

Dated 26<sup>th</sup> August 2009

THE MAYOR AND BURGESSES OF  
THE LONDON BOROUGH  
OF RICHMOND UPON THAMES

-and-

TIDE END (BURLINGTON ROAD) LIMITED

-and-

RICHMOND UPON THAMES CHURCHES HOUSING TRUST LIMITED

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DEED OF AGREEMENT  
made under Section 106 of the  
Town & Country Planning Act 1990  
relating to land and property being  
Waldegrave Arms, 209 Waldegrave Road, Teddington TW11 8LX

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THIS DEED OF AGREEMENT is made the 26<sup>th</sup> day of August two thousand and nine **B E T W E E N THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND UPON THAMES** of Civic Centre 44 York Street Twickenham Middlesex TW1 3BZ ("the Council") of the first part and **TIDE END (BURLINGTON ROAD) LIMITED** (company registration no: 6480262) of PO Box 1925 20 Station Road Gerrard's Cross SL9 8EL ("the Owner") of the second part and **RICHMOND UPON THAMES CHURCHES HOUSING TRUST LIMITED** (Industrial and Provident Society registration no: IP17956R) of 13 Castle Mews High Street Hampton Middlesex TW12 2NN ("the Mortgagee").

### INTERPRETATION

IN this Deed the following words and expressions shall have the following meanings:-

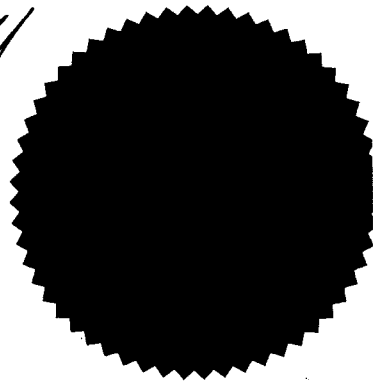
|                            |  |
|----------------------------|--|
| "1990 Act"                 | the Town & Country Planning Act 1990   |
| "Affordable Housing"       | subsidised housing irrespective of tenure or ownership that will be available to persons who cannot afford to rent or buy housing generally available on the open market and who are on a register maintained by the Council and Registered Social Landlords who have properties in the Council's administrative area or (in the absence of such persons) persons who fulfil the occupation criteria of the relevant Registered Social Landlord  |
| "Affordable Housing Land"  | all that land and premises being part of the Property upon which the Affordable Housing Units are constructed together with any land ancillary thereto and forming part of the Transfer  |
| "Affordable Housing Plans" | the plans marked Affordable Housing Plans and annexed to this Deed   |
| "Affordable Housing Units" | all those 9 units of Affordable Housing comprising the Social Rented Units and the Intermediate Housing Units to be constructed as part of the Development on the Affordable Housing Land in accordance with current Homes and Communities Agency Housing Quality Indicators, and CABE's Building For Life criteria applicable to new schemes in force as at the date hereof as well as in accordance with level 3 of the Code for Sustainable Homes and for the avoidance of doubt, where there is a discrepancy between any of the standards, in accordance with the higher of the standards |

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J. W. A.  
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"PLAN A"







|                                |   |
|--------------------------------|---|
| "Application"                  | the application for full planning permission for the Development submitted to the Council on 5 October 2007 and allocated ref. no. 07/03470/FUL   |
| "Contributions"                | collectively the "Education Contribution" the "Health Contribution" the "Play Contribution" and the "Transport Contribution"  |
| "DCM"                          | the Council's development control manager for the time being or such other person as may be appointed to carry out that function  |
| "Deed of Nomination Rights"    | a deed substantially in the form set out in Schedule 3 to be made between the Council and the Registered Social Landlord under which the Council shall be entitled to nominate prospective tenants or occupiers for all the Affordable Housing Units as and when they become available for occupation   |
| "Development"                  | the development of the Property described in the Planning Permission  |
| "Disposal Proceeds"            | the monetary proceeds of the disposal of any Affordable Housing Units in accordance with the provisions of clause 6 hereof received by the Registered Social Landlord which for the avoidance of doubt shall be calculated by deducting the following sums: 1.any monies repaid or repayable to any funder, lender, mortgage or chargee in accordance with a loan secured over the Affordable Housing Land and 2. any monies paid or payable in respect of any legal or professional fees or charges in connection with the disposal and 3. any VAT or other statutory costs and charges applicable to the disposal or to the disposal proceeds |
| "Education Contribution"       | the sum of twenty five thousand four hundred and ninety two pounds (£25,492.00) Indexed comprising a primary education contribution of £15,744 Indexed and a secondary education contribution of £9,748 Indexed   |
| "Health Contribution"          | the sum of four thousand six hundred and ninety nine pounds and fifty nine pence (£4,699.59) Indexed  |
| "Homes and Communities Agency" | the government body that funds Registered Social Landlords under the Housing and Regeneration Act 2008 or any statutory successor   |
| "Indexed"                      | increased in accordance with the formula whereby the relevant contribution is multiplied by the fraction A divided by B where B represents the value of the Retail Prices Index (All Items) as at date of this Deed and A represents the value of the same index as at the date of payment of the relevant contribution to the Council  |

"Intermediate Housing"

housing which is sold on a shared ownership basis in accordance with published Homes and Communities Agency and/or Office for Tenants and Social Landlords guidelines and retained equity level affordability criteria and is either:

- (i) housing at sub market rents which is above Target Rents but is substantially below open market rent levels or
- (ii) housing on a shared ownership basis

and, in the case of ii) which is affordable by households on annual incomes of less than £35,000 such sum to be revised in accordance with any revision to the Council's Supplementary Planning Guidance on Affordable Housing dated 25 February 2003 PROVIDED THAT such threshold shall not be revised to less than £35,000

"Intermediate Housing Units"

Three of the Affordable Housing Units comprising three self-contained two-bedroomed units to be constructed as part of the Development and shown outlined in red on the Affordable Housing Plans and to be transferred to the Registered Social Landlord to be used for Intermediate Housing being units numbered 1, 15 and 16

"Material Start"

the carrying out in relation to the Development of a material operation as defined in Section 56(4) of the 1990 Act save that such shall not include works of demolition; works of site clearance; ground investigations; site survey works; laying of services and service media; construction of temporary accesses; archaeological investigation; landscaping works off the public highway; and noise attenuation works

"Mortgage"

the charge dated 21 August 2008 and made between the Owner (1) and the Mortgagee (2)

"Occupation"

first occupation of any the buildings to be constructed on the Property (save for the purposes of fitting out) pursuant to the Planning Permission and "Occupy" and "Occupied" shall be construed accordingly

"Office for Tenants and Social Landlords"

the government body that regulates Registered Social Landlords under the Housing and Regeneration Act 2008 or any statutory successor

"Open Market Dwellings"

all those dwellings constructed or to be constructed on the Property for sale or rent on the open market other than the 9 Affordable Housing Units

"Plan A"

the plan marked 'A' and annexed to this Deed



"Planning Permission"

the planning permission reference 07/3470/FUL granted by the Council on 11 February 2008 pursuant to the Application for the refurbishment of existing public house retaining A4 Use Class at ground floor with three flats at upper floors. Construction of two new three storey buildings comprising of 19 flats with associated parking for 20 cars

"Play Contribution"

the sum of twenty one thousand, seven hundred and thirty nine pounds and sixty pence £21,739.60 Indexed

"Property"

land known as land and property being the Waldegrave Arms, 209 Waldegrave Road, Teddington TW11 8LX shown hatched black on Plan A attached hereto and registered at the Land Registry under title number TGL87739

"Registered Social Landlord"

either Richmond-upon-Thames Churches Housing Trust Limited of 13 Castle Mews, High Street Hampton Middlesex TW12 2NN (including its parent company Paragon Community Housing Group of Case House, 85-89 High Street Walton on Thames Surrey KT12 1DZ ) or any other body registered as a social landlord with the Office for Tenants and Social Landlords and who is registered pursuant to Section 3 of the Housing Act 1996 and who has not been removed pursuant to Section 4 of that Act and who complies with the Council's Supplementary Planning Guidance on Affordable Housing dated 25 February 2003 who is approved by the Council (such approval not to be unreasonably withheld or delayed)

"Social Rented Units"

six of the Affordable Housing Units comprising four self-contained two-bedroomed units and two one-bedroomed units to be constructed as part of the Development and shown outlined in blue on the Affordable Housing Plans and to be transferred to the Registered Social Landlord to be let at rents not exceeding Target Rents being units numbered 2, 5, 6, 7, 8 and 9

"Target Rents"

the Office for Tenants and Social Landlords Target Rents for the area within which the Property is located for the relevant year or any rent requirements stipulated for Registered Social Landlords by the Office for Tenants and Social Landlords

"Transfer"

Either a lease of not less than 125 years from the date of its grant at a peppercorn rent of the Affordable Housing Land granted by the Owner to the Registered Social Landlord or the transfer of the freehold title to the Affordable Housing Land by the Owner to the Registered Social Landlord

"Transport Contribution"

the sum of one hundred thousand two hundred and forty pounds (£100,240.00) Indexed

"UDP"

the Richmond upon Thames Unitary Development Plan: First Review 2005

**WHEREAS:**

- (1) The Council is the local planning authority for its administrative area within which the Property is situate for the purposes of the 1990 Act and for the purpose of Section 106(a) of the 1990 Act is the local planning authority by whom the planning obligations contained within this Deed are enforceable
- (2) The Owner is registered at the Land Registry with absolute title under title number TGL87739 as the proprietor of the freehold interest in the Property and the Mortgagee and Chargee are similarly registered as the proprietor of charges over the Property
- (3) Condition U19361 DB41A of the Planning Permission provides that the Development permitted by the Planning Permission shall not be initiated by the undertaking of a material operation as defined in section 56 (4) (a) – (e) of the 1990 Act in relation to the Development until details of schemes for the provision of financial contributions towards education, transport, health and play facilities in the administrative area of the Council and for the provision of affordable housing within the Development have been submitted to and approved by the Council
- (4) Policies IMP3, CCE8 and HSG19 of the UDP provide that the Council will seek the provision of planning advantages where it is necessary to make a proposal acceptable in land-use planning terms including ensuring that the provision of schools, pre-schools and other educational facilities meet the need for the additional educational resources any new development may generate
- (5) Policies IMP3 and TRN2 of the UDP provide that the Council will only permit new development where it can be demonstrated that the transport infrastructure can accommodate it and will seek in appropriate cases planning advantages appropriate to the site and commensurate to the scale of development with the Council's transportation policies
- (6) Policy CCE4 of the UDP provides that the Council will cooperate with the NHS commissioners and providers to improve health services for local residents and the planning Obligations Strategy adopted 6 June 2005 provides that planning can ensure the provision of primary care facilities as part of new residential and commercial developments (including through Section 106 agreements) (Policy 3.85 of the London Plan)
- (7) Policy IMP3 provides that where it is necessary to make a proposal acceptable in planning terms the Council will seek the provision of planning advantages appropriate to the site and commensurate to the scale and nature of the development including the provision of facilities for public use such as recreation and community uses which help meet site or other Plan objectives
- (8) Policy HSG 6 of the UDP deals with the Council's policies in respect of the provision of Affordable Housing on the Property.

- 9) The Council's Planning Obligations Strategy adopted as Supplementary Planning Guidance in June 2005 outlines and clarifies the Council's current approach, policies and procedures in respect of planning obligations
- 10) The Owner and the Mortgagee and Chargee have agreed to enter into this Deed in order to comply with Condition U19361 DV41A of the Planning Permission in the manner hereinafter appearing

**NOW THIS DEED WITNESSETH** as follows:-

1. THIS Deed is made pursuant to Section 106 of the 1990 Act and the obligations contained in this Deed are planning obligations for the purposes of that section insofar as they fall within the terms of Section 106 of the 1990 Act and receipt of a copy of this Deed pursuant to subsection 106(10) of the 1990 Act is hereby acknowledged by the Council
2. THE Council hereby COVENANTS with the Owner:-
  - (a) to accept the Owner's covenant contained in Clause 3 and Schedule 1 hereunder
  - (b) to use the Education Contribution paid to it pursuant to Clause 3 of this Deed for primary and secondary education facilities within its administrative area
  - (c) to use the Health Contribution paid to it pursuant to Clause 3 of this Deed for the provision of and improvements to health facilities within its administrative area
  - (d) to use the Play Contribution paid to pursuant to Clause 3 of this Deed for the provision of and improvements to the play facilities within its administrative area
  - (e) to use the Transport Contribution paid to it pursuant to Clause 3 of this Deed for the provision of transport improvements within its administrative area
  - (f) to discharge its obligations in Schedule 2
  - (g) that this Deed is the Council's approval for the purposes of Condition U19361 DV41A of the Planning Permission
3. THE Owner hereby COVENANTS with the Council:-
  - (a) to pay to the Council the Contributions within one year of a Material Start
  - (b) to give notice to the Council of its intention to commence the Development at least seven (7) days before making a Material Start
  - (c) on the date hereof to pay the Council's reasonable and proper legal costs in the preparation and completion of this Deed in the sum of £1000
  - (d) as set out in Schedule 1
4. The Mortgagee hereby consents to the Owner completing this Deed with the intention that notwithstanding Section 104 of the Law of Property Act 1925 their respective interests in the Property shall be bound by the terms of this Deed as if it

had been executed and registered as a local land charge prior to the execution of the Mortgages

5. IT IS HEREBY AGREED and DECLARED:-

*Miscellaneous agreements and declarations*

- (a) Nothing contained in this Deed constitutes planning permission
- (b) Nothing contained or implied in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as local authority and its rights powers duties and obligations under all public and private statutes bye-laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Deed
- (c) If any provision in this Deed shall be held to be void invalid illegal or unenforceable or if voidable is avoided this shall not affect the operation validity legality and enforceability of any other provision of this Deed provided severance therefrom is possible
- (d) Reference to the masculine feminine and neuter genders shall include the other genders and reference to the singular shall include the plural and vice versa
- (e) A reference to a clause is a reference to a clause contained in this Deed
- (f) The expressions "the Council" and "the Owner" and "the Mortgagee" shall include their respective successors in title and assignees

*Local land charge provisions*

- (g) This Deed is a Local Land Charge and shall be registered in the Council's Register of Local Land Charges immediately on completion thereof
- (h) The Council will, upon written request by the Owner or a Mortgagee if applicable effect a cancellation of any entry made in the Local Land Charges Register in regard to this Deed forthwith after the obligations of the Owner and/or the Mortgagee hereunder have been wholly performed or discharged

*Reference to statutes and statutory instruments*

- (i) References in this Deed to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force

*Variations*

- (j) The covenants undertakings and restrictions contained in this Deed shall only be capable of being varied by a memorandum to be endorsed upon or annexed to this Deed by or on behalf of the relevant parties hereto or by a subsequent deed of variation
- (k) This Deed shall continue to be valid and enforceable following an amendment or variation to the Planning Permission achieved through the submission of a planning application pursuant to Section 73 of the 1990 Act as if this Deed had been completed pursuant to such an application

*English law applicable*

- (l) The construction validity and performance of this Deed shall be governed by English law

*Effect of revocation of planning permission*

- (m) In the event of the Planning Permission being revoked by the Council or any other authority having powers in relation to planning matters or otherwise withdrawn or modified by any statutory procedure without the consent of the Owner or their successors in title the obligations of the Owner under this Deed shall thereupon cease absolutely and in that event the Council will repay to the Owner such monies as have been paid to it pursuant to the obligations contained within this Deed to the extent that they remain unspent

*Waivers not to be of a continuing nature*

- (n) No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Owner

*Liability of subsequent owners and release of former owners*

- (o) The provisions hereof shall be enforceable by the Council against the Owner and all persons who shall have derived title through or under it in respect of the Property (but so that no person shall be liable to the Council for any breach of the provisions committed after such a person has parted with all of its interest in such land)

*Contracts (Rights of Third Parties) Act 1999*

- (p) The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person who is not a party to this Deed is to have the benefit of or is capable of enforcing any term in this Deed and no party is to have any rights to enforce this Deed other than those falling within the definitions of the Council the Owner and the Mortgagee

*Release*

- (q) This Deed shall be deemed to have been revoked and be of no effect (without any further act or deed on the part of either the Council or the Owner) if a Material Start has not taken place within 3 years of the date of this Deed or the Planning Permission having been granted shall be varied or revoked other than at the request of the Owner or the Planning Permission having been granted is quashed following a successful legal challenge and in any such case any sums paid by the Owner under this Deed shall be repaid to the Owner by the Council forthwith together with interest at the Base Rate of Barclays Bank plc from the date such sums were received by the Council until the date of repayment

*VAT clauses*

- (r) all consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable in respect thereof
- (s) if at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

*Interest on late payment*

- (t) if any of the Contributions is not paid to the Council within one year from a Material Start, then interest shall be paid on the relevant Contribution at the rate of 4% above the base rate of Barclays Bank plc from time to time in force from the date that the Contribution became due to the date of actual payment

*Indemnity for Mortgagee*

- (u) notwithstanding the terms contained herein the Mortgagee shall only be liable for any breach of any provision of this Deed during such period (if any) as it is mortgagee in possession of the Property and then only if it shall have caused such breach or breaches to have been occasioned and PROVIDED THAT for the avoidance of doubt it shall not in any event be liable for any breach of this Deed arising prior to its becoming mortgagee in possession of the Property regardless of whether or not such pre existing breach shall continue for any period during which it is mortgagee in possession of the Property

*Obligations not binding on certain parties*

- (w) the covenants contained in clauses 3(a), 3(b) and 3(c) of this Deed shall not be enforceable against owner/occupiers or tenants of Open Market Dwellings and/or the Affordable Housing Units (including in both cases their funders) nor against those deriving title from them
- (x) the covenants contained in clauses 3 (a), 3(b) and 3(c) of this Deed and all paragraphs in Part 1 of Schedule 1(except for paragraphs 4 and 5 ) shall not be binding on the Registered Social Landlord in its capacity as lessee of the Affordable Housing Land

*Disputes*

- (y) In the event that there shall be any dispute between the parties in respect of any matter arising under the terms of this Deed such dispute shall be referred upon the application of any of the parties to an independent expert agreed upon by the parties or failing such agreement nominated upon the application of any of the parties by the President for the time being of the Royal Town Planning Institute and such independent expert shall act as expert and not an arbitrator in accordance with the provisions of the Arbitration Act 1996 or any statutory substitute therefore and whose decision shall be final and binding on the parties hereto and whose costs shall be in his award
- (z) The expert appointed under (y) above shall be required to give notice to each of the said parties inviting each of them to submit to him within ten (10) working days written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further five (5) working days in respect of any such submission and material and his decision shall be given in writing within twenty eight (28) days of his appointment with reasons and in the absence of manifest error shall be binding on the said parties

6. IT IS FURTHER HEREBY AGREED and DECLARED

It is hereby declared that the obligations contained in paragraphs 4 and 5 of Schedule 1 this Deed shall not be binding upon:

- (a) A mortgagee or chargee of a Registered Social Landlord in possession of the Affordable Housing Land or any part thereof or any receiver or any manager (including an administrative receiver) appointed by such mortgagee or chargee pursuant to the Law of Property Act 1925 or any person deriving title directly or indirectly therefrom or any successors in title therefrom
- (b) Any person acquiring any Affordable Housing Unit pursuant to any statutory right to acquire or buy the same or required to be disposed of to a tenant with the benefit of voluntary purchase grant provided under Section 20 of the Housing Act 1996 (or any similar provision in any subsequent legislation) or that mortgagee or chargee or any successors in title therefrom
- (c) Any lessee of any Affordable Housing Unit under any shared ownership or equity sharing scheme nor its mortgagee or chargee and any person deriving title directly or indirectly therefrom or any successors in title therefrom or a purchaser from any mortgagee or chargee of such lessee

PROVIDED THAT and subject to any current Office for Tenants and Social Landlords and/or Homes and Communities Agency requirements in the event of the occurrence of any of the events anticipated in Paragraphs 6(a) to 6(d) above or in the event of a mortgagee or chargee of an Affordable Housing Unit entering into possession the Registered Social Landlord shall provide the Council with written information demonstrating that the Disposal Proceeds received, if any, by the Registered Social Landlord in respect of any sale, lease or other disposal in accordance with this clause and relating to the social housing grant element of the scheme funding shall be applied exclusively for the provision of Affordable Housing in the London Borough of Richmond upon Thames

IN WITNESS whereof with the intent that these presents should be executed as a deed the parties hereto have duly executed the same the day and year first before written

### **SCHEDULE 1** **COVENANTS BY THE OWNER**

#### **Part I – Affordable Housing**

- 1.1 To apply for and obtain such building regulation and other approvals as may be necessary in respect of the erection of the Affordable Housing Units
- 1.2 To build all the Affordable Housing Units and not to Occupy or cause or permit the Occupation of any Open Market Dwellings prior to the completion of the Transfer
- 1.3 Not to occupy or cause or permit the occupation of more than five (5) Open Market Dwellings prior to the completion of the construction and fitting out of all the Affordable Housing Units so that they are ready for occupation
- 2. The Transfer referred to in clause 1.2 above shall be prepared by the Owner's solicitors at the cost of the Owner and shall contain (inter alia) the following:-

- 2.1 the grant by the Owner to the acquiring Registered Social Landlord of all rights of access light, air, support, and entry and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Land
- 2.2 a reservation of all rights of access light, air, support and entry and passage of services and other rights reasonable necessary for the purposes of the remainder of the Development
- 2.3 such other covenants as the Owner may reasonably require for the maintenance of the completed development and the preservation of the appearance thereof but no duly onerous or unusual covenants which conflict with the nature of the use of the Affordable Housing Units for Affordable Housing purposes
3. To notify the Council's DCM in writing within 7 days of occupation of the first and fifth Open Market Dwelling and to permit any duly authorised officer of the Council upon reasonable notice being given to enter any part of the Property for the purpose of inspection and ensuring compliance with the provisions relating to Affordable Housing contained in this Schedule
4. Not to use the Intermediate Housing Units for any purpose other than for Intermediate Housing and not to use the Social Rented Units for any purpose other than for units let at Target Rents save as provided in clause 6 of this Deed
5. Not to complete the Transfer until the Registered Social Landlord enters into and completes the Deed of Nomination Rights with the Council in substantially the same form as that set out in Schedule 3

#### **Part II – General**

1. In carrying out the terms and conditions of this Deed to comply with all applicable statutory enactments and regulations as may from time to time be in force.
- 2.1 To indemnify and keep indemnified the Council and every person engaged in the business of the Council from and against all actions demands proceedings liabilities and claims whatsoever arising either directly or indirectly from the covenants and obligations of the Owner

#### **SCHEDULE 2** **COVENANTS BY THE COUNCIL**

1. To enter into the Deed of Nomination Rights with the Registered Social Landlord
2. To (so far as it is lawfully able to do so) upon the written request of the Owner (and/or any successor to the Owner of the Property or any part of the Property to which any obligation relates) at any time after each or all of the obligations of the Owner under this Deed have been performed or otherwise discharged as soon as is reasonably practicable issue written confirmation of such performance or discharge and (if all such obligations have been discharged) with effect forthwith the cancellation of the relevant entries in the Register of Local Land Charges or if such cancellation is for any reason impossible secure thereon a note of such discharge in respect of this Deed.

#### **SCHEDULE 3**



## FORM OF DEED OF NOMINATION RIGHTS

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_ 200[ ]  
BETWEEN THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF  
RICHMOND-UPON-THAMES of the Civic Centre of 44 York Street Twickenham TW1 3BZ  
("the Council") and \_\_\_\_\_ ("the Association")  
WHEREAS

- (1) This Agreement is made pursuant to the terms of the "Principal Agreement" (as defined below) which requires 9 Affordable Housing Units to be provided at the Property the leasehold interest in which is to be granted to the Association
- (2) In accordance with the Principal Agreement 9 residential units are to be built in accordance with Planning Permission (dated 11<sup>th</sup> February 2008 ref number 07/3470/FUL for occupation by persons within the Association's charitable objects and the Association has agreed to the Council being given the right to nominate persons to take up occupation of the Units as hereinafter provided
- (3) Subject to the grant of a 125 year lease or freehold transfer the Association agrees to be bound by the obligations contained within this Deed
- (4) By the grant of a 125 year Lease or freehold transfer of even date herewith the leasehold interest in the Site is transferred to the Association

NOW IT IS HEREBY AGREED as follows:-

### 1. DEFINITIONS

- |                           |   |
|---------------------------|---|
| 1.1 "Availability Notice" | means the notices referred to at Sub-clauses 3(a) and (b) hereof  |
| 1.2 "Nomination Notice"   | means the notice in writing to be given by the Council to the Association of the proposed Nominees which shall include the names of such Nominees and all necessary and relevant information pertaining to such Nominees                        |
| 1.3 "Nominees"            | means persons nominated by the Council for the purposes of this Agreement   |
| 1.4 "Principal Agreement" | means the Agreement made under section 106 of the Town & Country Planning Act 1990 made the [ ] between The Council (1) Tide End (Burlington Road) Limited and (2) Richmond upon Thames Churches Housing Trust Limited (3)                      |
| 1.5 "Property"            | means the Site and the Units  |
| 1.6 "Relevant Nominee"    | means Nominees to whom the Association shall offer a Unit on the Site in accordance with Clause 5 hereof  |
| 1.7 "Site"                | all those Affordable Housing Land as are defined within the Principal Agreement   |
| 1.8 "Nomination Period"   | sixty years from the date of practical completion of the Units  |
| 1.9 "True Voids"          | a vacancy created in any of the circumstances set out in the First Schedule hereto under the heading "definition of a True Void" but excluding a vacancy arising in any circumstances defined under the heading "definition of a Non-True Void" |
| 1.10 "Non-True Voids"     | as defined in the First Schedule hereto   |
| 1.11 "Units"              | means the Affordable Housing Units to be managed and provided by the Association on the Site (as set out  |

in the Second Schedule hereto)

2. The Association hereby covenants with the Council that in respect of the initial lettings under this Agreement the Council shall have rights to nominate up to 100% of the Units and shall thereafter have the right to nominate up to 75% of Units being True Voids for the Nomination Period unless the Council at its absolute discretion agrees to waive or relinquish such rights of nomination
3. The Association shall give to the Council:-
  - (a) In the case of an initial letting of any Unit not less than 6 weeks notice of the projected practical completion date of such Unit and not less than 6 weeks notice of the actual completion of such Unit and its availability for letting
  - (b) In the case of any Unit being a True Void becoming subsequently available for letting 5 days written notice of such availability
4. Within 10 days of the receipt by the Council of any Availability Notice in respect of a Unit the Council shall in respect of such Unit serve on the Association a Nomination Notice
5. The Association shall as soon as practicable following receipt of the Nomination Notice offer a tenancy of the said Unit to the Relevant Nominee
6. If (a) no Nomination Notice is served by the Council within the 10 days referred to in Clause 4 or (b) the Relevant Nominee refuses or fails to accept the offer of a tenancy within 3 days of such offer in each case the Council shall be entitled to serve two further and subsequent Nomination Notices
7. The procedure for such nominations may at any time during the continuance of this Agreement be varied by agreement between the parties hereto
8. The provisions of this Agreement shall cease to apply to any Unit of which the Association is required compulsorily by legislation to transfer the freehold or to grant a long lease to a tenant exercising any statutory right to buy or right to acquire such an interest in that Unit
9. IT IS HEREBY AGREED AND DECLARED that the provisions of this Agreement shall:-
  - 9.1 not bind any mortgagee of the Association or its successors in title or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to the Association or its successors in title
  - 9.2 cease to apply to any part or the whole of the Unit should such part or the whole be transferred or leased by any mortgagee of the Association or its successors in title or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to the Association or its successors in title
10. Any notice or demand required or authorised shall be deemed to be served on the Council if sent to the Chief Executive of the London Borough or Richmond upon Thames at its Civic Offices at the address given above and shall be deemed to be duly served on the Association if sent to the Association and addressed to the Secretary at its address for the time being as stated above or such other address as may be notified in writing to the Council from time to time PROVIDED ALWAYS that any notice to be served by either party may be served by such party's Solicitors

For the avoidance of doubt, the Association shall not be required to offer a tenancy of a Unit to any Nominee/Relevant Nominee who in the opinion of the Association:

- 11.1 is not a suitable tenant to be offered a tenancy of the Unit, taking into account the housing scheme or schemes provided at the Property, the Association's allocation policy, rules or any membership policy or requirements of the Office for Tenants and Social Landlords (including any successor organisation) as amended from time to time; or
- 11.2 has provided false or incorrect information or has refused to provide information requested by the Association in order for the Association to assess whether it is appropriate for the Association to offer a tenancy to the Nominee/Relevant Nominee, or has commenced legal proceedings against the Council for a claim for adverse possession

IN WITNESS whereof the Council and the Association have hereunto caused their Common Seals to be affixed the day and year first above written

### **FIRST SCHEDULE**

#### *Definition of True Void*

11. Vacancies created through tenant transfer to another Borough where no reciprocal arrangements exists
12. Vacancies arising through tenant moves to other landlords where no reciprocal arrangement exist
13. Vacancies arising as a result of the death of a tenant where there is no statutory right to succession
14. Vacancies arising through tenants buying their own property in the private sector
15. Vacancies arising as a result of the tenant having been evicted or abandoning a Unit
16. Vacancies arising as a result of a tenant who has been permanently decanted returning to his former home
17. Vacancies arising through tenant transfer within the Association's own stock
- 17 Vacancies arising as a result of a tenant who has previously been decanted

#### *Definition of Non-True Void*

- 18 Vacancies arising as a result of a tenant being temporarily decanted and moving to a temporary home
- 19 Vacancies arising as a result of a tenant being re-housed via the Housing Association "Homes" scheme or other equivalent
20. Vacancies arising as a result of a tenant being re-housed by another Borough where a reciprocal arrangement exists

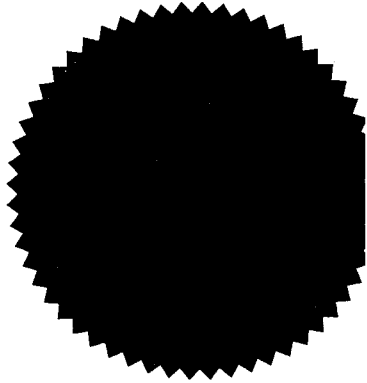
### **SECOND SCHEDULE**

- 6 Social Rented Units
- 3 Intermediate Housing Units

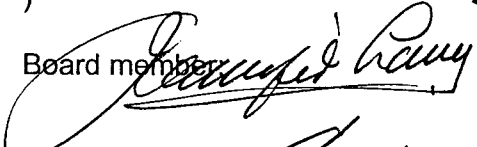

THE COMMON SEAL of the MAYOR  
AND BURGESSES  
OF THE LONDON BOROUGH OF  
RICHMOND UPON THAMES was  
hereunto affixed in the presence of:-

  
Authorised Officer

Seal Reg. No. 127/9/03




The COMMON SEAL of RICHMOND  
UPON THAMES CHURCHES HOUSING  
TRUST LIMITED  
Was hereunto affixed in the presence of

  
Board member  
Secretary: 



EXECUTED and delivered as a DEED by )  
TIDE END (BURLINGTON ROAD) )  
LIMITED (pursuant to a resolution of its )  
Board of Directors) acting by: )

Director:   
Director/Secretary: 