

**SCHEDULE 4**

**AHA (SE Charge)**

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**= AFFORDABLE HOUSING AGREEMENT =**  
**= SHARED EQUITY CHARGE UNITS =**

**THIS DEED** is made the \_\_\_\_\_ day of \_\_\_\_\_ Two thousand and twenty one BETWEEN **xx COUNCIL** of xx (“the Council”) (1) and **xx** (the “Owner”) (2) **xx** (“the Mortgagee”). (3)

**WHEREAS:**

- (1) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 or any statutory modification or re-enactment thereof (“the Planning Act”) for the area in which the land described below is situate and is also the housing authority for the purposes of the Housing Act 1985 or any statutory modification or re-enactment thereof (“the Housing Act”) and as housing authority is required by Section 8 of the Housing Act to consider housing conditions in its district and the needs of the district with respect to the provision of further housing accommodation.
- (2) Pursuant to such consideration the Council has concluded that there is a need in the district for Affordable Housing for local needs and that the provision of the housing the subject of this Deed contributes towards the satisfaction of that need.
- (3) The Owner is the owner in fee simple in possession of land being plot numbers **xxx** on the development site located on land at **xx** shown for identification on the attached plan (“the Plan”) edged red (“the Land”).
- (4) The Mortgagee is the registered proprietor of the charge dated xx referred to in entry number **xx** of the charges register of Title number **xx** and has agreed to enter into this deed to give its consent to the terms of this deed.
- (5) A grant of planning permission was obtained under the application numbered **xx** (“the Application”) which was issued on **xxx** for the development of the Land by erection of a [specialist housing development] which application is more particularly described in the forms, plans and particulars deposited with the Council (“the Planning Permission”).
- (7) The Council as local planning authority was disposed to grant the Planning Permission provided that the Land was regulated in order to secure part of its future availability for use as Affordable Housing by an earlier agreement under Section 106 of the Planning Act dated **xxx** and made between the Council (1) **xx** (2) **xx** (3) (“the Original Agreement”); and which each contained a restriction not to Occupy Dwellings built on the Land other than as Shared Equity Charge Units pursuant to an agreement under Section 106 of the Planning Act regulating occupations in the form in which this present Deed is entered into.
- (8) To the extent that the provision of the development and management of the Units in accordance with this Deed fulfils the responsibility of the Council as housing authority and so relieves it of its duty itself to provide and manage that kind of

housing accommodation in that location it is a benefit in money's worth to the Council.

**NOW THIS DEED WITNESSETH** as follows:

### **ENABLING POWERS**

- 1.1 This Deed and the covenants contained in it are made with and are enforceable by the Council pursuant to section 106 of the Planning Act sections 111 and 139 of the Local Government Act 1972 sections 8 and 9 of the Housing Act and any other enabling powers
- 1.2 To the extent to which such covenants are capable of being entered into under section 106 of the Planning Act they shall constitute planning obligations for the purposes of that section

### **OWNER'S COVENANTS**

- 2.1 The Owner and the Mortgagee COVENANTS with the Council so as to bind the Land and any part of it that it will observe and perform the restrictions obligations and stipulations set out in the Schedule to this Deed PROVIDED THAT the said Owner shall not be personally liable for any breach of this Deed which first occurs after it shall have disposed of all of its title and interest in the Land PROVIDED FURTHER that the restrictions obligations and stipulations set out in the Schedule hereto shall not bind nor be enforceable against
  - a) any mortgagee chargee or receiver (including any administrative receiver or any other person appointed under any security documentation to enable a mortgagee or chargee to realise its security) of the Owner or the Land or any part which mortgagee chargee receiver (including any administrative receiver or other such person) is in possession of the Land and is exercising its power of sale and any person deriving title under such mortgagee chargee receiver (howsoever appointed) including a housing administrator or such other person and/or
  - b) an owner of a Unit subject to a Second Charge (as defined in the Schedule to this Deed) who has occupied the Unit as a single family dwelling and who has redeemed the Second Charge and/or
  - c) any person or body (including any mortgagee or charge) deriving title under any person or body referred to in clauses 2.1.1 or 2.1.2 above or any of their respective successors in title.

### **MORTGAGEE'S CONSENT**

- 3.1 The Mortgagee consents to the completion of this deed and declares that its interest in the Property shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property.

- 3.2 The Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property.

## **AGREEMENTS AND DECLARATIONS**

- 4.1 Nothing in this Deed shall be construed as restricting the exercise by the Council or by any other competent authority of any powers exercisable by it or them under the Planning Act or under any statute regulation or byelaws.
- 4.2 This Deed will remain in full force and effect notwithstanding the terms and conditions of any planning permission which may be or has been at any time issued by the Council or by any other appropriate person or authority pursuant to the provisions of the Planning Act.
- 4.3 Subject only to the provisions of section 106A of the Planning Act the terms and conditions of this Deed can only be varied by a supplemental deed or memorandum endorsed on this Deed executed by the parties or their successors in title.
- 4.4 No express or implied waiver by the Council of any breach or default by the Owner or its successors in title in performing or observing any of its obligations under this Deed shall constitute a continuing waiver or prevent the Council from enforcing those obligations against the Owner or its successors in title.
- 4.5 The Owner WARRANTS that it has full power to enter into this Deed and that there is no person (other than the Mortgagee) having any charge over or any interest in the Land other than those entering this Deed whose consent is necessary to make this Deed binding upon the Land and all estates and interests in it.
- 4.6 The Owner WAIVES any rights to claim compensation arising from any limitation or restriction on the planning use of the Land under the terms of this Deed.

## **INTERPRETATION**

- 5.1 The expressions "the Council" and "the Owner" includes their respective successors in title and assigns.
- 5.2 One gender includes all the others.
- 5.3 A covenant not to do something includes a covenant not to permit or suffer that thing to be done.
- 5.4 The headings in this Deed are for ease of reference only and cannot be taken into account in its interpretation.

**IN WITNESS** whereof the parties hereto have executed this instrument as their deed and it is the parties' intention that this Deed be delivered and it is hereby delivered on the date first before written.

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## THE SCHEDULE

(restrictions obligations and stipulations)

1. Not to use the Land or allow it to be occupied other than as Affordable Housing comprising the Units as indicated in the table as set out below:

Plot No	Unit Type	No of Persons	Tenure
			Shared Equity Charge

### ABBREVIATION

Shared Equity Charge = means Affordable Housing available to be purchased at 80% Open Market Value on a freehold basis with a second charge ("the Second Charge") for the remaining 20% in favour of the [the Council]. The Second Charge shall have no interest payable in relation to it and shall not involve any consideration being due on initial sale. The Second Charge shall not be redeemed or removed by the purchaser

2. Not itself or through any contractors or subcontractors to discriminate against any individual on grounds of race religion gender marital status sexual orientation or age and to promote good relations between people of different racial groups.
3. Not to permit any Unit on the Land to be occupied other than as a Shared Equity Charge Unit whereby it is sold at a maximum of 80% of the Open Market Value at first purchase with a Second Charge for the remaining 20% in favour of the Council.

The Second Charge shall have no interest payable in relation to it and shall not involve any consideration being due on initial sale.

5. In this Deed:

5.1 "Affordable Housing" means housing of a kind which (having regard to its rent or other consideration) is suitable for occupation by people who are in need of such housing because of their limited means.

5.2 "Practical Completion" means completion of the construction of the Units in accordance with this Deed subject only to the existence of minor defects and/or omissions at the time of inspection which are capable of being made good without materially interfering with the beneficial use and enjoyment of the Units and which it would be reasonable to include in a schedule of minor snagging items and "Practically Completed" shall be construed accordingly.