

THIS AGREEMENT is made the 7th day of May 2020

BETWEEN:-

1. **THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of Plough Lane Offices, Plough Lane, Hereford HR4 0LE ("the Council")
2. **BARNETT WADDINGHAM TRUSTEES LIMITED** (Company registration number 2005798) whose registered office is at Decimal Place Chiltern Avenue Amersham Buckinghamshire HP6 5FG and whose address for correspondence is St James House St James Square Cheltenham GL50 3PR and **ANTHONY MARTIN KILLEEN** of St James House St James Square Cheltenham GL50 3PR the Trustees of the Allpay.net Executive Pension Scheme ("the First Owner")
3. **CITIZEN HOUSING GROUP LIMITED** (Company registration number RS008181) a Registered Society under the Co-operative and Community Benefit Societies Act 2014 and whose registered office is at 4040 Lakeside Solihull Parkway Birmingham Business Park Birmingham B37 7YN ("the Second Owner")
4. **JHD SOLUTIONS LIMITED** (Company registration number 08364267) whose registered office is at Unit 6 Mead Road Maida Vale Business Centre Cheltenham GL53 7ER ("the Applicant")

WHEREAS:-

1. The Council is the Local Planning Authority as defined in the Town and Country Planning Act 1990 (as amended) ("the Act") and the Local Planning Authority for the purposes of planning obligations imposed pursuant to the provisions of Section 106 of the Act by whom the restrictions and obligations contained in this Agreement are enforceable for the purpose of restricting or regulating the development or use of that land
2. The First Owner is the registered proprietor with freehold title absolute under title number HE5211 at HM Land Registry subject only as shown on the Registers thereto but otherwise free from encumbrances of the Land "the First Property"
3. The Second Owner has purchased that part of the Land registered under title number HE2499 at the Land Registry and will be the registered proprietor of the Land with

freehold title absolute under title number HE2499 at HM Land Registry subject only as shown on the Registers thereto but otherwise free from encumbrances but at the date of this Deed the registration of the transfer is yet to formally complete at the Land Registry.

4. The Applicant has by its agent submitted to the Council the Application for planning permission and proposes to carry out the Development on the Land

5. The First Owner and the Second Owner have agreed with the Council to provide the planning obligations in accordance with the terms and conditions hereof

6. The Council has delegated authority to its officers for the grant of the Permission (subject to conditions) and subject to the completion of this Deed for the purpose of restricting or regulating the development or use of the Land.

7. The Council are satisfied that entry into this Deed is of benefit to the public, that the planning obligations contained in this Deed are necessary to make the Development acceptable in planning terms and the planning obligations comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

THIS DEED is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers and enactments which may be relevant for the purposes of giving validity hereto or facilitating the enforcement of the obligations herein contained with the intent to bind the Land

NOW THIS DEED WITNESSES as follows:

1. Interpretation

In this Deed:

"the Act"	means the Town and Country Planning Act 1990 (as amended)
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"Affordable Housing"	means housing provided to eligible households whose needs are not met by the Open Market. Eligibility is determined with regard to local incomes and local house prices. Affordable Housing should remain at an
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affordable price for future eligible households or the subsidy recycled for alternative Affordable Housing provision. The descriptions of all types of Affordable Housing in Herefordshire are contained in the Technical Data

"Affordable Housing Units"

means (unless otherwise agreed in writing by the Council) the five residential units and ancillary areas comprised within the Development and intended for occupation as 5 units of Shared Ownership identified as plots 10, 11, 12, 13 and 14 on the drawing numbered CPK-BML-ERD-ZZ-DR-C-0105 Revision P01 forming part of the Application

"Application"

means the application for planning permission for 'Demolition of existing office building and the construction of 5no. affordable homes' made under the Council's reference P193566/F and validated by the Council on 11th October 2019

"Chargee"

means any mortgagee or chargee (or any receiver (including any administrative receiver) appointed by such mortgagee or chargee or any other person appointed under security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator) of the whole or any part of the Affordable Housing Units

"Commence Development" and
"Commencement of
Development"

means to commence the Development pursuant to the Permission by the carrying out of a Material Operation

"Development"

means the development of the Land as set out in the Application and in the case of an outline application in accordance with the subsequent details approved by

	the reserved matters applications
"Dwellings"	means the residential units to be constructed on the Land pursuant to the Permission and "Dwelling" means any one of such residential units
First Property	means the whole of the land comprised in title number HE5211 as at the date hereof which forms part of the Land
"Help to Buy Agent 2"	means the Help to Buy government scheme providing a range of home ownership options and Help to Buy Agent 2 is the government appointed agent for the Midlands including the Council's administrative area.
"Herefordshire Allocations Policy"	means the Council's Policy for the allocation of Affordable Housing in the administrative area of the Council which under the Housing Act 1996 as amended by the Homelessness Act 2002 and the Localism Act 2011 the Council has a duty to provide
"Land"	means land adjacent to Central Park Dean Pool Kingstone and shown edged red on the Plan being the land comprised within the Application
"Material Operation"	has the meaning given by Section 56 (4) of the Act other than operations consisting of site clearance, demolition works, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion or laying of services, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements on the Land Property in accordance with any planning permission

	granted in pursuance of the Application
"Occupy" "Occupied" and "Occupation"	means the first occupation of the Development for residential purposes but excluding occupation for the purposes of construction and fitting out
"Permission"	means the planning permission subject to conditions and reserved matters to be granted by the Council permitting the Development pursuant to the Application
"Plan"	means the plan attached to this Deed
"Reasonable Endeavours"	means that the party under such an obligation shall not be required to take proceedings (including any appeal) in any court public inquiry or other hearing (unless specified to the contrary) but subject thereto such party shall be bound to attempt to fulfil the relevant obligation by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances may be reasonable
"Registered Provider"	means a registered provider of Affordable Housing under Part 2 of the Housing and Regeneration Act 2008 being a preferred development partner listed (or intended for listing) in the Council's 'provision of affordable housing technical data' which supports the supplementary planning document Planning Obligations April 2008 (or any subsequent or updated document), or any such other Registered Provider as may previously be agreed with the Council in writing such agreement not to be unreasonably withheld

Second Property

means that part of the land registered under title number HE2499 as at the date hereof which comprises of part of the Land.

"Shared Ownership"

means ownership under the terms of a lease by which a lessee may (subject to the restriction in paragraph 1.7 of the First Schedule (Part 1) to this Deed acquire a share or shares of the equity in an Affordable Housing Unit from the Registered Provider who retains the remainder and may charge a rent and "Shared Ownership Unit" means any Affordable Housing Unit designated for Shared Ownership.

"Technical Data"

means the data updated annually by the Council entitled 'Provision of Affordable Housing Technical Data to Support the SPD – Planning Obligations April 2008' (or any technical data published by the Council in support of any replacement planning policy document)

1.2 In this Deed the following words and expressions shall where the context so admits have the following meanings:-

1.2.1 The expressions "the Owners" and the "the Council" shall include their respective successors in title and assigns

1.2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa

1.2.3 Words of the masculine gender include the feminine and neuter genders and all references in this Deed to a person or persons shall include corporations and unincorporated associations and all other legal entities.

1.2.4 Where there are two or more persons included in the expression "the Owner" covenants expressed or implied to be made by the Owner shall be deemed to be made by such persons jointly and severally save where the expression "the First Owner" or the



zeb1357

**Land adjacent to Central Park
Kingstone**

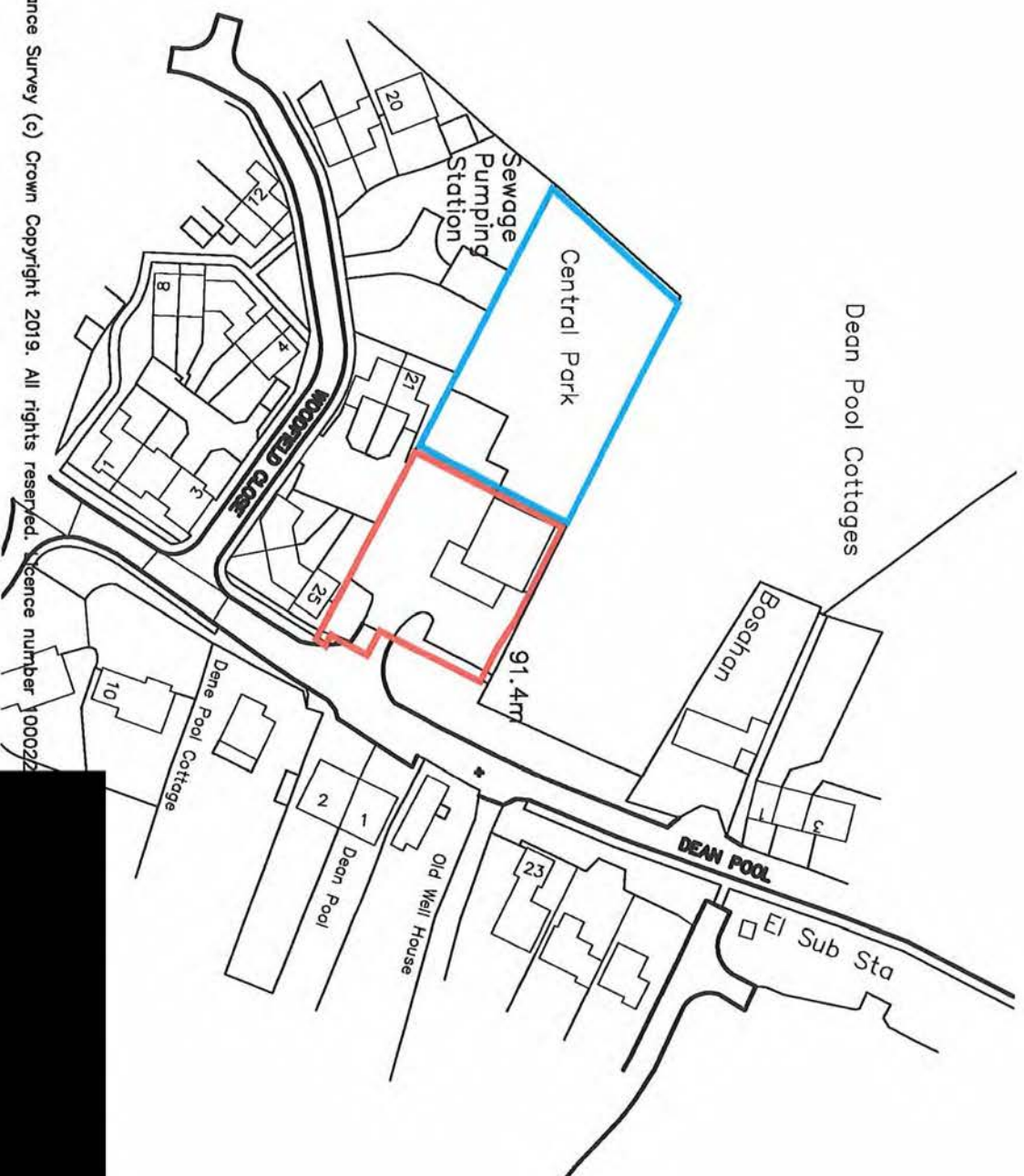
PL001

Location Plan

date September 2019

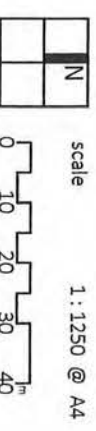
status information

rev -



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location plan



zebra architects ltd. is part of zebra group consulting ltd.

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The First Owner covenants and agrees with the Council that the First Owner will observe the restrictions and perform the obligations set out in the First Schedule to this Deed

5. Certificates

The Owners covenant and agree with the Council:

5.1 Where this Deed imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Specified Date the Owners shall give to the Planning Obligations Manager 14 days' notice of the Specified Date

5.2 If the Owners fail to give the notice required under clause 5.1 above the Council shall be entitled in its absolute discretion to determine the Specified Date and shall give notice to the Owners of its determination

6. Notices

6.1 A notice under this Deed is valid only if it is given by hand sent by recorded delivery or document exchange and it is served at the address shown in this Deed for the receiving party or at any address specified in a notice given by that party to the other parties.

6.2 A notice sent to the Council:

6.2.1 in relation to any matters arising from the First Schedule (Part 1) of this Deed shall be addressed to the Strategic Housing Officer, Strategic Housing, Economy and Place Directorate Herefordshire Council, Plough Lane, Hereford HR4 0LE quoting reference P193566/F; or

6.2.2 in relation to any matters arising from all other obligations in this Deed shall be addressed to the 'Planning Obligations Manager,' Development Management Team, Herefordshire Council, Plough Lane Offices Plough Lane Hereford HR4 0LE quoting reference P193566/F

6.3 A notice:

6.3.1 sent by recorded delivery is to be treated as served on the second working day after posting if sent by first class post or on the third working day after posting if sent by second class post;

6.3.2 sent through a document exchange is to be treated as served on the first working day after the day on which it would normally be available for collection by the recipient

7. Interest

If any payment due under the terms of this Deed has not been paid to the Council on the due date late interest calculated at the rate of 4% per annum above the National Westminster Bank Plc base rate from time to time will be payable from the date payment is due to the date payment is made

8. Determination

8.1 If the Permission shall expire before Commencement of Development or shall at any time be revoked or quashed this Deed shall forthwith determine and cease to have effect insofar only as it has not already been complied with and without prejudice to the validity of anything done or payments or contributions made or expended whilst this Deed is in force

8.2 If the Council agrees following an application under section 73 of the Act to vary or release any condition contained in the Permission or if a condition is varied or released following an appeal under section 78 of the Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission unless the Council in determining the application for the new planning permission indicate that consequential amendments are required to this Deed to reflect the impact of the section 73 application when a separate deed under s106 of the Act will be required to secure relevant planning obligations relating to the new planning permission

8.3 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission including any variation thereto agreed pursuant to section 73 of the Act) granted (whether or not on appeal) after the date of this Deed

8.4 If any provision or part provision of this Deed:

8.4.1 shall be held by any court or competent authority to be invalid illegal or unenforceable the validity legality or enforceability of the remaining provisions shall not in any way be deemed to be affected or impaired; and

8.4.2 if any invalid illegal or unenforceable provision or part provision of this Deed would be valid legal and enforceable if some part or parts of it were amended the parties shall amend such provision(s) so that as amended it is legal valid and enforceable and so far as possible achieves the original intentions of the parties.

8.5 The First Owner and the Second Owner shall not be entitled to any costs or compensation whatsoever from the Council arising from the agreement restrictions and obligations contained in this Deed

8.6 No person shall be liable for a breach of any of the planning obligations or other provisions of this Deed after parting with all interest in the Land or the part of the Land in respect of which such breach occurs but without prejudice to liability for any subsisting breach prior to parting with such interest

9. Third Party Rights

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Party) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from such act

10. Reservations

For the avoidance of doubt nothing in this Deed shall prevent the Council from exercising any of its statutory powers or functions in relation to the development of the Land

11. Registration

11.1 The First Owner in respect of the First Property and the Second Owner in respect of the Second Property hereby consent to the registration of this Deed as a Local Land Charge and as a Notice on title numbers HE5211 and HE2499 at HM Land Registry

11.2 On the written request of the First Owner or the Second Owner at any time after each or all of the obligations have been performed or otherwise discharged the Council will issue a written confirmation of such performance or discharge

11.3 Following the performance and full satisfaction of all the terms of this Deed or if this Deed is determined pursuant to clause 8 the Council will on the written request of the First Owner or the Second Owner record such performance or determination in the Local Land Charges Register in respect of this Deed

12. Costs

The Applicant covenants and agrees with the Council:

12.1 on or before the date of this Deed to pay to the Council its reasonable and proper costs in the preparation and completion of this Deed; and

12.2 The Council's disbursements of registering this Deed as a notice against title

13. Waiver

No waiver (whether expressed or implied) by the Council of any breach or default by the First Owner or the Second Owner in performing or observing any of the obligations or other terms of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the obligations or other terms of this Deed or from acting upon any subsequent breach or default by the First Owner or the Second Owner

14. Arbitration

14.1 In the event of any dispute or difference arising out of this Deed between the parties (other than a dispute or difference relating to a matter of law or concerning the meaning or construction of this Deed) which is not resolved within 14 days such dispute or difference shall at the request of any party be referred for arbitration under the Arbitration Act 1996 to a sole arbitrator to be agreed between the parties or in the absence of agreement within fourteen days after any party has given to the other(s) a written request to concur in the appointment of an arbitrator to be appointed at the request of any party by the President or Vice President of the Chartered Institute of Arbitrators and in these respects these presents shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996

14.2 The costs of bringing the arbitration will be borne jointly by the parties unless the arbitrator finds against one party at which the costs recommended by the arbitrator against that party will be borne by the same

15. Warranty

15.1 The First Owner in respect of the First Property and the Second Owner in respect of the Second Property warrant to the Council that the title details herein referred to in the Recitals is/are complete and accurate in every respect and that no person other than the Owners have any legal or equitable interest in the Land

15.2 The First Owner in respect of the First Property and the Second Owner in respect of the Second Property hereby warrant to the Council that they have not leased mortgaged charged or otherwise created an interest in the Land at the date of this Deed

16. VAT

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

17. SDLT

Entry into this Deed does not constitute a transaction for a chargeable consideration for which Stamp Duty Land Tax is required

18. Applicant's acknowledgement

The Applicant acknowledges that the Land shall be bound by the restrictions and obligations contained in this Deed

19. General

19.1 The First Owner and the Second Owner and the Council agree that:

19.1.1 Nothing in this Deed constitutes an obligation to grant planning permission

19.1.2 Nothing in this Deed grants planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function

19.1.3 This Agreement constitutes a Deed

19.1.4 This Deed constitutes the entire agreement between the parties in respect of the Permission

19.1.5 None of the parties has relied on any express or implied statement warranty representation or undertaking given by or on behalf of another and no collateral agreement exists between the parties

19.1.6 Nothing herein contained excludes the liability of any of the parties in relation to fraud

19.1.7 This Deed supersedes and replaces all previous negotiations whether oral or written

19.1.8 This Deed shall be governed by and construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English Courts

19.1.9 The headings in this Deed are for convenience only and shall not be taken into account in the construction and interpretation thereof

20. Limited Liability

Any liability of Barnett Waddingham Trustees Limited arising out of this Agreement or matters connected with it shall be limited to the value of the assets of the Allpay.net Executive Pension Scheme in their possession.

21. Counterparts

This Agreement may be executed in any number of counterparts each of which when executed and delivered shall constitute a duplicate original of this Agreement but all the counterparts together shall constitute the same Agreement. No counterpart shall be effective until each party has executed and delivered at least one counterpart.

IN WITNESS of which this instrument has been duly executed as a Deed by the parties and delivered on the date set out above

FIRST SCHEDULE
(The Owners' covenants)

(PART 1)

1. Affordable Housing

The First Owner covenants and agrees with the Council:

1.1 Following the Commencement of Development to construct or procure the construction of the Affordable Housing Units at no cost to the Council in accordance with the Permission

1.2 Not to let manage or co-own or allow the Affordable Housing Units to be let managed or co-owned other than strictly in accordance with the guidance issued by Homes England (or any successor agency) from time to time with the intention that the Affordable Housing Units shall at all times be used for the purposes of providing Affordable Housing to persons who are eligible in accordance with the allocation policies of the Registered Provider; and satisfy the following requirements:-:

1.2.1 registered with Help to Buy Agent 2 at the time the Affordable Housing Unit becomes available for residential Occupation and

1.2.2 satisfy the requirements of paragraphs 1.3 and 1.4 of Part 1 of this First Schedule

1.3 Not to Occupy or allow Occupation of the Affordable Housing Units by any person until the Affordable Housing Units have been registered and advertised through Help to Buy Agent 2 and allocated in accordance with the Herefordshire Allocations Policy for occupation as a sole residence to a person or persons

1.4 The transfer of the Affordable Housing Units to the Registered Provider shall include the following provisions:-

1.4.1 the grant to the acquiring Registered Provider of all rights of way access and passage of services and all other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units.

1.4.2 a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the Development.

1.5 Subject to paragraph 1.6 of Part 1 of this Schedule 1 the Affordable Housing Units must at all times be let or managed by a Registered Provider in accordance with the guidance issued from time to time by Homes England (or any successor agency) with the intention that the Affordable Housing Units shall not be used for any purpose other than the provision of Affordable Housing in the tenures specified by this Deed (unless otherwise agreed in writing by the Council)

1.6 The provisions of paragraphs 1.2, 1.3 and 1.4 above of Part 1 of this Schedule shall not be binding on nor enforceable against

1.6.1 A Chargee of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such Chargee PROVIDED THAT :

1.6.1.1 such Chargee shall first give written notice to the Housing Development Officer (Strategic Housing Herefordshire Council, Plough Lane, Hereford HR4 0LE) quoting reference P193566/F of its intention to dispose of the Affordable Housing Units (or relevant part) and shall have used Reasonable Endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units (or relevant part) to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses: and

1.6.1.2 if such disposal has not completed within the three month period the Chargee shall be entitled to dispose of the Affordable Housing Units (or relevant part) free from the provisions of Part 1 of the First Schedule of this Deed which provisions shall determine absolutely; or

1.6.2 any Chargee of an Affordable Housing Unit designated for Shared Ownership ("SO Unit") shall prior to seeking to dispose of any SO Unit pursuant to any default under the terms of the mortgage or charge give not less than 20 working days' prior notice to the Council and to the Registered Provider with an interest in the SO Unit of its intention to dispose and;

1.6.2.1 in the event that the Registered Provider responds within 20 working days from receipt of the notice indicating that arrangements for the transfer of the SO Unit can be

made in such a way as to safeguard it as Affordable Housing then the Chargee shall co-operate with such arrangements and use its Reasonable Endeavours to secure such transfer

1.6.2.2 if the Registered Provider does not serve its response to the notice served under paragraph 1.6.2 within the 20 working days then the Chargee shall be entitled to dispose of the SO Unit free from all the restrictions set out in Part 1 of the First Schedule which shall from the time of completion of the disposal cease to apply

1.6.2.3 if the Registered Provider cannot within 40 working days of the date of service of its response under paragraph 1.6.2.1 secure a binding contract for sale then provided that the Chargee shall have complied with its obligations under paragraph 1.6.2 the Chargee shall be entitled to dispose of the SO Unit free from of all the restrictions set out in sub-paragraphs 1.3 1.4 1.5 inclusive of Part 1 of the this Schedule which shall from the time of completion of the disposal cease to apply and be extinguished in respect of that disposal

PROVIDED FURTHER that at all times the rights and obligations in this paragraph 1.6 shall not require the Chargee to dispose of the SO Unit for any consideration less than the amount due and outstanding under the relevant security documentation including all accrued interest and costs and expenses or

1.6.3 any occupier of an Affordable Housing Unit who has exercised a statutory right to buy (or any subsequent or substituted contractual right) the whole of the freehold estate in an Affordable Housing Unit nor any Chargee or such occupier or their respective successors in title; or

1.6.4 the owner/lessee of a Shared Ownership Unit who has taken the model form of lease prescribed in paragraph 1.7 below and who has staircased his or her interest in that unit such that he or she owns one hundred per cent (100%) of the equity in that unit and his or her successors in title nor any Chargee of such owner/lessee and their successors in title."

1.7 Where any of the Affordable Housing Units are made available for Shared Ownership housing the occupiers shall not (unless otherwise agreed in writing by the Council) be permitted to own more than 80% of the total equity value of such Affordable Housing Units Provided That this paragraph shall not apply if the Shared Ownership lease of any such unit is in a model form for the protection of Affordable Housing in rural areas

published or approved by the Homes England (or a successor body) containing provisions that:

1.7.1 permit an occupier to acquire more than 80% of the total equity in such unit; and

1.7.1 require the mandatory buy back of any such unit by the Registered Provider or its nominee in the event of an intended disposal by any such occupier.

EXECUTED AS A DEED when
THE COMMON SEAL OF
THE COUNTY OF HEREFORDSHIRE
DISTRICT COUNCIL
was hereunto affixed BY ORDER

Authorised Officer

EXECUTED AS A DEED by
BARNETT WADDINGHAM
TRUSTEES LIMITED acting by a
Director

Director

In the presence of
Witness signature:

Name (capitals):
Address:

EXECUTED AS A DEED by
ANTHONY MARTIN KILLEEN

In the presence of:

Witness signature:

Name (capitals):
Address:

EXECUTED AS A DEED by
affixing THE COMMON SEAL of
CITIZEN HOUSING GROUP LIMITED
In the presence of

Authorised Signatory

Authorised Signatory

EXECUTED AS A DEED by
JHD SOLUTIONS LIMITED
acting by a Director

JAMES H DAWSON

Director

in the presence of
Witness signature

Name (capitals): LESLEY ELIZABETH MAHRE
Address: 7 THE VILLAGE,
CLIFTON UPON TEME,
WORCESTERSHIRE
WR6 6EW.