause 18.2** shall be extended by the number of days equal to the number of days by which Homes England's response time exceeds 30 days.
- 18.10. The provisions of **Clause 20** (Disputes) shall not apply to this **Clause 18** except where specific reference is made in this **Clause 18** to the provisions of **Clause 20**

## **19. REDUCTION NOTICES AND REDUCTION EVENT**

- 19.1. The provisions of this **Clause 19** shall apply to Material Breaches or other non-observance or non-compliance with the terms of this Lease in respect of which Homes England has elected not to serve a Breach Termination Notice **pursuant to Clause 16.1 (c) or (d)**
- 19.2. The Parties agree that the following events may constitute a Reduction Event:
  - (a) a Remediation Notice has been served which states that the breach is not remediable



- (b) a Remediation Notice has been served by Homes England and the Developer has failed to produce a Remediation Plan within 20 Working Days
  - (c) the Developer has produced a Remediation Plan following receipt of a Remediation Notice but Homes England rejects the Remediation Plan
  - (d) the Developer has served a Remediation Plan following receipt of a Remediation Notice which has been approved by Homes England and Homes England considers that the Developer has failed to remedy the breach in accordance with the approved Remediation Plan
- 19.3. When Homes England considers that a Reduction Event has occurred Homes England will inform the Compliance Inspector and instruct the Compliance Inspector to include in their next Monitoring Report (and the Developer will procure that the Compliance Inspector does so include) notification that Homes England considers that a Reduction Event has occurred specifying the relevant Reduction Event in **sub-clause (a) to (d) of Clause 19**.
- 19.4. The Developer has 20 Working Days from receipt of the Monitoring Report that includes the notification referred to in **Clause 19.3** to serve written notice on Homes England challenging the Reduction Notice
- 19.5. Any dispute with regard to:
- (a) Whether a breach specified in a Remediation Notice is or is not remediable; and/or
  - (b) Whether Homes England has acted reasonably in rejecting a Remediation Plan produced by the Developer; and/or
  - (c) Whether the Developer has remedied a breach in accordance with a Remediation Plan approved by Homes England

and so whether a Reduction Event has occurred shall be resolved in accordance with **Clause 20** (Disputes)

- 19.6. If:
- (a) the Developer does not challenge a Reduction Notice within 20 Working Days; or
  - (b) It is agreed or determined pursuant to **Clause 20** that a Reduction Event has occurred

then an Overage Reduction shall be imposed in respect of the breach specified in the original Remediation Notice.

## **20. DISPUTES**

20.1. In this Lease:

20.2. **Dispute** shall mean and include any difference or dispute between Homes England and the Developer arising out of or in connection with this Lease which Homes England and the Developer have been unable to resolve between them prior to referring the matter for resolution in accordance with the provisions of this **Clause 20** and shall include any question as to the validity or interpretation of this Lease and any dispute arising before or after Termination of this Lease

**Senior Representative** shall mean any director or senior executive officer of Homes England or the Developer

- 20.3. Any Dispute between Homes England or the Developer arising out of or connected with any matter referred to in this Lease for which a dispute resolution procedure is expressly provided in other clauses of this Lease shall be resolved in accordance with the dispute resolution procedure so provided. Any other Disputes which may arise between Homes England or the Developer shall be resolved in accordance with the procedures of this **Clause 20**.
- 20.4. Any Dispute which may arise shall first be referred to the Senior Representative of Homes England and the Developer for resolution through negotiation. Either Homes England or the Developer may at any time give 10 Working Days' notice to the other requiring that a Dispute be referred to the Senior Representatives of Homes England and the Developer. Any such notice shall contain brief particulars of the Dispute which is to be so referred. The Senior Representatives will meet within 10 Working Days of the expiry of the notice, or within such shorter or longer period as may be agreed between Homes England and the Developer and shall at their meeting negotiate in good faith in an attempt to resolve the Dispute. Homes England and the Developer shall bear their own costs of referring a Dispute to Senior Representatives for resolution through negotiation.
- 20.5. If a Dispute is not resolved by Senior Representatives, or if a Dispute has not been resolved within 20 Working Days after service of notice requiring that a Dispute be referred to Senior Representatives for resolution, either Homes England or the Developer shall be entitled to implement the dispute resolution procedure as set out in the following sub-clauses:
- (a) Any dispute arising between Homes England and the Developer over any calculation or valuation to be made under this Lease shall be referred to an expert to be agreed upon by the Parties, or failing agreement, to an expert nominated by the President for the time being of the Royal Institution of Chartered Surveyors and the expert's determination of the calculation or valuation shall be conclusive and binding.
  - (b) Any dispute arising between Homes England and the Developer over the construction or interpretation of the drafting of this Lease or where the provisions of this Lease require the form and contents of any document to be entered into between any of the Parties to be settled and the settling or conditions of such form shall not be agreed then the same shall be settled by counsel of at least 7 years call and experienced in property matters willing to act and in default of agreement as to his appointment to be appointed by the President for the time being of the Law Society.
  - (c) Any costs payable by reason of the provisions of this **Clause 20** shall be borne initially in equal proportions by Homes England and the Developer and thereafter as may be adjusted by the award or awards pursuant to the provisions thereof.

## 21. NOTICES ETC

- 21.1. Any notice, decision, direction, approval, authority, permission or consent to be given by Homes England under this Lease must be in writing and shall be valid and effectual (unless express provisions are made to the contrary) if signed by the director or such other officer or agent as Homes England may from time to time by resolution designate for the purpose.
- 21.2. Any notice, decision, direction, approval, authority, permission or consent to be given by a Party shall be sufficiently served, in the case of anything to be served on the Developer, by being left or sent by post to the Developer at its registered office for the time being and, in the case of anything to be served on Homes England, by being left or sent by prepaid registered post or by recorded delivery to Homes England at Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH and marked for the attention of the General Manager [■ insert region](or such other address or reference as may be notified in writing by Homes England to the Developer for such purpose) [and in the case of anything to be served on the Surety, by being left or sent by post to the Surety at the address specified at the beginning of this Lease as being the address for service of the Surety (or such other address in England or Wales as the Surety may notify to the serving Party as its address for service for the purposes of this Lease)]<sup>26</sup>.

## **22. HOMES ENGLAND'S POWERS AND LIABILITY**

- 22.1. Nothing herein contained or implied shall prejudice or affect Homes England's rights, powers, duties and obligations in pursuance of its objects as a statutory body and the rights, powers, duties and obligations of Homes England under all public or private statutes, byelaws, orders and regulations may be as fully and effectually exercised in relation to the Land and the Development as if Homes England were not the owner of the Land and this Lease had not been executed by it.
- 22.2. Homes England shall not be under any liability whatsoever in respect of any defect in the design of the Development by reason of Homes England having approved the Approved Plans or otherwise and shall not be deemed to have made any representation or warranty as to the fitness or suitability of the Land for the purposes of the Development or any other representation or warranty and the Developer declares that:
- (a) no oral representation has been made to the Developer prior to the date hereof by Homes England or its agents concerning the subject matter of this Lease which has influenced, induced or persuaded the Developer to enter into this Lease; and
  - (b) it has been provided with all information necessary to assess the state and condition of the Land and has been afforded full opportunity to enter the Land to conduct such surveys as it wished.

## **23. VALUE ADDED TAX**

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<sup>26</sup> Surety provisions only to be included where the Surety is a party to the Lease

- 23.1. All monies payable under the terms of this Lease are paid exclusive of VAT.
- 23.2. In the event of VAT being chargeable on such monies the Developer will on demand pay the same to Homes England at the appropriate rate in exchange for a VAT invoice addressed to the Developer.

## 24. ACKNOWLEDGMENT

The Parties to this Lease agree and acknowledge as follows:

- 24.1. [Homes England shall not be in breach of the covenant for quiet enjoyment at **Clause 14.1** nor in respect of any implied obligation not to derogate from the grant created by this Lease by reason of any demolition, construction, infrastructure or other works being carried out on the Adjoining Land or any other adjoining or neighbouring land of Homes England]
- 24.2. The Parties do not intend that any term of this Lease shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party.
- 24.3. No variation of this Lease shall be made other than by deed.

## 25. SURETY COVENANTS

[The Surety covenants with Homes England as a direct and primary obligation in the terms set out in **Schedule 11**.]

[Not Used]<sup>27</sup>

## 26. COMPLIANCE INSPECTOR

In relation to the Compliance Inspector Appointment the Developer agrees:

- 26.1. not without the prior written consent of Homes England (not to be unreasonably withheld) discharge or release any rights and remedies which it may have against the Compliance Inspector (pursuant to the Compliance Inspector Appointment) nor restrict or diminish any of their obligations or liabilities relating to the Development provided that nothing in this clause shall prejudice or affect Homes England's own remedies against the Compliance Inspector;
- 26.2. to observe and perform the obligations on its part in the manner and at the times set out in the Compliance Inspector Appointment and, so as to ensure the due performance by the Compliance Inspector of their respective services, to operate the provisions of the Compliance Inspector Appointment;
- 26.3. not to replace or substitute (or agree or approve any replacement or substitution of) the Compliance Inspector without:
- (a) the prior written approval of Homes England;
  - (b) Homes England having approved the form of the appointment of the replacement or substitute Compliance Inspector which shall be in the same form as that attached to the Agreement for Lease (subject to any change which Homes England may require as a result of variation in the form of the new appointment or the status of the replacement or substitute Compliance Inspector).

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<sup>27</sup> If the surety is providing a separate deed of guarantee this clause will not be used

## 27. MANAGEMENT COMPANY

- 27.1. The Developer shall incorporate the Management Company following prior agreement as to its constitution with Homes England (the Developer providing details for agreement by Homes England within 6 months following the Term Commencement Date of this Lease) with such constitution to provide that each Purchaser of a [Dwelling][Unit] shall have a voting share in such Management Company and following practical completion and the sale of the last [Dwelling][Unit] only the owners of [Dwellings][Units] shall be entitled to be members and shareholders of the Management Company and the Developer shall not at any time be entitled to transfer any share in it to a party that is not a Purchaser of a [Dwelling][Unit]
- 27.2. The Developer shall as soon as possible and in any event by the Adjusted Target House Build Completion Date devise an Estate Management Scheme which is acceptable to Homes England and this shall form part of the long term management strategy led by the Developer and first approved by Homes England (whose approval shall not be unreasonably withheld) such Estate Management Scheme conforming to the stipulations contained in any Planning Agreements

## 28. FREEDOM OF INFORMATION ETC

- 28.1. The Developer [and the Surety] acknowledges that Homes England is subject to legal duties which may require the release of Information under FOIA and/or EIR and that Homes England may be under an obligation to provide Information subject to a Request for Information. [The parties acknowledge that such Information may include matters relating to, arising out of or under this Lease and any information provided by the Developer [and/or the Surety] prior thereto]
- 28.2. Homes England shall be responsible for determining in its absolute discretion whether:
- (a) any Information is Exempted Information or remains Exempted Information; or
  - (b) any Information is to be disclosed in response to a Request for Information
- and in no event shall the Developer [and/or the Surety] respond directly to a Request for Information to which Homes England is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to Homes England unless otherwise expressly authorised to do so by Homes England.
- 28.3. Subject to **Clause 28.4** below the Developer [and/or the Surety] acknowledges that Homes England may be obliged under FOIA or EIR to disclose Information:
- (a) without consulting the Developer [and/or the Surety]; or
  - (b) following consultation with the Developer [and/or the Surety] and having taken (or not taken, as the case may be) its views into account
- 28.4. Without in any way limiting **Clauses 28.2** and **28.3**, in the event that Homes England receives a Request for Information Homes England will, where relevant, as soon as reasonably practicable notify the Developer [and/or Surety]
- 28.5. The Developer [and/or the Surety] will assist and co-operate with Homes England as requested by Homes England to enable Homes England to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in

particular without limitation will (and shall procure that its employees agents and sub-contractors will) at their own cost:

- (a) transfer any Request for Information received by the Developer [and/or the Surety] to Homes England as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
- (b) provide all such assistance as may be required from time to time by Homes England and supply such data or information as may be requested by Homes England; and
- (c) provide Homes England with any data or information in its possession or power in the form that Homes England requires within five Working Days (or such other period as Homes England may specify) of Homes England requesting that Information;
- (d) ensure that all Information produced in the course of this Lease or relating to this Lease is retained for disclosure; and
- (e) permit Homes England to inspect all records retained in accordance with **Clause 28.5 (d)** as requested from time to time

28.6. Nothing in this Lease will prevent Homes England from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and/or EIR in relation to any Exempted Information

## **29. EXCLUSION OF SECTIONS 24-28 OF THE LANDLORD AND TENANT ACT 1954**

29.1. The Parties confirm that:

- (a) Homes England served a notice on the Developer, as required by section 38A(3)(a) of the LTA 1954, applying to the tenancy created by this Lease, [not less than 14 days] before [this Lease][the Agreement for Lease] was entered into;
- (b) [NAME OF DECLARANT] who was duly authorised by the Developer to do so made a [statutory] declaration dated [DATE] in accordance with the requirements of section 38A(3)(b) of the LTA 1954; and
- (c) [there is no agreement for lease to which this Lease gives effect.]

29.2. The parties agree that the provisions of sections 24 to 28 of the LTA 1954 are excluded in relation to the tenancy created by this Lease.

29.3. [The parties confirm that:

- (a) Homes England served a notice on the Surety, as required by section 38A(3)(a) of the LTA 1954, applying to the tenancy to be entered into by the Surety pursuant to **paragraph 6.1 of Schedule 11**, [not less than 14 days] before [this Lease][the Agreement for Lease] was entered into; and
- (b) [the Surety OR [NAME OF DECLARANT], who was duly authorised by the Surety to do so], made a [statutory] declaration dated [DATE] in accordance with the requirements of section 38A(3)(b) of the LTA 1954.]

### **30. CONSIDERATE CONSTRUCTORS SCHEME**

The Developer shall in carrying out the works comprising the Development comply with the provisions of the Considerate Constructors Scheme save that where there shall be any conflict between the provisions of this Lease and the provisions of the said Scheme the former shall prevail.

### **31. LAW**

This Lease is governed by and shall be construed in accordance with English law and subject to the exclusive jurisdiction of the English courts.

### **32. COVENANTS RELATING TO EMPLOYMENT AND SKILLS**

The Developer covenants with Homes England to comply with the Developer's obligations relating to Employment and Skills contained in **Schedule [14]**.

### **33. COMMENCEMENT**

IN WITNESS whereof this document has been executed as a Deed by the parties hereto but is not intended to have legal affect until it has been unconditionally delivered and dated.

## SCHEDULE 1 – GRANTS AND RESERVATIONS

### Part 1 - Rights easements and privileges

1. A right of way (until the same are adopted (if ever) by the highway authority as highways maintainable at the public expense) for the Developer at all times for all reasonable purposes over and along the carriageways and (on foot only) the footpaths on the Adjoining Land [shown coloured [\*\* ] on the annexed plan marked ["**Plan B**"] [which give access to the Land from the nearest public highway].
2. A right (until adoption (if ever)) to the free passage of water and soil, gas and electricity, telephone radio or television signals through the Common Services now or in the future running through, in, under or over, or attached to, the Adjoining Land together with the right to enter the Adjoining Land to inspect, make, lay, clean, reconstruct, divert, alter, maintain or connect into such Common Services until they have been adopted, such entry to be on the following terms (save in the case of emergency when no prior agreement of or notice to Homes England shall be required):
  - (a) entry may take place only at times to be agreed with Homes England;
  - (b) entry shall otherwise be subject to such conditions as Homes England may require;
  - (c) entry may only be over such parts of the Adjoining Land as may be necessary in order to carry out the Developer's Infrastructure Works and, in any event, may not be over any part of the Adjoining Land that has been built upon or is no longer in Homes England's possession or control; and
  - (d) the person so entering shall cause as little damage as reasonably possible and as soon as reasonably possible make good any damage caused.
3. A right to enter the Adjoining Land to carry out the Developer's Infrastructure Works, and entry to be on the following terms (save in the case of emergency when no prior agreement of or notice to Homes England shall be required):
  - (a) entry may take place only at times to be agreed with Homes England;
  - (b) entry shall otherwise be subject to such conditions as Homes England may require;
  - (c) entry may only be over such parts of the Adjoining Land as may be necessary in order to carry out the Developer's Infrastructure Works and, in any event, may not be over any part of the Adjoining Land that has been built upon or is no longer in Homes England's possession or control; and

the person so entering shall cause as little damage as reasonably possible and as soon as reasonably possible make good any damage caused.

4. The right of support and protection from any part of the Adjoining Land.

### Part 2 – Exceptions and reservations

- 1 A right of way (until adoption) at all times and for all purposes over and along all roads and footpaths constructed upon the Land now or at any time in the future.



- 2 The right to free passage of water, soil, gas and electricity, telephone, radio or television signals through the Common Services now or at any time in the future running through, in, under or over or attached, to the Land.
- 3 The right to use, install, lay, clean, enlarge, extend, connect into, repair, reconstruct, divert, remove, alter and replace Common Services now or at any time in the future in, under, over or attached to the Land and to enter upon such part of the Land as may be necessary (but excluding any parts which have permanent structures upon them or are within building lines ) for any of the foregoing such entry to be on the following terms(save in the case of emergency when no prior agreement of or notice to the Developer shall be required) :
  - (a) Entry may take place only at times to be reasonably agreed by the Developer;
  - (b) Entry shall otherwise be subject to such conditions as the Developer may reasonably require;
  - (c) Entry may only be over such parts of the Land as is reasonably required in order to carry out such works and, in any event, may not be over any part of the Land that has been built upon or is no longer in the Developer's possession and control; and
  - (d) The person so entering shall do as little damage as reasonably possible and as soon as reasonably possible make good any damage caused.
- 4 A right of entry on to the Land in order to carry out any works [including the Homes England Infrastructure Works] to the Land and/or any Adjoining Land.
- 5 The right to develop the Adjoining Land or any other adjoining or neighbouring land of Homes England as Homes England sees fit at any time during the term of this Lease.
- 6 All other rights of entry given to Homes England referred to elsewhere in this Lease.
- 7 The right to enter upon all such parts of the Land as may be appropriate for any other reasonable purpose connected with the Development such entry to be on the following terms (save in case of emergency when no prior agreement of or notice to Developer shall be required):
  - (a) entry may take place only at times to be reasonably agreed with the Developer;
  - (b) entry shall otherwise be subject to such conditions as the Developer may reasonably require;
  - (c) entry may only be over such parts of the Land as is reasonably required in order to carry out such works and, in any event, may not be over any part of the Land that has been built upon or is no longer in the Developer's possession or control .
- 8 All rights, easements, quasi-easements and privileges granted to, or enjoyed by, any third party in respect of the construction of any infrastructure or related matters.
- 9 The right of support and protection from any part of the Land
- 10 All rights to be reserved in the following:
  - (a) Transfer (Affordable/PRS Dwelling)

- (b) Transfer (Affordable/PRS Leasehold Building)
- (c) Transfer (Non-Residential Unit)
- (d) Transfer (Market Dwelling)
- (e) Transfer (Leasehold Building)

## SCHEDULE 2 – DEVELOPER’S COVENANTS AND OTHER PROVISIONS RELATING TO THE DEVELOPMENT

### [Part 1 – General]

#### 1 PRE-DEVELOPMENT MATTERS CONSENTS AND AGREEMENTS

1.1 No work of any nature forming part of the Development shall commence until:

- (a) The Developer has complied with any requirement to be complied with before Start on Site under the provisions of this Lease; and
- (b) all matters to be complied with under any Planning Agreement and/or Planning Permission prior to commencement of such work have been complied with and it is lawful for Development to be commenced
- (c) the Developer has produced to Homes England’s Representative:-
  - (i) the submission of detailed proposals for the Highways Technical Approval
  - (ii) the submission of detailed proposals for the Sewers Technical Approvaltogether in each case with copies of all specifications drawings and other documents forming part of such approvals

#### 1.2 Consents and agreements

Subject to **paragraphs 1.3 and 1.4**, the Developer must in accordance with the programme contained in the Approved Plans (or such extended period as the Developer and Homes England may agree):

- (a) obtain all permissions and consents required by all Planning Acts in relation to the Development;
- (b) obtain consent under the building regulations for the Development in accordance with the requirements of the Building Act 1984;
- (c) obtain all other permissions and consents required to carry out the Development;
- (d) enter into an agreement with the highway authority pursuant to Section 38 and/or Section 278 of the Highways Act 1980 (as appropriate) in respect of the construction and adoption of the Adoptable Highways and procure any bond or guarantee required by the highway authority in connection with any such agreement;
- (e) enter into an agreement with the water authority pursuant to Section 104 of the Water Industry Act 1991 in respect of the construction and adoption of the sewers serving the Development and procure any bond or guarantee required by the water authority in connection with such agreement;
- (f) [(save to the extent that such parts of the Land are intended to be transferred to the Management Company)] enter into an agreement with the Council for the adoption by the Council of the [Open Space Land] [and any other play areas, amenity areas and landscaping areas comprising a part of the Development]; [and]

- (g) enter into an agreement with a landscaping contractor upon such terms so as to ensure the completion of the landscaping works referred to in the Approved Plans.
- 1.3 (save to the extent that such matters are provided for under the Agreement for Lease) the Developer must not submit an application for any permission or consent without Homes England's approval to the form of application; nor may the Developer implement any permission or consent without Homes England's approval to the form of the permission or consent.
- 1.4 Each of the matters referred in **paragraph 1.2** shall be in accordance with the Approved Plans.
- 1.5 The Developer covenants with Homes England to observe perform and comply with all the obligations on its part contained in any document referred to in **paragraph 1.2**.

## **2 BOUNDARY FENCES**

- 2.1 Before Start on Site, the Developer must erect along all boundaries of the Land fences and hoardings in accordance with Homes England's specification contained in the Approved Plans (but in any event being in accordance with the Health and Safety Executive's, or other competent body's, recommendations) and to maintain the same in position and good repair throughout the Development.
- 2.2 If the Developer shall commence work on the Development without first having erected all fences required under **paragraph 2.1** then Homes England shall have the right without notice to enter upon the Land in order to erect any such fences along the boundaries of the Land (including the right to take down and erect any fences erected by the Developer in an incorrect position, whether on the Land or on adjoining land) and the cost of all such works undertaken by Homes England (including any works of reinstatement to adjoining land) shall be paid by the Developer to Homes England on demand.

## **3 SIGNAGE DURING CONSTRUCTION**

- 3.1 Within three months of the date of this Lease Homes England and the Developer shall consider and agree a signage strategy in relation to the Development to be displayed on the Land.
- 3.2 It is agreed that all signage to be erected on the Land will include the name of Homes England in a prominent position and to a size not less than that of the Developer [or a contractor.]
- 3.3 [The Developer shall ensure that all promotional events for the Development are notified in writing in advance to Homes England and that marketing material in respect of the Development acknowledges Homes England's role in providing assistance and the Developer will not issue any material until the manner in which and the wording by which such acknowledgement to be given shall have been given the prior approval by Homes England, such approval not to be unreasonably withheld or delayed.]
- 3.4 The Developer shall not represent with finality either the layout of the Development and/or the mix and location of tenures across the Development in any marketing particulars so as to cause the Developer or Homes England to be subject to any civil or criminal liability for misdescription, misrepresentation or any other cause of action

in respect of the same, the Developer acknowledging that this covenant is to intended to ensure that there are no obligations or representations to Purchasers that could negate a reconfiguration of the Development or a change in the proposed tenure of any [Dwelling][Unit] or the location of market, affordable or social housing within the Development in the event that Homes England takes back any Units on the Termination of this Lease

#### 4 SITE ACCESS

- 4.1 Access to the Land for construction traffic and any other vehicles must be via the Site Access and no other roadway and the Developer must ensure that anyone driving to the Land is aware of this.
- 4.2 The Developer must lay a sufficient length of access road of adequate construction to the satisfaction of Homes England before commencing construction work on other aspects of the Development so as to facilitate compliance with the provisions of this Lease relating to protection and cleaning of roads.
- 4.3 Before Start on Site the Developer must erect across the Site Access at every point of permitted vehicular access to the Land a substantial height gauge the top bar of which shall not be more than sixteen feet above ground level at points within the boundaries of the Land not less than five metres from such points of access each such height gauge to incorporate a warning notice which shall read "No loads over 16 feet to proceed" and thereafter to maintain the same until completion of the Development.

#### 5 TEMPORARY VEHICLE PARKING

- 5.1 The Developer must provide at Start on Site and maintain during the Development to the satisfaction of Homes England a temporary vehicle park for all vehicular traffic used in the course of construction including sub-contractor's and operatives' private vehicles and shall remove the same and make good the Land at practical completion.
- 5.2 The proposed layout of the vehicle park together with construction details shall be provided by the Developer not later than one week prior to Start on Site.
- 5.3 The Developer must not park or permit or suffer to be parked construction plant vehicles and private vehicles on highways and highway verges except with the express written consent of Homes England.

#### 6 COMPLETION OF DEVELOPMENT [AND THE DEVELOPER'S INFRASTRUCTURE WORKS]

- 6.1 The Developer must:-
  - (a) ensure that Start on Site occurs on or before the Target Start on Site Date (but without prejudice to any provision of this Lease containing any conditions to be met prior to Start on Site);
  - (b) ensure that the Actual House Build Commencement Date occurs on or before the Adjusted Target House Build Commencement Date (as extended where appropriate pursuant to **paragraph 8.2** of this Schedule) (but without prejudice to any provision of this Lease containing any conditions to be met prior to the Actual House Build Commencement Date);

and thereafter:

- (c) carry out and complete the Development [in accordance with the Adjusted House Build Targets<sup>28</sup> and in any event ]by the Adjusted Target House Build Completion Date in a good and workmanlike manner to the satisfaction of Homes England in accordance with the Planning Permission the Approved Plans and the Performance Criteria
  - (d) [carry out and complete the Developer's Infrastructure Works in a good and workmanlike manner to the satisfaction of Homes England in accordance with the Planning Permission the Approved Plans and the Performance Criteria and with all practicable speed, in compliance with the programme forming part of the Approved Plans and, in any event, not later than the Adjusted Target House Build Completion Date];
  - (e) [comply with the provisions of any Remediation Plan accepted by Homes England]
- 6.2 The Developer shall ensure that no Deleterious Materials are used in any works or materials used comprised in or relating to the Development and that the construction methodology that it adopts and the materials it uses are of a kind that would generally be acceptable to a CML mortgage lender.
- 6.3 [The Developer shall comply with all obligations and other matters set out on the Constraints Plan as being obligations on the part of the Developer or matters which are its responsibility]<sup>29</sup>.
- 6.4 All Highways and Common Services to be constructed by the Developer shall connect to any existing highway network [on the Adjoining Land] and shall be constructed in accordance with all applicable Enactments and the Approved Plans.
- 6.5 The Developer will provide information to Homes England and to the Compliance Inspector forthwith when requested to do so by Homes England or by the Compliance Inspector relating to progress of Development against the [Adjusted House Build Targets and the ]<sup>30</sup> Approved Plans and the Performance Criteria.

## 7 PLANNING AGREEMENTS

- 7.1 In carrying out the Development [and the Developer's Infrastructure Works] the Developer must:
- (a) comply with all Planning Agreements affecting the Land (and where relevant the Adjoining Land in so far as they relate to the Development [and/or the Developer's Infrastructure Works]) including the payment of all sums payable thereunder and the discharge of all obligations thereunder at the times stated therein;
  - (b) indemnify and keep indemnified Homes England against all actions proceedings claims demands losses costs expenses damages and liabilities arising directly or indirectly from any breach of the Planning Agreements;

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<sup>28</sup> The provisions regarding House Build Targets are only appropriate if the total build period exceeds 18 months

<sup>29</sup> Delete if no Constraints Plan

<sup>30</sup> The provisions regarding House Build Targets are only appropriate if the total build period exceeds 18 months

- (c) [to provide on demand to Homes England suitable written evidence of all payments made and obligations satisfied under the Planning Agreements.]

## 8 EXTENSIONS OF TIME

8.1 If the Developer is materially delayed in commencing, proceeding with or completing the Development solely by reason of any of the following:

- (a) outbreak of war or civil insurrection involving the United Kingdom;
- (b) extreme adverse weather;
- (c) any strikes or lockout in the building trade or any kindred trades;
- (d) non availability of labour and materials;
- (e) non-availability of or unreasonable delay in the supply of off-site manufactured components of the Development
- (f) any town planning or building licensing or building regulations refusal or restrictions;
- (g) unforeseen ecological issues;
- (h) exercise by the Council or Homes England of their rights under **paragraph 22** of this Schedule (archaeology);
- (i) an extension, variation or alteration made to the Development which shall have been approved by Homes England pursuant to this Lease;
- (j) unreasonable delay by a statutory undertaker or statutory undertakers responsible for connecting the Units on the Development with that statutory undertaker's network and/or those statutory undertakers' networks and/or upgrading connections or increasing capacity of existing connections to statutory undertakers' networks, where this is required in connection with the Development;
- (k) any unreasonable delay by Homes England in granting or otherwise withholding approval where provided for in this Lease; and
- (l) any delay arising as a result of any breach non-performance or non-observance of Homes England's obligations in this Lease
- (m) other unavoidable cause or accident beyond the control of the Developer;

then the Developer shall provide such evidence of the cause and length of the delay to the Compliance Inspector as the Compliance Inspector requests and (except where the delay has been caused by the default or negligence of the Developer) Homes England shall allow such further time for the completion of the Development as the Compliance Inspector shall certify and Homes England shall approve and the programme (as contained in the Approved Plans), [the House Build Targets,] the Target House Build Completion Date and the relevant Construction Related Deadline(s) shall be amended accordingly.

8.2 If the Actual House Build Commencement Date is materially delayed solely by reason of either of the following:

- (a) Any of the grounds set out in sub-paragraphs (a) – (l) of **paragraph 8.1** of this Schedule; or

- (b) Unforeseen ground or site conditions that are discovered following and as a result of Start on Site

then the Developer shall provide such evidence of the cause and length of the delay to the Compliance Inspector as the Compliance Inspector requests and (except where the delay has been caused by the default or negligence of the Developer) Homes England shall allow such further time for the Actual House Build Commencement Date as the Compliance Inspector shall certify and Homes England shall approve and the Target House Build Commencement Date shall be amended accordingly.

- 8.3 [In the event of a Market Downturn Homes England and the Developer shall agree such further time for the completion of the Development as may be reasonable and the programme (as contained in the Approved Plans) and the Target House Build Completion Date the House Build Targets and the relevant Construction Related Deadline(s) shall be amended accordingly
- 8.4 If an amendment to the Target House Build Completion Date the House Build Targets and the Construction Related Deadlines has been agreed pursuant to **paragraph 8.3** of this Schedule then on the date 6 months following the date of the publication of the Total Sales Volume that established the Market Downturn Homes England and the Developer shall review the Total Sales Volume and if at that date the Total Sales Volume most recently published shows that there is no longer a Market Downturn then Homes England and the Developer shall agree such amended time for the completion of the Development as shall provide for the Development to proceed at a rate equivalent to the rate established by the original House Build Targets and the programme (as contained in the Approved Plans) and the Target House Build Completion Date the House Build Targets and the Construction Related Deadlines shall be amended accordingly
- 8.5 If an amendment to the Target House Build Completion Date the House Build Targets and the Construction Related Deadlines has been agreed pursuant to **paragraph 8.3** of this Schedule and on the date 6 months following the date of the publication of the Total Sales Volume that established the Market Downturn Homes England and the Developer have reviewed the Total Sales Volume and if at that date the Total Sales Volume most recently published showed that there was still a Market Downturn the procedure in **paragraph 8.4** of this Schedule shall be repeated at six monthly intervals until the earlier of:
- (a) the date on which such review shows that there is no longer a Market Downturn (and Homes England and the Developer have agreed amendments to the time for the completion of the Development, the Target House Build Completion Date the House Build Targets and the Construction Related Deadlines pursuant to **paragraph 8.4**); and
- (b) the date which the Development is completed.]<sup>31</sup>
- 8.6 Subject to **paragraph 8.7** if at any time  $\geq$ <sup>32</sup>% of Dwellings which:
- (a) have been practically completed which shall be evidenced by the production of a CML Certificate to Homes England and to the Compliance Inspector; and

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<sup>31</sup> Paragraphs 8.3 - 8.5 only included in schemes with a build period in excess of 18 months

<sup>32</sup> Percentage to be specified in the Invitation to Tender and confirmed in instructions to solicitor



- (b) have been marketed for a period of one month following practical completion at the Base Value for the relevant Dwelling as certified by the Compliance Inspector

have not been Disposed of Homes England shall consider the Developer's proposals for an extension of time and may agree such further time for the completion of the Development as may be reasonable and the programme (as contained in the Approved Plans) and the Target House Build Completion Date [the House Build Targets] and the relevant Construction Related Deadline(s) shall be amended accordingly.

- 8.7 The procedure agreed in **paragraph 8.6** of this Schedule may be repeated at intervals of not less than 6 months.
- 8.8 Any adjustment of the Target House Build Commencement Date and/or [the House Build Targets,] the Target House Build Completion Date and the relevant Construction Related Deadline(s) agreed in accordance with **paragraphs 8.1** and/or **8.2** and/or **8.3** and/or **8.4** and/or **8.5** and/or **8.6**<sup>33</sup> shall not have effect unless confirmed by the entry by the Parties into memorandum of agreement in the form annexed at Annexure **■**.
- 8.9 The parties acknowledge and agree that extensions of time agreed pursuant to **paragraphs 8.1** and/or **8.2** and/or **8.3** and/or **8.4** and/or **8.5** and/or **8.6**<sup>34</sup> may run concurrently.

## 9 APPROVED PLANS AND ESTATE LAYOUT PLAN

- 9.1 Subject to **paragraph 9.2**, the Developer must not erect or build or permit or suffer to be erected or built on the Land any building, structure or erection otherwise than in conformity with the Planning Permission and the Approved Plans.
- 9.2 The Developer may:
- (a) in accordance with the Compliance Inspector's recommendation and with Homes England's prior approval make amendments to the Approved Plans
  - (b) without Homes England's approval, make internal amendments to a [Dwelling] [Unit] which do not affect its external appearance.
- 9.3 As soon as reasonably practicable (and in any event prior to the Actual House Build Commencement Date):
- (a) to provide an Estate Layout Plan to Homes England for its approval (such Estate Layout Plan to be in conformity with the Approved Plans previously approved by Homes England and to be in a form which will enable Homes England to verify the Estate boundaries and individual boundaries against relevant Approved Plans); and
  - (b) apply for and pursue with due diligence the registration of such Estate Layout Plan at the Land Registry and notify Homes England when this has been done.
- 9.4 All revisions of the Estate Layout Plan must be approved by Homes England (such approval not to be unreasonably withheld or delayed).

## 10 SUBSTITUTE MATERIALS

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<sup>33</sup> Check cross-references, paragraphs 8.3- 8.5 will be removed where the build period is 18 months or less

<sup>34</sup> Check cross-references, paragraphs 8.3- 8.5 will be removed where the build period is 18 months or less

If the Developer proves to the reasonable satisfaction of the Compliance Inspector that it is necessary to use materials in substitution for materials previously approved by Homes England in the Development then the Developer may use such substitute materials as are recommended by the Compliance Inspector and approved by Homes England in writing [(such approval not to be unreasonably withheld or delayed) provided that such substitutions are of no less specification quality design suitability and fitness for purpose than the original materials and are consistent with the Approved Plans and do not comprise any Deleterious Materials].

## 11 HOMES ENGLAND'S RIGHTS TO VIEW ETC AND REMEDY BREACHES

11.1 The Developer must permit Homes England and the Compliance Inspector to enter upon the Land at all reasonable times (subject to complying with such safety and security precautions as may be in force from time to time at the Development):

- (a) to view the state of progress of the Development and the materials used and intended for use in connection therewith;
- (b) to ascertain whether the obligations of the Developer under this Lease or any other document have been observed and performed; and
- (c) to ascertain whether the Developer has complied with an approved Remediation Plan.

11.2 If the Developer shall default in complying with an approved Remediation Plan it shall be lawful for Homes England to enter the Land to remedy any such breach and all proper and reasonable costs and expenses thereby incurred shall be paid by the Developer to Homes England on demand as a debt due to Homes England.

## 12 COMPLIANCE WITH ENACTMENTS

12.1 The Developer must do all acts and things required by, and conform in all respects with, the provisions of any Enactments applicable to the Development (which for the avoidance of doubt shall include the provisions of Section 57 of and Schedule 22 to the Environment Act 1995) and in particular to comply with:

- (a) the lawful requirements of any statutory undertakers in respect of electricity, gas, water, telephone or other public services; and
- (b) the conditions imposed by any agreements, licences, permissions and approvals for development or use granted in relation to the Land and the Development.

12.2 Without prejudice to the generality of **Paragraph 12.1**, the Developer shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
- (b) comply with the Modern Slavery Policy; and
- (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and

- (d) include in its contracts with its direct subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this **Paragraph 12.2** and require that each of its direct subcontractors and suppliers comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015
- 12.3 The Developer represents, warrants and undertakes that it conducts its business in a manner that is consistent with the Modern Slavery Policy.
- 12.4 The Developer must not do anything which may result in Homes England incurring or becoming liable to pay any penalty, damage, compensation, costs, charges or expenses.
- 12.5 Competent Authorities
- (a) In this paragraph "**Competent Authority**" means any government body, court, tribunal or other body deriving power under Environmental Law.
- (b) The parties agree that the apportionment by a Competent Authority of any liabilities that may arise under Part IIA of the Environmental Protection Act 1990 (as amended) (**Part IIA**) in respect of pollution or contamination present in on or under or originating from the Land shall be undertaken on the basis that the Developer shall have full responsibility for any and all such liabilities.
- (c) It is hereby acknowledged and intended by the parties that **paragraph 12.5(b)** is an agreement on liabilities for the purposes of Part IIA.
- (d) The parties agree that in the event of a notification being served on any of them which indicates that the Land is or is likely to be determined 'contaminated land' under Part IIA to notify the other as soon as is reasonably practicable.
- (e) The parties undertake to furnish the Competent Authority with a copy of this Lease as soon as is reasonably practicable after receiving a note from the Competent Authority or a notification under **paragraph 12.5(b)**, and individually to agree to the application of **paragraph 12.5(b)** and to confirm such individual agreement in writing to the Competent Authority following receipt of such notice or notification.
- (f) The parties hereby undertake to use all reasonable endeavours to ensure that the Competent Authority applies the agreement on liabilities set out in sub-**paragraph 12.5(b)**.
- (g) For the avoidance of doubt Homes England shall retain the right to appeal against a decision of a Competent Authority in accordance with Part IIA's appeal procedure.
- 12.6 The Developer hereby undertakes to indemnify Homes England and keep Homes England indemnified in respect of all and any fines, penalties, charges, actions, losses, costs, claims, expenses, demands, duties, obligations, damages and other liabilities that Homes England may suffer (i) as a result of any failure of the Developer to adhere to the provisions of **paragraph 12.5**; or (ii) arising from any pollution or contamination present in or under or originating from the Land.

## 12.7 Anti-Bribery

(a) The Developer shall:

- (i) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Requirements);
- (ii) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (iii) EITHER

[comply with Homes England's [Anti-bribery and Corruption Policy](#), in each case as Homes England or the relevant industry body may update from time to time (Relevant Policies).]

OR

[have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Requirements, the Relevant Policies and paragraph (ii) above, and will enforce them where appropriate];

- (iv) immediately report to Homes England's General Manager – Financial Crime Compliance and MLRO any request or demand for any undue financial or other advantage of any kind received by the Developer in connection with the performance of this agreement;
  - (v) if required by Homes England, produce a written certificate to it signed by an officer of the Developer, confirming compliance with this **paragraph 12.7** by the Developer and all persons associated with it under **paragraph 12.7(b)** and the Developer shall provide such supporting evidence of compliance as Homes England may reasonably request.
- (b) The Developer shall ensure that any person associated with the Developer who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Consultant in this **paragraph 12.7** (Relevant Terms). The Developer shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Homes England for any breach by such persons of any of the Relevant Terms.
- (c) Breach of this **paragraph 12.7** shall be deemed a Material Breach.

## 13 CDM REGULATIONS

13.1 The Developer accepts that it is a client as defined by the CDM and warrants that it is and will at all times remain competent to carry out the role of a client under CDM.

13.2 The Developer agrees that it will act as the only client in respect of the Development for the purposes of CDM.

- 13.3 Homes England agrees that the Developer is the only client for the Development for the purposes of CDM.
- 13.4 The Developer shall comply fully with all the obligations of the client under CDM and ensure that the Development is carried out in accordance with CDM.
- 13.5 The Developer shall not seek to withdraw, terminate or in any manner derogate from the agreement contained in **paragraphs 13.2 and 13.3** above without Homes England's prior written consent, which Homes England may in its absolute discretion withhold.
- 13.6 The Developer shall ensure that any and all parties engaged in respect of the procurement and/or undertaking of the works comprised in the Development are aware of the terms of the Developer's election as only the client for the purposes of CDM.
- 13.7 Before commencement of the Development, the Developer shall notify the Development to the Health and Safety Executive in accordance with CDM and shall give Homes England a copy of the notification and any acknowledgement from the Health and Safety Executive.
- 13.8 The Developer[ as principal contractor shall comply and] shall ensure that the Principal Designer [and Building Contractor (as principal contractor and contractor) each comply with their respective] [complies with its] obligations under CDM.
- 13.9 The Developer shall ensure that the Principal Designer [is] [and Building Contractor are both] promptly:
- (a) supplied with all relevant information required under CDM; and
  - (b) notified of any changes relating to the Development which may have any effect on their responsibilities or duties under CDM.
- 13.10 The Developer shall:
- (a) [ensure that the Building Contractor] prepare[s] the construction phase plan;
  - (b) not allow the construction phase of the Development to commence until the construction phase plan is prepared;
  - (c) not allow the construction phase of the Development to commence until the site welfare facilities required by schedule 2 to CDM are in place; and
  - (d) ensure that the Health and Safety File is prepared by the Principal Designer and is maintained correctly and is available for inspection in accordance with CDM.
- 13.11 The Developer shall indemnify and keep Homes England indemnified against liability for any breach of the Developer's obligations under or in connection with this **paragraph 13**

## 14 HEALTH & SAFETY

- 14.1 The Developer shall at all times comply with all obligations, requirements and duties arising under Health and Safety legislation in connection with the works comprising the Development.

- 14.2 The Developer shall appoint a Competent Person pursuant to Regulation 7 of The Management of Health at Work Regulations 1999 to assist the Developer in carrying out the necessary measures that needs to be taken in order to ensure the safety and health of any person affected by the carrying out of the works comprising the Development. The Developer will be responsible for health, safety, environmental and security issues and will ensure that a sufficient number of competent staff are available and responsible for health, safety and welfare matters relating to the works comprising the Development.
- 14.3 The Developer shall at all times procure the compliance with all obligations, requirements and duties arising under Health and Safety legislation by any and all parties appointed in connection with the works comprising the Development or allowed on the Land.
- 14.4 The Developer shall maintain an accurate record of all health, safety and environmental incidents which occur on or in connection with the Development, and shall provide a report to Homes England's Health & Safety Manager quarterly in the form set out in **Schedule 10**.
- 14.5 The Developer shall notify Homes England's Health & Safety Manager immediately on the occurrence of any of the following events which arise out of or in connection with the Development:
- (a) a fatal accident to any worker or a member of the public;
  - (b) any injury to a member of the public requiring reporting under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (as amended from time to time) ("**RIDDOR**");
  - (c) any dangerous occurrence, as defined by RIDDOR;
  - (d) the service of any improvement or prohibition notice under the Health & Safety at Work etc Act 1974;
  - (e) any incident having health & safety implications which attracts the attention of the police and/or the media;
  - (f) the commencement of any criminal prosecution under the Health & Safety at Work etc Act 1974;
  - (g) any occurrence or incident of pollution

## 15 [LANDSCAPING WORKS

In the event that the Developer shall fail to carry out the landscaping works in accordance with the Approved Plans or in the time specified in the programme (as contained in the Approved Plans) and fails to carry out such works within 20 Working Days of being asked to do so by Homes England (acting reasonably and taking into account the season in question) contained therein Homes England shall be entitled to enter upon the Land (including any land then disposed of) to carry out the landscaping works in accordance with the Approved Plans and the Developer shall indemnify Homes England against the cost of such works.]

## 16 INSURANCE

- 16.1 The Developer must:
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- (a) insure, or cause to be insured, at all times during the carrying out of the Development any buildings erected on the Land (save any [Dwellings] [Units] disposed of to Purchasers or land disposed of to the Management Company) (**Insurable Premises**) in a sum sufficient to cover the cost of completely reinstating the same in the event of total destruction together with architects' and surveyors' fees and other expenses incidental thereto against loss or damage by fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion in an insurance office to be approved by Homes England (such approval not to be unreasonably withheld or delayed) and to ensure that Homes England's interest is noted on the policy or policies of insurance;
- (b) pay or cause to be paid, all premiums and other monies necessary for effecting such insurance;
- (c) whenever required, produce to Homes England the policy or policies of such insurance and the last receipt for every premium or other monies;
- (d) (in the event of the Insurable Premises or any part thereof being destroyed or damaged as aforesaid) secure that all monies payable by virtue of such insurance shall with all convenient speed be laid out and applied in rebuilding or otherwise reinstating the same in a good and substantial manner in accordance with the terms of this Lease and (in case the same shall be insufficient for that purpose) make up the deficiency out of its own monies;
- (e) not do, or permit to be done, upon the Land anything which may render the policy or policies of insurance void or voidable;
- (f) indemnify Homes England (notwithstanding any supervision or approval of Homes England or any person acting on behalf of Homes England) and insure in an insurance office approved by Homes England (such approval not to be unreasonably withheld or delayed) in the sum of [£10,000,000] against any liability, loss, claim or proceedings in respect of any injury or damage whatsoever caused to any person or to any property real or personal in so far as such injury or damage arises out of, or in the course of, or by reason of, the negligent execution of the Development.

## 17 PROTECTION OF HIGHWAYS

### 17.1 The Developer must:

- (a) not deposit any building or other materials within two metres of any adopted Highway;
- (b) comply with all reasonable instructions of the local highway authority and the police given to prevent any congestion of, or hazard to, traffic and in any event arrange for the delivery and removal of all materials to and from the Land with as little inconvenience to pedestrians and traffic as possible;
- (c) at all times protect all Highways against damage arising (and take all necessary or proper precautions for the protection of any person on any Highway against injury arising) by vehicles employed in connection with the Development and forthwith make good any such damage at the expense of the Developer in the event that the perpetrator of such damage does not maintain or repair the same;

- (d) at all times keep all Highways free from mud, dirt, debris and other deleterious matter to the satisfaction of Homes England and ensure that all vehicles leaving the Land are clean and properly loaded; and
- (e) to provide in any contract for the carrying out of the Development or any part or parts thereof a provision requiring the contractor under such contract to comply with the terms of **paragraphs 17.1(a) (b) (c) and (d)**.

17.2 If the Developer fails to carry out any work necessary for compliance with the provisions of this **paragraph 17** within 10 Working Days of having received written notification of such default Homes England may undertake the same and the Developer must forthwith on demand repay to Homes England the proper cost of so doing which cost shall be recoverable by Homes England from Homes England as a liquidated debt.

## 18 MAINTENANCE OF HIGHWAYS

The Developer must maintain all Highways constructed by the Developer until adoption by the highway authority or transfer to a Purchaser or to the Management Company.

## 19 DEFECTS INSURANCE

19.1 The Developer must build every Dwelling so as to comply with the requirements of the [National House Building Council (or any successor organisation) (**NHBC**)]<sup>35</sup> and so as to qualify for the insurance cover provided by it which the Developer must obtain.

19.2 That the Developer will ensure that every Purchaser obtains the benefit of the insurance cover provided by [NHBC]<sup>36</sup>.

## 20 SEWERS, DRAINS AND OTHER CONDUITS

20.1 During the construction of the Development the Developer must:

- (a) lay out and construct to the satisfaction of Homes England proper and sufficient branch and connecting sewers, drains, soakaways, outfalls, treatment tanks, shafts, traps, gullies and gratings as necessary to properly discharge flows. Where the scheme design allows the sewers constructed shall be connected to the public sewerage network;
- (b) liaise with Homes England in connection with the overall programming for the provision of services and comply with all reasonable instructions issued by it to ensure the smooth progress of the Development and appropriate interface with any works being carried out on any Adjoining Land;
- (c) protect all pipes, ducts, cables and statutory undertakers' apparatus against damage as a result of carrying out the works;
- (d) take all necessary precautions to ensure the protection of all streams, waterways, surface water, sewers and drains against pollution as a result of carrying out the works and any temporary diversions of existing streams, waterways, sewers or other works must be carried out so as not to reduce the capacity of that stream, waterway, sewer or other works and to the satisfaction of Homes England;

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<sup>35</sup> This can be substituted with a similar insurance product

<sup>36</sup> This can be substituted with a similar insurance provider



- (e) ensure that the Common Services are not blocked and that any connection to a Common Service is effected with the approval of Homes England or, where appropriate, the relevant statutory undertaker; and
- (f) maintain all sewers, drains, pipes, ducts, cables and other conduits constructed by the Developer until adoption by the relevant statutory undertaker or transfer to a Purchaser or to the Management Company.

## 21 MAINTENANCE UNTIL COMPLETION

- 21.1 Until completion of the Development, the Developer must keep and maintain the Land and all parts of the Development in a neat and tidy condition so far as may be reasonable and prevent so far as may be reasonably practicable any matters or things which may be unnecessarily unsightly or offensive visually or otherwise.
- 21.2 Until the completion of the disposal of any [Dwelling] [Unit], the Developer must keep and maintain that [Dwelling] [Unit] in good and marketable condition.

## 22 ARCHAEOLOGY

- 22.1 All fossils, coins, articles of value or antiquity and structures or other remains or things of prehistoric, geological or archaeological interest ("**Archaeological Finds**") discovered on the Land during the Development shall be the property of Homes England and the Developer must:
  - (a) not conceal, remove or damage or permit to be concealed, removed or damaged any Archaeological Finds;
  - (b) promptly on discovery of any Archaeological Finds notify Homes England and the archaeology officer of the Council (or other local archaeology authority);
  - (c) allow (upon such reasonable terms as may be agreed with the Developer) officers and agents of Homes England and of the Council (or other local archaeology authority) with or without workmen and plant to enter the Land for the purpose of appraising, recording and removing the Archaeological Finds; and
  - (d) reimburse to Homes England or to the Council (or other local archaeology authority) or to any third party authorised by either of them costs incurred in the emergency recording of any significant Archaeological Find made during the Development.

## 23 TREES

Save in accordance with the Approved Plans and subject to the Developer obtaining all necessary consents, not to cut down or top any trees on the Land without the consent in writing of Homes England (which is not to be unreasonably withheld or delayed) which if granted may be subject to such conditions as Homes England may reasonably require.

## 24 GRAVEL ETC

The Developer may use for the purpose of the Development any substances which may be excavated in the proper execution of such works without making any payment for such substances to Homes England or to any person) Provided Always that where such earth, clay, gravel or sand is not required by the Developer for the purposes of the Development the Developer must not sell or dispose of such earth, clay, gravel or sand or permit or suffer any of the same to be removed from the Land without the prior

approval of Homes England (which is not to be unreasonably withheld or delayed) and such payments received by the Developer on its disposal shall be paid to Homes England.

## 25 HOUSING OUTPUTS

As between the Developer and Homes England, the Developer shall permit Homes England to claim any Outputs (as defined in **Schedule 13** of the Lease) in respect of the development of the Land and will not claim any itself

26 [Part 2 – Site Specific Obligations]

## SCHEDULE 3 – MARKET DWELLINGS

### Transfer of Market Dwellings

1. The Developer shall procure the transfer of the freehold interest in each Market Dwelling to a Purchaser at arm's length, in the open market on bona fide terms in good faith and with vacant possession, as soon as reasonably practicable.
2. Subject to other paragraphs of this Schedule Homes England need not take any step in relation to the transfer of any Market Dwelling until the CML Certificate has been issued in respect of that Market Dwelling and a copy has been provided to Homes England and Homes England is satisfied of the matters referred to in **Clause 4.1**.
3. Homes England need not take any step in relation to the transfer of the last [two]<sup>37</sup> Market Dwellings remaining to be transferred until the Final Completion Certificate has been issued, the Price and any other sums due to Homes England pursuant to this Lease have been paid in full and any Overage has been paid in accordance with **Schedule 12**
4. Subject to other paragraphs of this Schedule, Homes England will transfer the freehold interest in each Market Dwelling to the relevant Purchaser on the following terms:
  - (a) the form of transfer shall be substantially in the form of the Transfer (Market Dwelling) attaching a plan delineating the land to be transferred by red edging (such plan to conform with the Estate Layout Plan previously approved by Homes England and bearing no other red edging<sup>38</sup>);
  - (b) the form of transfer must be executed by all relevant parties either in duplicate or in counterparts;
  - (c) Homes England need not deduce title (having already deduced title to the Developer before completion of this Lease), nor answer any requisitions or enquiries (whether raised by the Developer or any other person);
  - (d) the Developer shall send the following documents to Homes England's Plot Sales Solicitors not less than 5 Working Days before the anticipated date for completion of the transfer:
    - (i) the form of transfer (in duplicate if appropriate);
    - (ii) a completed (but undated) draft of the Sale Report in respect of the Market Dwelling;
    - (iii) a CML Certificate for the relevant Dwelling
    - (iv) Energy Performance Certificate for the relevant Dwelling
    - (v) [NHBC buildmark warranty]<sup>39</sup>

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<sup>37</sup> The number of Units to be held back will vary on a scheme by scheme basis in relation to potential residual liabilities ■■■■■  
■■■■■

<sup>39</sup> This can be substituted with a similar product

- (vi) The Developer's Home Use Guide
  - (vii) *[Add any other documents]*
- (e) Homes England need not deliver the form of transfer, executed by Homes England, to the Developer or any other person until any dispute over instalments of the Price payable to Homes England pursuant to this Lease has been determined and Homes England has received that amount, including any VAT and interest.
5. Within 5 Working Days after the completion of any transfer of a Market Dwelling, the Developer must deliver to Homes England's Solicitors a certified copy of the completed form of transfer executed by the Developer and the Purchaser and any other parties together with the Sale Report.

## SCHEDULE 4 – AFFORDABLE/PRS DWELLINGS<sup>40</sup>

### Transfer of Affordable/PRS Dwellings

1. The Developer shall procure the transfer of the freehold interest in each Affordable Dwelling to the Registered Provider and the transfer of each PRS Dwelling to the PRS Operator with vacant possession, as soon as reasonably practicable.
2. The Developer shall procure that the [Registered Provider][PRS Operator] enters into:
  - (a) the Transfer Affordable/PRS Dwellings[; and]
  - (b) a CML Certificate for the relevant Dwelling
  - (c) Energy Performance Certificate for the relevant Dwelling
  - (d) [NHBC buildmark warranty]
  - (e) The Developer's Home Use Guide
  - (f) [insert details of any relevant documents]on completion of the transfer.
3. Subject to other paragraphs of this Schedule Homes England need not take any step in relation to the transfer of any Affordable Dwelling or any PRS Dwelling until the CML Certificate has been issued in respect of that Affordable Dwelling or that PRS Dwelling (as appropriate) and a copy has been provided to Homes England.
4. Homes England need not take any step in relation to the transfer of the last [two] Affordable Dwellings and PRS Dwellings until the transfer of the Remainder Land has been completed pursuant to **Clause 10** and any Overage has been paid in accordance with **Schedule 12**<sup>41</sup>
5. Subject to **paragraphs 1 to 4** inclusive of this Schedule, Homes England shall transfer the freehold interest in each Affordable Dwelling to the Registered Provider and shall transfer the freehold interest in any PRS Dwelling to the PRS Operator on the following terms:
  - (a) the form of transfer shall be substantially in the form of the Transfer (Affordable/PRS Dwelling) attaching a plan delineating the land to be transferred by red edging (such plan to conform with the Estate Layout Plan previously approved by Homes England and bearing no other red edging);
  - (b) the form of transfer must be executed by all relevant parties either in duplicate or in counterparts;
  - (c) Homes England need not deduce title (having already deduced title to the Developer before completion of this Lease), nor answer any requisitions or enquiries (whether raised by the Developer or any other person);

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<sup>40</sup> Delete schedule if not applicable

<sup>41</sup> Only where scheme is 100% affordable /PRS otherwise delete paragraph

- (d) the Developer shall send the following documents to Homes England not less than 5 working days before the anticipated date for completion of the transfer:
    - (i) the form of transfer (in duplicate if appropriate);
    - (ii) a completed (but undated) draft of the Sale Report in respect of the Affordable Dwelling or the PRS Dwelling (as appropriate);
    - (iii) [*insert any other relevant documents*]
  - (e) Homes England need not deliver the form of transfer, executed by Homes England, to the Developer or any other person until any dispute over instalments of the Price payable to Homes England pursuant to this Lease has been determined and Homes England has received that amount, including any VAT and interest.
6. Within 5 working days after the completion of any transfer of an Affordable Dwelling, or of a PRS Dwelling the Developer must deliver to Homes England's Solicitors a certified copy of the completed form of transfer executed by the Developer and the Purchaser and any other parties together with the Sale Report.

## SCHEDULE 5 – TRANSFER ETC. OF LEASEHOLD BUILDINGS<sup>42</sup>

1. Homes England shall transfer, and the Developer shall receive, the freehold interest in a Leasehold Building to the Developer on the following terms:
  - (a) Homes England is not obliged to take any step in relation to the transfer of any Leasehold Building until the first CML Certificate has been issued in respect of a Flat in that Leasehold Building and a copy has been provided to Homes England;
  - (b) the form of transfer shall be substantially in the form of the Transfer (Leasehold Building) attaching a plan delineating the land to be transferred by red edging (such plan to conform with the Estate Layout Plan previously approved by Homes England and bearing no other red edging);
  - (c) the form of transfer will contain a covenant on the part of the Developer to the effect that the Developer will not reserve a ground rent (other than a peppercorn) on the disposal of any Flat in a Leasehold Building;
  - (d) the form of transfer must be executed by all relevant parties either in duplicate or in counterparts;
  - (e) Homes England shall not be required to deduce title (having already deduced title to the Developer before completion of this Lease), nor answer any requisitions or enquiries (whether raised by the Developer or any other person);
  - (f) Homes England need not deliver the form of transfer executed by Homes England to the Developer or any other person until any dispute over instalments of the Price payable to Homes England pursuant to this Lease has been determined and Homes England has received that amount including any VAT and interest
  - (g) the Developer shall send the following documents to Homes England not less than 5 Working Days before the anticipated date for completion of the transfer:
    - [(i) the form of transfer<sup>43</sup> (in duplicate if appropriate);*
    - (ii) set out any other documents e.g. Legal Charge / Overage Covenant to secure any deferred payment of overage or long-term clawback]*and shall enter into them on completion.
2. Immediately before completion of the transfer the Developer must provide a solicitor's undertaking (in a form acceptable to Homes England) to:
  - (a) register a restriction on title onto the freehold title to the Leasehold Building in the following form:

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<sup>42</sup> Delete if not applicable

<sup>43</sup> This will need to incorporate a restriction against disposal to protect payments due/issue of CML Certificate for individual units



"No disposition of the registered estate 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 The Homes and Communities Agency of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH or their conveyancer that the provisions of Clause 4.4 of a lease dated ■ and made between (1) Homes and Communities Agency [and] (2) [developer] [and (3) [surety]] have been complied with or that they do not apply to the disposition (Form L)".

- (b) [register the [<sup>44</sup> ] Charge at the Companies Registry within the period prescribed by Section 860 of the Companies Act 2006 (or at such other competent registry as may be necessary or appropriate) or, if so requested by Homes England, deliver to Homes England's solicitors the appropriate monies, completed form and documentation to enable Homes England's solicitors to apply for the registration and shall pay Homes England's solicitor's costs of so doing;
- (b) register the transfer and the [<sup>45</sup> ] Charge at the Land Registry or, if so requested by Homes England, deliver to Homes England's solicitors the appropriate money, completed forms and all other appropriate documentation to enable Homes England's solicitors to apply for the registration and shall pay Homes England's solicitor's costs of so doing.]

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<sup>44</sup> here refer to any relevant charge

<sup>45</sup> here refer to any relevant charge

## SCHEDULE 6 – TRANSFER ETC. OF AFFORDABLE/PRS LEASEHOLD BUILDINGS<sup>46</sup>

1. The Developer shall procure the transfer of:
  - (i) the freehold interest in each Affordable Leasehold Building to the Registered Provider; and
  - (ii) the freehold interest in each PRS Leasehold Building to the PRS Operatorwith vacant possession, as soon as reasonably practicable.
2. The Developer shall procure that the Registered Provider or the PRS Operator (as appropriate) enters into:
  - (i) the form of Transfer (Affordable/PRS Leasehold Building);
  - (ii) [*any others*]  
  
[*e.g. charge to secure overage or any payments due to Homes England*]on completion of the transfer.
3. Homes England need not take any step in relation to the transfer of any Affordable Leasehold Building or of any PRS Leasehold Building until the first CML Certificate has been issued in respect of a Flat in that Affordable Leasehold Building or that PRS Leasehold Building (as appropriate) and a copy has been provided to Homes England.
4. Subject to **paragraphs 1 to 3** inclusive of this Schedule, Homes England shall transfer the freehold interest in an Affordable Leasehold Building to the Registered Provider and shall transfer the freehold interest in a PRS Leasehold Building to the PRS Operator on the following terms:
  - (a) the form of transfer shall be substantially in the form of the Transfer (Affordable/PRS Leasehold Building) attaching a plan delineating the land to be transferred by red edging (such plan to conform with the Estate Layout Plan previously approved by Homes England and bearing no other red edging);
  - (b) the form of transfer must be executed by all relevant parties either in duplicate or in counterparts;
  - (c) Homes England need not deduce title (having already deduced title to the Developer before completion of this Lease), nor answer any requisitions or enquiries (whether raised by the Developer or any other person);
  - (d) the Developer shall send the following documents to Homes England, executed by the Developer and the Registered Provider (as the case may be), not less than 5 Working Days before the anticipated date for completion of the transfer:
    - (i) the form of transfer (in duplicate if appropriate);

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<sup>46</sup> Delete if not applicable

(ii) [*refer to any other documents required.*]

## SCHEDULE 7 – TRANSFER OF NON-RESIDENTIAL UNITS

1. The Developer shall procure the transfer of the freehold interest in each Non-Residential Unit to a Purchaser at arm's length, in the open market on bona fide terms in good faith and with vacant possession, as soon as reasonably practicable.
2. Homes England need not take any step in relation to the transfer of any Non-Residential Unit until the Compliance Certificate has been issued in respect of that Non-Residential Unit and a copy has been provided to Homes England.
3. Subject to other paragraphs of this Part of this Schedule, Homes England will transfer the freehold interest in each Non-Residential Unit to the relevant Purchaser on the following terms:
  - (a) the form of transfer shall be substantially in the form of the Transfer (Non-Residential Unit) attaching a plan delineating the land to be transferred by red edging (such plan to conform with the Estate Layout Plan previously approved by Homes England and bear no other red edging);
  - (b) the form of transfer must be executed by all relevant parties either in duplicate or in counterparts;
  - (c) Homes England need not deduce title (having already deduced title to the Developer before completion of this Lease), nor answer any requisitions or enquiries (whether raised by the Developer or any other person) except in relation to matters arising or registered against Homes England's title following the date of this Lease;
  - (d) Homes England need not deliver the form of transfer executed by Homes England to the Developer or any other person until any dispute over instalments of the Price payable to Homes England pursuant to this Lease has been determined and Homes England has received that amount including any VAT and interest
  - (e) the Developer shall send the following documents to Homes England not less than 5 working days before the anticipated date for completion of the transfer:
    - (i) the form of transfer (in duplicate if appropriate);
    - (ii) *[refer to any other documents required]*
4. Immediately before completion of the transfer the Developer must provide a solicitor's undertaking (in a form acceptable to Homes England) to:
  - (a) register the [ <sup>47</sup> ] Charge at the Companies Registry within the period prescribed by Section 860 of the Companies Act 2006 (or at such other competent registry as may be necessary or appropriate) or, if so requested by Homes England, deliver to Homes England's solicitors the appropriate monies, completed form and documentation to enable Homes England's solicitors to apply for the registration and shall pay Homes England's solicitor's costs of so doing;

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<sup>47</sup> here refer to any relevant charge

- (b) register the transfer and the [ <sup>48</sup> ] Charge at the Land Registry or, if so requested by Homes England, deliver to Homes England's solicitors the appropriate money, completed forms and all other appropriate documentation to enable Homes England's solicitors to apply for the registration and shall pay Homes England's solicitor's costs of so doing.
5. Within 5 Working Days after the completion of any transfer of a Non-Residential Unit, the Developer must deliver to Homes England's Solicitors a certified copy of the completed form of transfer.

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<sup>48</sup> here refer to any relevant charge

## SCHEDULE 8 – SALE REPORT<sup>49</sup>

Estate:

Plot:

Postal Address:

Full Name(s) of Purchaser:

Developer:

Building Lease: the Building Lease dated [ ] relating to the Estate and made between (1) Homes England (the trading name of Homes and Communities Agency) [and] (2) the Developer [and (3) the Surety]

As solicitors for and on behalf of the Developer we certify as follows:

- (a) that a transfer of the above plot to the Purchaser in the agreed form without amendment was completed on [ ] 20[ ] which is the Disposal Date of the Plot for the purposes of the Building Lease;
- (b) that the consideration paid by the Purchaser for the transfer (which for the avoidance of doubt does not include rent charge and/or service charge) was £[ ] which is the Disposal Value of the Plot for the purposes of the Building Lease
- (c) the transfer of the Plot is the ■<sup>[stj][nd][rd][th]</sup> of ■ plots on the Estate to be completed
- (d) The Deductible Amounts<sup>50</sup> are: *(please list)*
- (e) The Extras<sup>51</sup> are: *(please list)*

[We attach a completed copy of the CML Disclosure of Incentives Form prepared by the Developer in respect of the above plot] [We confirm that there was no borrowing by the Purchaser and therefore a CML Disclosure of Incentives Form was not required.]

Capitalised terms in this Report have the same meaning as in the Building Lease.

SIGNED

\_\_\_\_\_  
Developer's Solicitors

DATE

\_\_\_\_\_

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<sup>49</sup> The Sale Report is to assist with the calculation of any overage. Therefore, the Sale Report should be amended to reflect the overage formula that has been agreed.

<sup>50</sup> For definition see the overage schedule

<sup>51</sup> For definition see the overage schedule

**SCHEDULE 9 – FORMS OF DOCUMENTS ETC.**

- Part 1 - Transfer (Market Dwelling)
- Part 2 - Transfer (Leasehold Building)
- Part 3 - Transfer (Affordable/PRS Dwelling)
- Part 4 - Transfer (Affordable/PRS Leasehold Building)
- Part 5 - Transfer (Non-Residential Unit)

## SCHEDULE 10 – HEALTH AND SAFETY REPORTS

1. The Developer shall provide to Homes England on a quarterly basis a Health and Safety Report containing the information relating to health and safety performance. As a minimum the Health and Safety Report will contain the following information:

(A) Accident incidence rates per 100,000 workers ("**AIR**") involved in the [works associated with the Development], listing by month and rolling annual frequency rate for the lifetime of the works comprising the Development:

- (I) accidents resulting in greater than three days lost time
- (II) major injuries
- (III) fatalities
- (IV) reportable diseases

all as defined by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time), in accordance with the formula:

$$\text{AIR} = (A/N) \times 100,000$$

where: A = the number of accidents or incidents of the defined type during the period

N = the average number of workers on the site during the period

(V) reportable injuries to members of the public

(B) A listing in respect of the works comprising the Development by month, and the rolling annual rate, showing the number of:

- (I) days lost due to accidents occurring on the Land or ill-health incurred by workers directly from the said works on the Land
- (II) dangerous occurrences as defined by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time)
- (III) enforcement notices served by the regulatory authorities served by the Health & Safety Executive

(C) A summary in respect of the works comprising the Development of:

- (I) all accident investigations carried out in the relevant quarterly period
- (II) all actions taken to rectify any identified health and safety deficiencies
- (III) all initiatives to improve health and safety undertaken in the period (e.g. site inspections, tool box talks etc)
- (IV) all visits by the Health & Safety Executive, the Police or the Environment Agency to the Land undertaken in the relevant quarterly period



## **SCHEDULE 11 – COVENANTS BY SURETY**

### **1 DEVELOPER'S COVENANTS**

In this Schedule **Developer's Covenants** means the covenants, terms, conditions, agreements, restrictions, stipulations and obligations falling to be complied with by the Developer under this Lease.

### **2 INDEMNITY BY SURETY**

The Developer or the Surety shall while the Developer remains bound by the Developer's Covenants comply with the Developer's Covenants and the Surety shall indemnify Homes England against all claims, demands, losses, damages, liabilities, costs, fees and expenses sustained by Homes England by reason of or arising out of any default by the Developer in complying with the Developer's Covenants.

### **3 SURETY JOINTLY AND SEVERALLY LIABLE WITH DEVELOPER**

The Surety shall be jointly and severally liable with the Developer (whether before or after any disclaimer by a liquidator or trustee in bankruptcy or any Termination of this Lease) for the fulfilment of all the obligations of the Developer under this Lease and agrees that Homes England in the enforcement of its rights under this Lease may proceed against the Surety as if the Surety were named as the Developer in this Lease.

### **4 WAIVER BY SURETY**

The Surety waives any right to require Homes England to proceed against the Developer or to pursue any other remedy whatsoever which may be available to Homes England before proceeding against the Surety.

### **5 NO RELEASE OF SURETY**

None of the following or any combination of them shall release, discharge or lessen or affect the liability of the Surety under this Lease:

- (a) any neglect, delay or forbearance of Homes England in endeavouring to obtain payment of any sums due under this Lease or in enforcing compliance with the Developer's Covenants;
- (b) any refusal by Homes England to accept any payment tendered by or on behalf of the Developer at a time when Homes England is entitled (or would after the service of a notice under section 146 of the Law of Property Act 1925 be entitled) to re-enter the Land;
- (c) any extension of time given by Homes England to the Developer;
- (d) save as provided for in the Landlord and Tenant (Covenants) Act 1995 any variation of the terms of this Lease or the transfer of Homes England's reversion or the assignment of this Lease;
- (e) any surrender by the Developer of any part of the Land (in which event the liability of the Surety shall continue in respect of the part of the Land not so surrendered after making any necessary apportionments);

- (f) any other act, omission, matter or thing whereby but for this provision the Surety would be exonerated wholly or in part (other than a release under seal given by Homes England).

## **6 DISCLAIMER OR FORFEITURE OF LEASE**

6.1 If the Developer (being an individual) becomes bankrupt or (being a company) enters into liquidation and the trustee in bankruptcy or liquidator disclaims or surrenders this Lease or this Lease is forfeited then the Surety shall (if Homes England gives written notice to the Surety within 65 Working Days after such disclaimer or other event) accept from and execute and deliver to Homes England a counterpart of a new lease of the Land (the proper and reasonable costs of which shall be borne by the Surety) and Homes England shall grant such new lease to the Surety:

- (a) to take effect from the date of the disclaimer or other event;
- (b) for a term beginning on the date of the disclaimer and equal in length to the residue of the term granted by this Lease which would have remained had there been no disclaimer;
- (c) reserving by way of yearly rent an amount equal to the yearly rent payable immediately before the date of the disclaimer or other event such yearly rent to be payable from that date;
- (d) imposing on the Surety the same obligations as the Developer was subject to immediately before the disclaimer or other event; and
- (e) otherwise containing the same terms and provisions as this Lease, including the provisions relating to payment of money, except that the Surety shall not be required to procure that any other person is made a party to the new lease as surety.

6.2 If Homes England does not require the Surety to take a new lease, the Surety shall nevertheless on demand pay to Homes England a sum equal to the rents and other sums that would have been payable under this Lease but for the disclaimer or other event, from and including the date of such disclaimer or other event for a period of two years or (if sooner) until the date on which a lease or underlease of the Land to a third party is completed.

## **7 SUPPLEMENTAL DOCUMENTS**

The Surety shall at the request of Homes England join in any document made supplemental or collateral to this Lease.

## **8 ADDRESS FOR SERVICE**

The Surety shall promptly notify in writing Homes England in writing of any change in the Surety's address for service and until such notice has been given the Surety's address for service shall be the Surety's address for service most recently notified in writing to Homes England.

## SCHEDULE 12 – OVERAGE SCHEDULE

### 1. DEFINITIONS

In this Schedule, the following definitions apply:

- (a) **Acceleration Date** means the twenty eighth day after service of written notice invoking the Acceleration Date by Homes England on the Developer following:
- (i) a Material Breach by the Developer of the terms of this Schedule; or
  - (ii) an Insolvency Event.
- (b) **Act of Circumvention** means any act or omission the principal purpose or purposes of which is or are to avoid or reduce the amount of any payment to be made or envisaged by this Schedule including (but not limited to) the following:
- (i) any transaction or transactions entered into by the Developer;
  - (ii) any omission by the Developer to enter into a transaction;
  - (iii) any delay by the Developer in entering into a transaction;
  - (iv) any way in which the Development is carried out;
  - (v) any omission by the Developer to carry out the Development; and/or
  - (vi) any delay by the Developer in beginning the Development.
- (c) **Adjusted Gross Development Costs** means the sum calculated in accordance with the following formula:
- GDC + [GDC x ((A – B) / B)] where:
- GDC = the Gross Development Costs
- A = the BCIS Mean Index
- B = the BCIS Initial Index
- (d) **Approved Additional Compliance Inspector Fee** means the fee calculated pursuant to **paragraph 4** of this Schedule
- (e) **BCIS Final Index** means the BCIS Index at the Payment Date
- (f) **BCIS Index** means the Building Cost Information Service General Building Cost Price Index as published from time to time by the BCIS or such other replacement index as the parties may agree incorporating the similar assumptions as this Index incorporates as at the date of this Lease
- (g) **BCIS Initial Index** means ■<sup>52</sup>

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<sup>52</sup> The BCIS Initial Index will be the BCIS Index at the date of the tender

- (h) **BCIS Mean Index** means the figure calculated by adding together the BCIS Initial Index and the BCIS Final Index and dividing the resultant sum by 2
- (i) **Compliance Inspector Monthly Fee** means the sum of £<sup>53</sup>
- (j) **Cost Inflation Allowance** means the figure calculated by deducting the Gross Development Costs from the Adjusted Gross Development Costs
- (k) **Deductible Amount** means in respect of a Market Dwelling or a Sale Flat the aggregate of:
- (i) the figure identified as 'Incentives' in CML Disclosure of Incentives Form annexed with the Sale Report relating to the relevant Dwelling being amounts which may include (but are not limited to) discounts, cash back, deposit paid, payment of a purchaser's legal fees, survey fees, estate agent's commission on the sale of a purchaser's property and payment of Stamp Duty Land Tax and costs of the Developer in relation to the government's Help to Buy scheme together with the value of any carpets, curtains, soft furnishings, white goods or other items that the Developer provides to a purchaser on the Disposal of the relevant Dwelling; and
- (ii) any negative PX Value of a PX Property acquired by the Developer in part consideration for the disposal of that Market Dwelling or Sale Flat
- provided always that the Deductible Amount shall not in any circumstances exceed 5% of the Disposal Value of the relevant Dwelling
- (l) **Developer's Payment** means the Developer's Percentage share of the Overage Fund
- (m) **Developer's Percentage** means the percentage share of the Overage Fund due to the Developer calculated in accordance with **paragraph 5** of this schedule and shown in the Relevant Row of the third column of the table that appears at **paragraph 5.3** of this schedule
- (n) **Disposal** means either the completion of the sale of the freehold interest or the grant of a lease term of at least [99] years in respect of a [Dwelling][Unit] and "**Disposed of**" shall be interpreted accordingly
- (o) **Disposal Date** means the date on which the Disposal of a [Dwelling][Unit] to a Purchaser is completed or the Payment Date in respect of any [Dwelling][Unit] remaining unsold at that date.
- (p) **Disposal Value** means:
- (i) In respect of a Market Dwelling or a Sale Flat which has been the subject of a Disposal:
- a) the sales price shown in the Sale Report for the relevant Dwelling; or

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<sup>53</sup> This figure will be quoted by the compliance inspector in their bid and notified by the project manager for inclusion in the lease

- b) where there is a dispute between the Developer and Homes England with regard to the sales price of any Market Dwelling or Sale Flat, the amount agreed between the Parties or determined by an expert pursuant to **paragraph 10** of this Schedule

PLUS any positive PX Value of a PX Property acquired by the Developer in part consideration for the disposal of that Market Dwelling or Sale Flat

LESS the Deductible Amount and/or Extras; or

- (ii) In respect of the Affordable Dwellings or Affordable Leasehold Buildings the amount payable by the Registered Provider in consideration of the transfer of such Dwellings or Buildings
- (iii) In respect of the PRS Dwellings or the PRS Leasehold Buildings the amount payable by the PRS Operator in consideration of the transfer of such Dwellings or Buildings
- (iv) [In respect of a Non-Residential Unit which has been the subject of a Disposal:
  - a) the sales price shown in the Sale Report for the relevant Non-Residential Unit; or
  - b) where there is a dispute between the Developer and Homes England with regard to the sales price of any Non-Residential Unit, the amount agreed between the Parties or determined by an expert pursuant to **paragraph 10** of this Schedule]
- (v) In respect of any [Dwelling][Unit][Leasehold Building] [Affordable Leasehold Building] [PRS Leasehold Building] which has not been Disposed of at the Payment Date the Market Value of such [Dwelling][Unit][Leasehold Building] [Affordable Leasehold Building] [PRS Leasehold Building]
- (q) **Extras** means the figure identified as 'Extras' in the Sale Report being a charge for extra specifications or facilities in relation to the relevant Dwelling that is made to the purchaser of a Dwelling over and above or in addition to the Dwelling specification in the Approved Plans
- (r) **Gross Development Costs** means [£■ ]<sup>54</sup>
- (s) **Homes England's Adjusted Payment** means the sum calculated in accordance with the following formula:

$$\text{HEAP} = (\text{HEP} \times 100) \div (100 + \text{SDLTPR})$$

Where:

HEAP = Homes England's Adjusted Payment

HEP = Homes England's Payment

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<sup>54</sup> As bid by the Developer and specified in instructions to solicitor

SDLTPR = the SDLT Percentage Rate

- (t) **Homes England's Payment** means Homes England's Percentage share of the Overage Fund plus the aggregate amount of any Overage Reductions
- (u) **Homes England's Percentage** means the percentage share of the Overage Fund payable to Homes England calculated in accordance with **paragraph 5** of this schedule and shown in the Relevant Row of the third column of the table that appears at **paragraph 5.3** of this schedule
- (v) **Market Value** means:
  - (i) in respect of a Dwelling the value at the Payment Date at which such Dwelling; or
  - (ii) in respect of a PX Property the value at which such PX Property at the date of disposal by the Developer of such PX Property[; or]
  - (iii) [in respect of a Non-Residential Unit the value at which the Non-Residential Unit]might reasonably be expected to be sold at arm's length in the open market in good faith with vacant possession between a willing seller and a willing buyer [the Developer to produce suitable evidence of such value as Homes England may reasonably require (and where Homes England is not satisfied with such evidence or there is any disagreement as to such value the same shall be determined pursuant to **Clause 20** (Disputes).
- (w) **Overage Fund** means the sum calculated in accordance with **paragraph 3** of this Schedule less any Approved Additional Compliance Inspector Fee
- (x) **Overage SDLT** means the figure calculated by deducting Homes England's Adjusted Payment from Homes England's Payment
- (y) **Payment Date** means the earliest of the following dates to occur:
  - (i) The Adjusted Target House Build Completion Date; or
  - (ii) the issue of the CML Certificate for the last [Dwelling][Unit]; or
  - (iii) the Acceleration Date
- (z) **Practical Completion** in respect of a Dwelling shall be evidenced by the issue of the CML Certificate in respect of that Dwelling[ and in respect of a Non-Residential Unit shall be evidenced by the issue of the Compliance Certificate in respect of that Non-Residential Unit].
- (aa) **PX Property** means any property acquired or to be acquired by the Developer as part consideration payable to the Developer under the provisions of the contract for the disposal of a Dwelling.
- (bb) **PX Value** means the amount in pounds sterling calculated in accordance with the following formula:

$$\text{PX Value} = X - (Y+Z)$$

Where:

X is the Market Value of the relevant PX Property

Y is the aggregate of all costs, fees, expenses incurred or expected to be incurred by the Developer in purchasing, holding, improving and selling the relevant PX Property prior to its disposal and the costs actually incurred or expected to be incurred by the Developer in respect of agent's and legal fees relating to the purchase and resale of the PX Property subject to an aggregate maximum of 5% of the Market Value of the PX Property

Z is the price at which the PX Property was acquired by the Developer pursuant to the contract for the disposal of the relevant Dwelling

provided that for the avoidance of doubt the PX Value may be a positive or negative figure

- (cc) **Relevant Row** means the row of the table that appears at **paragraph 5.3** identified pursuant to **paragraph 5.2**
- (dd) **SDLT Percentage Rate** means the percentage rate at which Stamp Duty Land Tax is payable by the Developer on Homes England's Payment

## 2. ACKNOWLEDGEMENTS

The Parties acknowledge that

- 2.1. the Price reflects expected Disposal Values and that the retention of overage by the Developer is intended to incentivise delivery of the Development in accordance with the Approved Plans.
- 2.2. The worked example that appears at Annexure ■ is an accurate representation of the Parties' agreement with regard to the method of calculation of the Developer's Payment and Homes England's Payment and may be relied on by either Party or by a third party in the event of a dispute

## 3. CALCULATION OF THE OVERAGE FUND

The Overage Fund shall be calculated in accordance with the following formula:

$$O = C - CIA - GDV$$

Where:

- O = The Overage Fund
- C = the aggregate of the Disposal Values for the [Dwellings] [Units] [Affordable Dwellings][PRS Dwellings] [Affordable Leasehold Buildings] [ PRS Leasehold Buildings]
- CIA = the Cost Inflation Allowance
- GDV = <sup>55</sup>

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<sup>55</sup> Insert tendered gross development value (specified in instruction)

**4. CALCULATING THE APPROVED ADDITIONAL COMPLIANCE INSPECTOR FEE**

The Approved Additional Compliance Inspector Fee (if any) shall be determined in accordance with this paragraph:

- 4.1. The number of 4 week periods (or part thereof) between the Target House Build Completion Date and the Adjusted Target House Build Completion Date as recorded in the final memorandum of agreement signed by the Parties pursuant to **paragraph 8.8 of Schedule 2** shall be determined.
- 4.2. The number of 4 week periods determined pursuant to **paragraph 4.2** shall be multiplied by the Compliance Inspector Monthly Fee and the resultant figure shall be the Approved Additional Compliance Inspector Fee.

**5. CALCULATING THE DEVELOPER PERCENTAGE AND THE HOMES ENGLAND PERCENTAGE**

The Developer Percentage and the Homes England Percentage shall be determined in accordance with this paragraph.

- 5.1. The difference in weeks (rounded up to the nearest whole week) which the Actual House Build Completion Date is earlier or later than the Adjusted Target House Build Completion Date shall be calculated
- 5.2. The Relevant Row of the table below shall be identified: The difference in weeks calculated pursuant to **paragraph 5.1** is shown in the first column of the table below and whether the Actual House Build Completion Date is earlier or later than the Adjusted Target House Build Completion Date is shown in the second column of the table below.
- 5.3. The Developer’s Percentage and the Homes England’s Percentage shall be the percentage shown in the Relevant Row of the table below.

<b>Time difference between the Adjusted Target House Build Completion Date and The Actual House Build Completion Date (in whole weeks rounded up)</b>	<b>Actual House Build Date occurs earlier or later than the Adjusted Target House Build Completion Date?</b>	<b>Homes England’s Percentage (share of Overage Fund (%))</b>	<b>Developer’s Percentage share of Overage Fund (%)</b>
<i>[insert time in whole weeks that is 10% of the</i>	Earlier	30	70



<i>Target House Build Period]</i> <sup>56</sup> weeks or greater			
<i>[insert time in whole weeks that is 9% of the Target House Build Period]</i> <sup>57</sup> weeks	Earlier	32	68
<i>[insert time in whole weeks that is 8% of the Target House Build Period]</i> weeks	Earlier	34	66
<i>[insert time in whole weeks that is 7% of the Target House Build Period]</i> weeks	Earlier	36	64
<i>[insert time in whole weeks that is 6% of the Target House Build Period]</i> weeks	Earlier	38	62
<i>[insert time in whole weeks that is 5% of the Target House Build Period]</i> weeks	Earlier	40	60
<i>[insert time in whole weeks that is 4% of the Target House Build Period]</i> weeks	Earlier	42	58
<i>[insert time in whole weeks that is 3% of the</i>	Earlier	44	56

<sup>56</sup> These to be inserted manually on completion of the Lease based on the house build period as confirmed in instructions. This is the original house build period and not any extended period permitted due to extensions of time. For example, if the original house build period was 100 weeks, insert 10 weeks here. If it was 70 weeks, insert 7 weeks here.

<sup>57</sup> For example, if the original house build period was 100 weeks, insert 9 weeks here. If it was 70 weeks (9% is 6.3) so insert 7 weeks here

<i>Target House Build Period] weeks</i>			
<i>[insert time in whole weeks that is 2% of the Target House Build Period] weeks</i>	Earlier	46	54
<i>[insert time in whole weeks that is 1% of the Target House Build Period] weeks</i>	Earlier	48	52
0	On time	50	50
<i>[insert time in whole weeks that is 1% of the Target House Build Period] weeks</i>	Later	55	45
<i>[insert time in whole weeks that is 2% of the Target House Build Period] weeks</i>	Later	60	40
<i>[insert time in whole weeks that is 3% of the House Build Period] weeks</i>	Later	65	35
<i>[insert time in whole weeks that is 4% of the Target House Build Period] weeks</i>	Later	70	30
<i>[insert time in whole weeks that is 5% of the Target House Build Period] weeks</i>	Later	75	25

<i>[insert time in whole weeks that is 6% of the Target House Build Period]</i> weeks	Later	80	20
<i>[insert time in whole weeks that is 7% of the Target House Build Period]</i> weeks	Later	85	15
<i>[insert time in whole weeks that is 8% of the Target House Build Period]</i> weeks	Later	90	10
<i>[insert time in whole weeks that is 9% of the Target House Build Period]</i> weeks	Later	95	5
<i>[insert time in whole weeks that is 10% of the Target House Build Period]</i> weeks or greater	Later	100	0

## 6. DEVELOPER OVERAGE REDUCTIONS

- 6.1. When the Developer's Payment has been calculated the aggregate of any Overage Reductions imposed pursuant to the provisions of **Clause 19.6** shall be calculated and deducted from the Developer's Payment and added to Homes England's Percentage of the Overage Fund to calculate Homes England's Payment.
- 6.2. Once the Developer's Payment has reduced to zero there shall be no further Overage Reductions

## 7. STAMP DUTY LAND TAX

- 7.1. Following determination of the Homes England's Percentage of the Overage Fund Homes England's Adjusted Payment shall be calculated.
- 7.2. The Parties agree that when Homes England's Adjusted Payment has been finally calculated:

- (a) the Overage SDLT shall be retained by the Developer in addition to the Developer's Payment; and
- (b) the Developer shall account to HM Revenue and Customs for the Stamp Duty Land Tax due from the Developer as a result of paying Homes England's Adjusted Payment

## 8. PAYMENT OF THE OVERAGE

The Developer must pay to Homes England:

- 8.1. Homes England's Adjusted Payment on the Payment Date
- 8.2. all VAT on Homes England's Adjusted Payment on the Payment Date.
- 8.3. Interest on any sum payable under this paragraph which is not paid when payment is due.

## 9. ACCOUNTS AND INSPECTION AND AUDIT FACILITIES

- 9.1. The Developer shall maintain full and accurate accounts and documentary evidence for the Development on an Open Book basis.
- 9.2. The Developer shall at all times:
  - (a) maintain a full record of particulars of all the income received by the Developer in respect of the Development;
  - (b) when required to do so by Homes England or by the Compliance Inspector, provide a summary of any of the income referred to in **paragraph 9.2(a)** as Homes England or as the Compliance Inspector may require to enable it to monitor the performance by the Developer of its obligations under this Schedule;
  - (c) permit Homes England and persons authorised by Homes England to inspect audit and take copies of all reports books accounting records and vouchers which Homes England properly considers relevant to the Development; and
  - (d) provide such facilities as Homes England may require for its representatives to visit any place where the records are held and examine the records maintained under this **paragraph 9**
- 9.3. The Developer will at all times retain documentary evidence to support the Gross Development Costs of the Development and will maintain full and accurate accounts in accordance with all applicable law and accounting standards and (to the extent that no accounting standard is applicable) use generally accepted accounting principles and practices of the United Kingdom then in force
- 9.4. At the request of Homes England the Developer shall produce evidence to Homes England as Homes England may require of the disposal value of any Market Dwelling or Sale Flat [and any Non-Residential Unit] in order to substantiate that the Developer has complied with its obligation[s] at **paragraph 1 of Schedule 3** and **paragraph 1 of Schedule 7** (as appropriate)]

## 10. DISPUTES

Where Homes England is not satisfied with the evidence produced by the Developer pursuant to **paragraph 9.4** of this Schedule or where there is any disagreement between the Parties as to the disposal value of any Market Dwelling or Sale Flat [or any Non-Residential Unit] the same shall be determined by an expert pursuant to **Clause 20** (Disputes)].

## 11. ADDITIONAL PROVISIONS

The Developer agrees and acknowledges that it is under a duty to Homes England:

- 11.1. (save where the [Dwelling][Unit] is to be disposed of to the Registered Provider as an Affordable Dwelling or a PRS Dwelling is to be disposed of to the PRS Operator) to freely expose the [Dwelling][Unit] to the market and to use reasonable endeavours to effect Disposals of the same
- 11.2. not to carry out any Act of Circumvention
- 11.3. to act at all times with the utmost good faith in connection with the terms and provisions and payments contained and/or referred to in this Schedule it being acknowledged that the consideration payable pursuant to this Lease comprises both the Price and the Overage

## SCHEDULE 13 – OUTPUT DATA

### Part 1 – Developer’s obligations

1. In this Schedule the following definitions apply:

**Evidence** means the evidence required to support achievement of an Output as specified in column 3 of the table which appears in part 2 of this Schedule

**Outputs** means the outputs detailed in column 1 of the table which appears in part 2 of this Schedule

**Reporting Date** means the date on which the event specified in column 2 of the table which appears in part 2 of this Schedule occurs

2. The Developer will procure that the Compliance Inspector provides written confirmation to Homes England of the Outputs in respect of which the Reporting Date has been achieved since the date of this Lease or (if appropriate) since last confirmation of Outputs was provided to Homes England pursuant to this **paragraph 2**.
3. The Developer will procure that the confirmation required pursuant to **paragraph 2** above at monthly intervals commencing on the date of this Lease.
4. The Developer will procure that there is included with the report provided pursuant to **paragraph 2** the relevant Evidence to support the achievement of the Output.

### Part 2 - Table

Output	Reporting Date	Evidence
Housing Capacity	On exchange of conditional agreement for sale/lease or if no agreement on completion of lease or sale	Exchange or completion as appropriate
Start on site (numbers for affordable housing/ /market housing to be confirmed individually)	1. The Developer has taken possession of the site and either: (i) where a building contractor is employed, the completion of the building contract; or (ii) where the developer is building, the Developer has taken possession of the site and start on site works have commenced. Start on site works comprise the	1. Unconditional disposal; and 2. Evidence of start on site works to be provided from any one of the following: (i) Warranty provider (NHBC/LABC/NHW or similar) (ii) Building control officer (local authority or independent or LPA planning officer (iii) professionally qualified

	<p>following:</p> <p>(a) excavation for strip or trench foundations or for pad footings;</p> <p>(b) digging out and preparation of ground for raft foundations;</p> <p>(c) vibroflotation, piling, boring for piles or pile driving; or</p> <p>(d) drainage work specific to the scheme/phase</p> <p>(e) infrastructure works and demolition works (where these works are included in the building contract or development agreement) for example drainage, on-site highway works and open spaces. Where the infrastructure or demolition works have been separately procured by Homes England, infrastructure or demolition works are not included</p>	<p>contract administrator of employer's agent</p> <p>(iv) a site digital photograph which includes geographical location data (geotagged photograph)</p>
Housing completions (numbers for affordable housing/ /market housing to be confirmed individually)	Physical completion of the individual Dwelling or, in the case of flats, physical completion of the block. The property must be habitable.	issue of CML Certificate.
Employment floorspace (square metres)	On practical completion of a commercial building	Production of the certificate of practical completion and a copy of the approved drawings which identify the floorspace area

## SCHEDULE 14 – EMPLOYMENT AND SKILLS

### Overview

The Employment and Skills Plan sets out the process by which the Developer can ensure that skills development and employment initiatives are integrated within its construction scheme for the Development. This is achieved by the implementation and observation of the Employment and Skills Plan.

### Obligations

1. Prior to Start on Site the Developer shall provide Homes England with contact details of the Developer's nominated representative responsible for liaising with Homes England's Representative in respect of the Employment Commitments.
2. The Developer shall provide to Homes England's Representative on a quarterly basis in accordance with the dates set out in **paragraph 3** a report (in a format to be agreed with Homes England) outlining the achievements during the previous quarter against the Employment Commitments, Employment and Skills Plan and Method Statement and will provide details of the various employment and skills activities delivered in the previous quarter.
3. The report referred to in **paragraph 2** shall be provided to Homes England's Representative on the following dates:
  - 3.1 **31 July** for the period 1 April to 30 June;
  - 3.2 **31 October** for the period 1 July to 30 September;
  - 3.3 **31 January** for the period 1 October to 31 December;
  - 3.4 **30 April** for the period 1 January to 31 March.
4. Homes England's Representative shall be responsible for monitoring compliance with and implementation of the Employment and Skills Plan and the Method Statement and such monitoring shall form part of Homes England's assessment of the Developer's compliance with the Employment Commitments.
5. The Developer shall provide written confirmation and such evidence as Homes England may reasonably require that the Employment Commitments have been achieved in respect of the Development.
6. The Developer and Homes England's Representative shall attend a meeting (to be convened by Homes England's Representative) on practical completion of the Development as a whole to review the completed Development and the Developer's performance against the Employment Commitments and its compliance and implementation of the Employment and Skills Plan and Method Statement and to consider the scope for further improvement on future projects.
7. Any and all costs relating to the compliance and implementation of the Employment and Skills Plan and Method Statement will be the responsibility of the Developer.





## Annexures

1. Plans
2. Approved Plans Schedule
3. Base Values
4. Notice of Remainder Land (**Clause 10.1**)
5. Memorandum of Agreement (Schedule 2 **paragraph 8.8**)
6. Overage Worked Example
7. Employment and Skills Plan
8. [Landscape Works Specification]
9. [Constraints Plan]
10. [Homes England's Infrastructure Works Specification]

**EXECUTED** by the Parties as a Deed

**The Common Seal of** )  
**Homes and Communities Agency** )  
was hereunto affixed in the presence of: )

Authorised Signatory

Print Name

**The Common Seal of** )  
[\*\* ] )  
was affixed in the presence of: )

Director

Director/Secretary

**Executed** as a deed by \*\* )  
**[Limited] [Plc]** )  
acting by its secretary and a director )  
or by two directors )

Director

Director/Secretary

**ANNEXURE 1**  
Plans

**ANNEXURE 2**  
Approved Plans Schedule

**ANNEXURE 3**  
Base Values

**ANNEXURE 4**  
Notice of Remainder Land (**Clause 10.1**)

☐[*name of PM*]  
Homes England  
☐[*office address*]

☐ [Date]

By Post [and Email]:

**FAO:**  
**Reference: PCS ☐**

**URGENT: THIS LETTER CONTAINS A NOTICE WHICH HOMES ENGLAND IS REQUIRED TO RESPOND TO WITH WITHIN 10 WORKING DAYS**

Dear Sirs

☐ [**SITE NAME**] (“**LAND**”)  
☐ [**DEVELOPER**] (“**DEVELOPER**”)  
**BUILDING LEASE DATED ☐ (“LEASE”)**  
**SERVICE OF RELEASE NOTICE IN ACCORDANCE WITH CLAUSE 10.1 OF THE LEASE**

This letter is served on you by the Developer under the provisions of clause 10.1 of the Lease.

This Letter encloses a Digital Plan (as defined in the Lease) which identifies the Remainder Land (as defined in the Lease) being the parts of the Land the freehold of which is still vested in Homes England and which is not the subject of another transfer under the Lease.

**In accordance with Clause 10.4 of the Lease, Homes England is required to confirm to the Developer within 10 working days:**

- (a) which part or parts of the Remainder Land Homes England requires the Developer to take a transfer of prior to the issue of the Final Completion Certificate (as defined in the Lease); and
- (b) the date by which Homes England requires such transfer to complete.

Yours faithfully



**ANNEXURE 5**  
Memorandum of Agreement (**Schedule 2 paragraph 8.8**)

## Memorandum of Agreement to Adjustment of Time

Lease: Building Lease relating to  [insert name of development]

Date:

Original parties:

Landlord: Homes and Communities Agency (trading as Homes England)

Tenant:

Guarantor:

Current Landlord: [as above][ or  ]

Current Tenant: [as above][ or  ]

Current Guarantor: [as above][ or  ]

Target House Build Commencement Date:

Target House Build Completion Date:

House Build Targets:

Construction Related Deadlines:

The [Current ]Landlord and the [Current ]Tenant record that the following adjustments of time are agreed pursuant to the Lease:

Adjusted Target House Build Commencement Date:

Adjusted Target House Build Completion Date:

Adjusted House Build Targets:

with effect from  [date], subject to further review in accordance with the Lease.

The [Current ]Landlord and the [Current ]Tenant further record that for the purposes of **paragraph 4.1** of **Schedule 12** of the Lease the number of 4 week periods (or part thereof) between the Target House Build Completion Date and the Adjusted Target House Build Completion Date is

Date:

Signed on behalf of the Current Landlord

Signed on behalf of the Current Tenant

Signed on behalf of the Current Guarantor

**ANNEXURE 6**  
Overage Worked Example

**ANNEXURE 7**  
Employment and Skills Plan

**ANNEXURE 8**  
[Landscape Works Specification]

**ANNEXURE 9**  
[Constraints Plan]

**ANNEXURE 10**  
[Homes England's Infrastructure Works Specification]