HAMPSHIRE COUNTY COUNCIL

and

[ ]

DEVELOPMENT FUNDING AGREEMENT

[ ] EXTRA CARE SCHEME
THIS AGREEMENT is made the day of 201[ ]

BETWEEN

(1) HAMPSHIRE COUNTY COUNCIL whose principal offices are at the Castle, Winchester in Hampshire SO23 8UJ ("the Council"); and

(2) [ ] (Company Number  ) being a duly incorporated company having its registered offices at [ ] ("the [Developer] [Registered Provider]") 1

Jointly referred as “the Parties” or individually as “Party”

WHEREAS

A The Council has approved a strategy to extend the development of Extra Care Housing

B The [Developer] [Registered Provider] is a Registered Provider of Social Housing

C The [Developer] [Registered Provider] owns the Site and intends to carry out the Development and use the Premises for the Extra Care Purpose

D In accordance with its strategy for the development of Extra Care Housing and in exercise of its general power of competence under Section 1 of the Localism Act 2011 and all other enabling powers the Council has agreed to award a Capital Grant to the [Developer] [Registered Provider] in respect of the Development

E The Council and the [Developer] [Registered Provider] agree that the Capital Grant is to be made in accordance with the Commission Decision.

F In consideration for the Capital Grant the [Developer] [Registered Provider]

1 Where the Developer is not a Registered Provider of Social Housing, the intended Registered Provider of Social Housing who will undertake the Extra Care Purpose will be required to be a party to this Agreement in addition to the Developer. Where this applies, variations shall be made to this form of agreement to include additional provisions setting out the position in relation to ownership of the Site and the intended transfer or lease of the Premises to the Registered Provider together with such other variations as are appropriate.
has agreed to enter into this Agreement

IT IS HEREBY agreed as follows:-

1 DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:

“Affordable Housing” means subsidised housing provided by the [Developer] [Registered Provider] that will be made permanently available as:
(a) Socially Rented; or
(b) Shared Ownership; or
(c) Shared Equity;

“Affordable Housing Units” the flats of Affordable Housing constructed on the Site as part of the Development;

“Agreement” means this Agreement (including its Schedules, Annexures and Appendices (if any));

“Application” means the [Developer] [Registered Provider]’s application to the Council for instalments of the Capital Grant;

“Architect” means the person for the time being appointed to act as architect employer’s agent or quantity surveyor appointed to (inter alia) issue the Certificate of Completion of Waterproofing Works and Certificate of Practical Completion pursuant to the Building Contract;

“Building Contract” means the [insert form of contract] contract entered into between the
“Building Contractor” means the building contractor appointed or to be appointed or to be appointed by the [Developer] [Registered Provider] in respect of the Development;

“Building Control Body” means a Local Authority Building Control Body or a private sector Approved Inspector Building Control Body;

“Building Control Regulations” means the Building Regulations 2010;

“Building Works” means the works of and in connection with the carrying out of the Development and includes (unless the context otherwise requires) all site clearance works [not included in the Demolition Works] and site preparation works;

“Business Day” means any day other than a Saturday, Sunday or a statutory Bank Holiday in England;

“Capital Grant” means the sum of [ ] POUNDS (£[ ]);

“CDM Regulations” means the Construction (Design and Management) Regulations 2007 S.I. No 320;

“Certificate of Completion of Waterproofing Works” means the certificate issued by the Architect confirming that the waterproofing works have been completed pursuant to the Building Contract;
“Certificate of Practical Completion” means the certificate issued by the Architect confirming Practical Completion of the Building Works pursuant to the Building Contract;

“Change of Control” shall have the same meaning as set out in section 450 and 451 of the Corporation Tax Act 2010;

“Commission’s Decision” means the Decision of the Commission of the European Communities of 20 December 2011;

“Confidential Information” means all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives or advisers (together in this definition and in Clause 18 its “Representatives”) to the other Party and that Party’s Representatives in connection with this Agreement concerning:

(a) the terms of this Agreement;
(b) any information that would be regarded as confidential by a reasonable business person relating to:
   (i) the business, affairs, clients, service providers, plans, intentions, or market opportunities of the disclosing Party; and
   (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party (or of any member of the group of companies to which the disclosing Party belongs); and
(c) any information developed by the Parties in the course of carrying out this Agreement

And the expression “Confidential Information” does not include any information that:

(a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party or its Representatives in breach of this clause); or

(b) was available to the receiving Party on a non-confidential basis prior to disclosure by the disclosing Party; or

(c) was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party’s knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party; or

(d) was known to the receiving Party before the information was disclosed to it by the disclosing Party; or

(e) the Parties agree in writing is not confidential or may be disclosed; or

(f) is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.

“Consents” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory,
regulatory, contractual or otherwise) necessary for the carrying out of the Development;

“Contractor” means the Building Contractor and any other contractor appointed by the [Developer] [Registered Provider] to carry out the Works or undertake works or perform services in respect of the Extra Care Purpose and the expression “Contractors” shall be construed accordingly;

“Council’s Representative” a person appointed by the Council to be the [Developer’s] [Registered Provider’s] first point of contact for all matters relating to the Agreement whose details shall be notified to the [Developer] [Registered Provider] upon the date of this Agreement or such other person(s) as notified to the [Developer] [Registered Provider] in writing;

“Data Protection Legislation” the DPA and the Privacy & Electronic Communications (EC Directive) Regulations 2003;

“DBS” means the Disclosure and Barring Service;

“Design Guide” means the Hampshire County Council Guide to Designing Extra Care Housing (as varied from time to time) a copy of which is included in Annexure 1;

[“Demolition Works” means the works of demolition and removal of all subsisting buildings structures and debris from the Site and all associated site clearance works];

“[Developer]
“[Registered Provider]’s Authorised Representative” means the [Developer] [Registered Provider]’s Development Director or such other person agreed by the Council to act as the [Developer] [Registered Provider]’s representative from time to time for the purposes of this Agreement.

“[Developer] [Registered Provider]’s Intentions” means the intentions of the [Developer] [Registered Provider] in respect of the Scheme as set out in Clause 2.3;

“Development” means the development of the Site in accordance with the Planning Permission and having regard to the Design Guide;

“Development Costs” means the costs incurred in the Development including but not limited to land purchase, materials, works and professional fees but excluding the costs of Demolition Works;

“Disposal of the Site” means any sale transfer lease or any other type of disposal of the Site or the Premises or any part thereof;

“DPA” means the Data Protection Act 1998;

“EIR” means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such statutory instrument;

“Eligible Older Persons” means people over the age of 55 years who have been identified and nominated by the
relevant housing authority in accordance with the Local Lettings Policy in force at the time;

“Extra Care Housing”  means a development that comprises of a group of self contained homes for rent or for sale specifically designed to meet the need of people over the age of 55 years with vulnerabilities by incorporating appropriate design features and enhanced communal facilities that support and enable independent living, and offer on site 24 hours/7 days a week care and support services;

“Extra Care Purpose”  means the purposes of providing an Extra Care Housing scheme as the Site consisting of [ ] units of Affordable Housing for use by Eligible Older Persons who require social care, health care, support and housing needs;

“EU Procurement Regime”  means all applicable United Kingdom and European procurement legislation and any implementing measures and any other Legislation in connection with the procurement of works, supplies or services;

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

“HSA”  means the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to
health and safety which may apply to staff and other persons;

“Information Commissioner” has the meaning set out in Section 6 of the DPA;

“Insolvency Event” means the occurrence of any of the following in relation to the [Developer] [Registered Provider]:

(a) it is unable or admits an inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

(b) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities);

(c) a moratorium is declared in respect of any indebtedness under Section 145 of the Housing and Regeneration Act 2008;

(d) any corporate action, legal proceedings or other procedure or step is taken in relation to:

(i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) other than a solvent liquidation or reorganisation on terms previously approved by the Council (such
approval not to be unreasonably withheld or delayed);

(ii) a composition, compromise, assignment, or arrangement with any of its creditors;

(iii) the appointment of a liquidator (other than in respect of a solvent liquidation on terms previously approved by the Council (such approval not to be unreasonably withheld or delayed), receiver, administrative receiver, administrator, compulsory manager or other similar officer;

(iv) enforcement of any Security over any assets of the [Developer] [Registered Provider]; or

(v) any analogous procedure or step is taken in any jurisdiction;

other than any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within ten (10) Business Days of commencement; or

(e) any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the [Developer] [Registered Provider] which has a Material Adverse Effect.

“Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or
get-up, rights in goodwill or to sue for passing off, rights in designs, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"Legislation" means:
(a) any Act of Parliament;
(b) any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;
(c) any exercise of the Royal Prerogative;
and
(d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972 in each case in the United Kingdom;

"Local Lettings Policy" means the policy for the nomination of Eligible Older Persons agreed by the Council and the relevant housing authorities (as varied from time to time) a copy of which is annexed at Annex [ ];

"Longstop Date" means [ ];

"Material Adverse Effect" means the effect of any event or circumstance which is reasonably likely to be materially adverse to the ability of the [Developer] [Registered Provider] to deliver
“Open Book” means the declaration of all price components including profit margins, central office overheads, site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and services with all and any books of accounts, correspondence, agreements, orders, invoices, receipts and other documents available for inspection;

“PaCT” means the Council’s Partnership in Care Team;

“Personal Data” has the meaning ascribed to it in the DPA;

“Phase” means a phase of the Development being Phase One Phase Two or Phase Three;

“Phase One” means the period during which the [Developer] [Registered Provider] obtains all Consents necessary for the lawful development of the Site for the Development as are then required, the Building Contract is entered into, possession of the Site is given to the Building Contractor and Start on Site Works have commenced;

“Phase Two” means the period during which the Works are carried out up to the stage of issue of the Certificate of Completion of Waterproofing Works pursuant to the Building Contract’s specification;

“Phase Three” means the period during which the Works are carried out from issue of the Certificate of Completion of Waterproofing Works on Site until the later of:
(i) issue of a Certificate of Practical Completion;

(ii) all relevant Building Control Regulations have been complied with;

(iii) all conditions attached to the Planning Permission required to be discharged prior to occupation and use of the Premises have been discharged;

(iv) all Consents have been obtained;

"Planning Permission" means the Planning Permission dated [ ] a copy of which is attached at Annexure 2 and for the purposes of this Agreement the term Planning Permission means the Planning Permission as originally granted on [ ] and not any amendment or variation to the Planning Permission unless agreed by the Council under this Agreement;

"Premises" means the completed Development at the Site;

"Programme" means the [Developer] [Registered Provider]'s programme for carrying out the Development as set out in Schedule 1;

"Prohibited Act" means offering giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward; for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this Agreement or any other agreement or any
contract with the Council; or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement or any contract with the Council; entering into this Agreement or any other contract with the Council where a commission has been paid or has been agreed to be paid by the [Developer] [Registered Provider] or on behalf of the [Developer] [Registered Provider], or to the [Developer] [Registered Provider]’s knowledge unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council; committing any offence: under the Prevention of Corruption Act 1916, the Bribery Act 2010; or under legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to the Agreement or any other contract with the Council; or defrauding or attempting to defraud or conspiring to defraud the Council;

“Public Sector Subsidy”

means all funding or subsidy in relation to the Scheme in money or money’s worth (including the Capital Grant) received or receivable by the [Developer] [Registered Provider] from public sector bodies including for this purpose funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery
Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998 and any further funding by the Council not provided under this Agreement;

“Registered Provider of Social Housing” means a registered provider of social housing within the meaning of Section 3 of the Housing and Regeneration Act 2008;

“Regulated Activity” Has the meaning as set out in Part 2 of Schedule 4 of the Safeguarding Vulnerable Groups Act 2006 as amended;

“Regulated Activity Provider” shall have the same meaning as set out in section 6 of the Vulnerable Groups Act 2006 as amended;

“Regulatory Body” means government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled by any Legislation to supervise, regulate, investigate or influence the matters dealt with in this Agreement or any other affairs of the Parties;

“Relevant Authority” means any governmental or other authority, court with relevant jurisdiction, local planning authority, landlord funder, adjoining landowner or any other person whose consent is required to undertake the Works necessary to the delivery of the Scheme or perform the Extra Care Purpose at the Premises;
“Representations and Warranties” means the representations made and the warranties given in Schedule 3.

“Request for Information” means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR;

“Security” means a mortgage charge pledge lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

“Scheme” means the scheme for the Development and use of the Premises for the Extra Care Purpose;

“Scheme Appraisal” the [Developer] [Registered Provider]’s financial appraisal dated [insert date] for the Scheme including the Development and operational costs and expenses, Public Sector Subsidy, other funding and investments, projected income, rate of return on capital and profits submitted to the Council by the [Developer] [Registered Provider];

“Scheme Details” means the plans elevations and other details relating to the Development submitted by the [Developer] [Registered Provider] to the Council;

“Site” means the land situated at [ ] as the same is for the purpose of identification only edged red on the plan attached at Annexure 3 and known as [ ]; together with all buildings or other
structures from time to time thereon and a reference to the Site is to the whole or any part of it as the circumstances may require;

“Shared Equity” means those Affordable Housing units where a share of the value of the interest is available for purchase on a leasehold basis and this share can be increased during the term of the leasehold interest whilst the Registered Provider owns the remaining share of the value of the interest on which rent can be charged;

“Shared Ownership” means those Affordable Housing units where a fixed share of the value of the interest is available for purchase on a leasehold basis whilst the Registered Provider owns the remaining share of the value of the interest on which rent can be charged;

“Socially Rented” means low cost rental accommodation as defined in Section 69 of the Housing and Regeneration Act 2008;

“Start on Site Date” means the date of which:

(a) the [Developer] [Registered Provider] and Building Contractor have entered into the Building Contract;

(b) the Building Contractor has taken possession of the Site; and the Start on Site Works have commenced.

“Start on Site Works” means:
(a) excavation for strip or trench foundations or for pad footings;

(b) digging out and preparation of ground for raft foundations;

(c) vibrofloatation, piling, boring for piles or pile driving; or

(d) drainage work specific to the buildings forming part of the Development;

“Term” means a period of ten (10) years from the date of this Agreement;

“Termination Event” has the meaning given to in Clause 22;

“VAT” means Value Added Tax as presently charged under the Value Added Tax Act 1994 or any tax of a similar nature;

“the Works” means all of the works (including design infrastructure works and all other works) necessary for carrying out the Development.

1.2 Interpretation

1.2.1 Words denoting any gender include all other genders.

1.2.2 The singular includes the plural and vice versa.

1.2.3 Any reference in this Agreement to any clause, sub-clause, paragraph, schedule, annexure or appendix is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, annexure or appendix to this Agreement.

1.2.4 Any reference to this Agreement or to any other document shall include (except where expressly stated otherwise) any variation, amendment or supplement to such document to the extent that such variation, amendment or supplement is not prohibited under the terms of this Agreement.
1.2.5 Any reference to any enactment, order, regulation or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation or instrument (including any European Commission Decision or European Union instrument) as amended, replaced, consolidated or re-enacted.

1.2.6 A reference to a person includes firms, partnerships or corporate bodies and their successors and permitted assignees or transferees.

1.2.7 Headings are for convenience of reference only.

1.2.8 The words includes or including are to be construed without limitation.

1.2.9 A paragraph in a Schedule or Appendix shall be construed as references to a paragraph in that particular Schedule or, as the case may be, Appendix.

1.2.10 In any case where the consent or approval of the Council is required or a notice is to be given by the Council, such consent or approval or notice shall only be validly given if it is in writing and signed by an officer of the Council.

1.2.11 An obligation to do anything includes an obligation to procure it is being done.

1.2.12 Any restriction includes an obligation not to permit infringement of the restriction.

1.2.13 The term Site includes each and every part of it.

1.2.14 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally.

1.2.15 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
2 THE DEVELOPMENT

2.1 The Council has in consideration of the agreements on the part of the [Developer] [Registered Provider] hereinafter contained agreed pursuant to its general power of competence under Section 1 of the Localism Act 2011 and all other enabling powers to make the Capital Grant to the [Developer] [Registered Provider] subject to and in accordance with the terms and conditions of this Agreement for the purposes of enabling the Scheme to be carried out.

2.2 The [Developer] [Registered Provider] agrees:

2.2.1 to expend the whole of the Capital Grant exclusively upon funding the Development Costs and

2.2.2 to perform and observe its obligations contained in this Agreement

2.3 The [Developer] [Registered Provider] confirms its intention to:

2.3.1 comply with any applicable requirements of the EU Procurement Regime in relation to the carrying out of the Development and the use of the Premises for the Extra Care Purpose;

2.3.2 carry out the Development in accordance with the Programme, the Scheme Appraisal and the Scheme Details;

2.3.3 following completion of the Development to use the Premises for the Extra Care Purpose and for no other purpose;

2.3.4 [ ] Affordable Housing Units within the Scheme shall be made available to Eligible Older Persons for Socially Rented accommodation; and

2.3.5 [ ] Affordable Housing Units within the Scheme shall be made available to Eligible Older Persons for Shared Ownership/Shared Equity.

2.4 The [Developer] [Registered Provider] confirms that the eligible rented accommodation within the Scheme will be let in accordance with the relevant Local Lettings Policy.
3 [DEVELOPER] [REGISTERED PROVIDER]’S OBLIGATIONS

3.1 The [Developer] [Registered Provider] agrees with the Council as follows:

3.1.1 To inform the Council in writing immediately once the Start on Site Date has occurred or if the Start on Site Date has occurred prior to the date of this Agreement to give written confirmation thereof to the Council immediately following the date of this Agreement;

3.1.2 To inform the Council in writing as soon as reasonably practicable of it becoming aware that [the Scheme Details or] any [other] details or information supplied to the Council in connection with the Development, the Scheme or this Agreement is [materially] deficient, misleading, inaccurate or incomplete;

3.1.3 To inform the Council in writing immediately of it becoming aware that the Scheme Appraisal is deficient, misleading, inaccurate, incomplete or if any projections or assumptions within it are no longer reasonable;

3.1.4 To inform the Council in writing immediately if it is unable to make the Representations and give the warranties set out in the Representations and Warranties;

3.1.5 To inform the Council in writing immediately of any breach of this Agreement; and

3.1.6 To inform the Council in writing immediately of any Disposal of the Site or proposed Disposal of the Site;

3.1.7 To inform the Council in writing immediately of the grant or proposal to grant any Security over all or part of the Site or the Premises;
3.1.8 To inform the Council in writing as soon as reasonably practicable of any change or variation to the Planning Permission or any of its conditions;

3.1.9 To inform the Council in writing as soon as reasonably practicable of any circumstance occurring which may:

(a) Impact on the [Developer] [Registered Provider]'s ability to procure delivery of the Scheme;

(b) Impact on the [Developer] [Registered Provider]'s ability to procure delivery of the Scheme within the Programme timescale;

(c) Change any aspect of the Development;

(d) Change any aspect of the Scheme Details;

(e) Change any aspect of the Scheme Appraisal; and

(f) Impact on the [Developer] [Registered Provider]'s ability to use the Premises for the Extra Care Purpose.

3.1.10 To inform the Council in writing immediately if it fails to comply with any applicable requirements of the EU Procurement Regime in relation to the carrying out of the Development and the use of the Premises for the Extra Care Purpose.

3.1.11 To inform the Council in writing immediately if the Premises fail to be or cease to be used for the Extra Care Purpose following the issue of the Certificate of Practical Completion.

3.1.12 To allow the Council and any person authorised by it to visit the Site and the Premises to view the same at all reasonable times subject to compliance with any HSA requirements.

3.2 In discharging its obligations under this Agreement it shall act at all times with the utmost good faith.
4 CAPITAL GRANT AND PAYMENT

4.1 The [Developer] [Registered Provider] may apply to the Council for instalments of the Capital Grant in accordance with the Payment Schedule at Schedule 2. Applications for payment must be in writing and must be signed by the [Developer] [Registered Provider]’s Authorised Representative.

4.2 In submitting an Application pursuant to clause 4.1 the [Developer] [Registered Provider] is deemed to represent and warrant to the Council the Representations and Warranties at clause 21.

4.3 Prior to making an Application for the first instalment of Capital Grant at the end of Phase One the [Developer] [Registered Provider] shall submit to the Council:

4.3.1 copies of all Consents capable of being obtained by the Start on Site Date; and

4.3.2 documentary evidence that the Start on Site Date has occurred.

4.4 Prior to making an Application for the second instalment of Capital Grant at the end of Phase Two the [Developer] [Registered Provider] shall submit to the Council a Certificate of Completion of Waterproofing Works.

4.5 Prior to making an Application for the third instalment of the Capital Grant at the end of Phase Three the [Developer] [Registered Provider] shall submit to the Council:

4.5.1 a Certificate of Practical Completion;

4.5.2 certificate from a Building Control Body confirming all relevant Building Control Regulations have been complied with;

4.5.3 written confirmation from the planning department of the Relevant Authority confirming the discharge of any conditions attached to the Planning Permission required to be discharged prior to occupation and use of the Premises; and

4.5.4 copies of all Consents (other than those submitted in accordance with clause 4.3.1 unless there has been a change to any
Consent previously submitted in which event a copy of the revised amended or subsequent Consent must also be submitted).

4.6 Subject to:

4.6.1 the Council being satisfied with the [Developer] [Registered Provider]’s Application for payment and that in respect of each Application for payment the relevant Phase has been completed; and

4.6.2 Clause 5.1 the Council shall pay the relevant instalment of Capital Grant to the [Developer] [Registered Provider] within thirty (30) Business Days of receipt of the satisfactory Application.

4.7 If the Council is not satisfied with the [Developer] [Registered Provider]’s Application for payment, it shall notify the [Developer] [Registered Provider] in writing as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of the Application for payment identifying the reason for its dissatisfaction. When the [Developer] [Registered Provider] has addressed the issues identified in the notification it shall resubmit or amend its Application accordingly in which case the provisions of this clause 4 (as applicable) will be reapplied to the [Developer] [Registered Provider]’s resubmitted or amended Application for payment.

4.8 The Council shall not be obliged to make any payment by way of Capital Grant if the Certificate of Practical Completion has not been issued by the Longstop Date or it considers (acting reasonably) that the Certificate of Practical Completion is unlikely to be issued by the Longstop Date.

5 CESSATION, SUSPENSION OR REPAYMENT OF CAPITAL GRANT

5.1 Notwithstanding any other terms of this Agreement and without prejudice to the Council’s other rights and remedies (a) the Council shall not be obliged to make any payment or any further payment of Capital Grant to the [Developer] [Registered Provider] and (b) the
Council may require repayment by the [Developer] [Registered Provider] of the full amount of Capital Grant paid to the [Developer] [Registered Provider] (or such other sum as provided and determined in accordance with clause 5.2) where:

5.1.1 the Scheme has not been delivered in accordance with the Consents; or

5.1.2 The Certificate of Practical Completion has not been issued by the Longstop Date; or

5.1.3 there has been a change to the Development or the Scheme unless the Council has agreed in accordance with clause 22 that such change shall not result in the cessation, suspension or repayment of Capital Grant; or

5.1.4 the Capital Grant has been paid to the [Developer] [Registered Provider] on the basis of a misrepresentation made by or on behalf of the [Developer] [Registered Provider]; or

5.1.5 a Prohibited Act has occurred; or

5.1.6 an Insolvency Event has occurred in relation to the [Developer] [Registered Provider]; or

5.1.7 The [Developer] [Registered Provider] has ceased to operate; or

5.1.8 The [Developer] [Registered Provider] has undergone a Change of Control unless the Council has confirmed its agreement to the Change of Control; or

5.1.9 The [Developer] [Registered Provider] has made a Disposal of the Site; or

5.1.10 A person having Security over the Site or the Premises or any other assets of the [Developer] [Registered Provider] has enforced or given notice of its intention to enforce such security; or

5.1.11 the [Developer] [Registered Provider]’s status as a Registered Provider of Social Housing is removed or withdrawn; or
5.1.12 The Premises fail to be or cease to be used for the Extra Care Purpose following the issue of the Certificate of Practical Completion; or

5.1.13 The [Developer] [Registered Provider] has failed to comply with any applicable requirements of the EU Procurement Regime in relation to the carrying out of the Development and the use of the Premises for the Extra Care Purpose; or

5.1.14 The Council has in accordance with clause 7 determined that the Capital Grant is to be reduced or repaid in its entirety; or

5.1.15 the [Developer] [Registered Provider] is in material breach of this Agreement and such breach is not capable of remedy or the [Developer] [Registered Provider] has not taken steps to remedy it to the Council’s satisfaction (acting reasonably); or

5.1.16 the Council becomes aware that the [Developer] [Registered Provider] will be unable to deliver or has failed to deliver or will otherwise not be delivering or has not delivered the Scheme in accordance with:

(a) the Scheme Appraisal as originally submitted to the Council; or

(b) the Scheme Details as originally submitted to the Council; or

(c) the [Developer] [Registered Provider]’s Intentions

unless the Council has agreed in accordance with clause 22 that such failure, change or variation shall not result in the cessation, suspension or repayment of Capital Grant.

5.2 Where the Council is entitled to require repayment of the Capital Grant in accordance with clause 5.1:

5.2.1 if the entitlement to require repayment arises under any of the circumstances listed in clauses 5.1.1 to 5.1.16 at any time between the date of payment by the Council to the Developer of the first instalment of Capital Grant and the date upon which all
the Affordable Housing Units have been first let then the Council may require repayment of the full amount of Capital Grant paid to the [Developer] [Registered Provider]; and

5.2.2 if the entitlement to require repayment arises under any of the circumstances listed in clauses 5.1.4, 5.1.5, 5.1.6, 5.1.7, 5.1.8, 5.1.9, 5.1.10, 5.1.11, 5.1.12, 5.1.14 and 5.1.15 at any time between the date upon which all the Affordable Housing Units have been first let and the expiry of the Term the Council may require repayment by the [Developer] [Registered Provider] of the Capital Grant on the basis of the following formula:

\[ \frac{A}{(B - C) \times D} = E \]

Where:

A = Capital Grant

B = 10 years expressed in months viz 120

C = the number of complete months from the date of this Agreement to the date upon which all the Affordable Housing Units are first let

D = the number of complete months from the cessation of use of all or any of the Affordable Housing Units within the Premises to the expiry of the Term

E = the sum payable to the Council

6 REPAYMENT OF GRANT

6.1 Without prejudice to any other term of this Agreement, the [Developer] [Registered Provider] agrees to pay and the Council reserves the right whether following termination of this Agreement or otherwise to recover from the [Developer] [Registered Provider]:

6.1.1 any Capital Grant which the Council requires to be repaid in accordance with clause 5.1 and

6.1.2 any Capital Grant which the Council has paid in error or is an overpayment of Capital Grant.

6.2 The [Developer] [Registered Provider] shall pay the sum payable in
accordance with clause 6.1 to the Council within ten (10) Business Days of demand together with interest at two per centum (2%) above the base lending rate of National Westminster Bank Plc or such higher rate as imposed by statute such interest to run from the date upon which the Capital Grant (or relevant part thereof) overpayment or payment in error was paid to the [Developer] [Registered Provider] until the date upon which the Council receives the repayment required from the [Developer] [Registered Provider] under this clause 6.

6.3 Notwithstanding any other term of this clause 6, where a payment has been made following an administrative error by the Council, the [Developer] [Registered Provider] shall not be liable for interest on the amount repayable under clause 6.2.

7 DUPLICATE FUNDING, RECEIPT OF ADDITIONAL INCOME AND COST SAVINGS

7.1 The [Developer] [Registered Provider] must inform the Council in writing immediately of:

7.1.1 any offers of Public Sector Subsidy (other than the Capital Grant) or funding or loans for the Scheme received from any other source at any time where this duplicates all or part of the funding provided by the Council for the Scheme;

7.1.2 additional income received for the Scheme (such as interest on the Capital Grant) at any time not identified to the Council prior to the date of this Agreement;

7.1.3 any cost savings identified for the Scheme or reduction in expenditure incurred in respect of the Scheme; and

7.1.4 any circumstance occurring which may indicate that the Council is making available more Capital Grant than is required to deliver the Scheme.

In these situations, the Council retains the right to require repayment of the whole or relevant proportion of Capital Grant that has received
duplicate funding or additional income or is not required to deliver the Scheme.

8 VAT

8.1 Except where expressly stated to the contrary in this Agreement:

8.1.1 the amount of any payment or the value of any supply is expressed exclusive of VAT properly chargeable on it;

8.1.2 where any payment for a taxable supply falls to be made pursuant to this Agreement VAT properly chargeable on it will be paid in addition by the recipient of the supply for which payment (if any) is consideration on the provision of a valid VAT invoice for it.

8.2 The Capital Grant does not represent consideration for a taxable supply to the [Developer][Registered Provider] and is therefore not subject to VAT. If HM Revenue and Customs rules that VAT is payable, then the amount of the Capital Grant payable by the Council shall be deemed to be exclusive of VAT.

8.3 The [Developer] [Registered Provider] will be required to confirm its VAT position when it submits its application for Capital Grant.

9 RECORDS AND INFORMATION

9.1 The [Developer] [Registered Provider] shall on an Open Book basis:

9.1.1 (at no additional cost to the Council) maintain a full record of particulars of all income received (including all funding and Public Sector Subsidy) and costs incurred in respect of the Scheme.

9.1.2 At all times when reasonably required to do so by the Council, provide a summary of any of the income and Development Costs referred to in clause 9.1.1 as the Council may reasonably require to enable it to monitor compliance by the [Developer] [Registered Provider] with the terms of this Agreement; and
9.1.3 At all times provide such access or facilities as the Council may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause 9.

9.2 Compliance with the above shall require the [Developer] [Registered Provider] to keep separate books of account (from those relating to any business, activity or operation carried on by the [Developer] [Registered Provider] and which do not directly relate to the Scheme) in accordance with good accountancy practice with respect to the Scheme showing in detail:

9.2.1 income (including Public Sector Subsidy and receipts);

9.2.2 administrative overheads where directly attributed or where apportioned on a pro rata basis;

9.2.3 payments made to Contractors;

9.2.4 capital and revenue expenditure;

9.2.5 VAT incurred on all items of expenditure where the [Developer] [Registered Provider] has received Capital Grant under this Agreement in respect of such VAT, including the rate of such VAT and full details of the recovery (or not) by the [Developer] [Registered Provider] of such VAT as input tax from HM Revenue & Customs or other competent authority; and

9.2.6 Such other item as the Council may reasonable require to conduct (itself or through a third party) costs audits for verification of income, cost expenditure or estimated expenditure, for the purpose of any of the provisions of this Agreement;

and the [Developer] [Registered Provider] shall have the books of account and records evidencing the items listed in this clause available for inspection by the Council and any person authorised by the Council upon reasonable notice, and shall submit a report of these to the Council as and when requested.

9.3 If requested by the Council the [Developer] [Registered Provider] will
supply the Council with:

9.3.1 copies of its accounts and annual report for the latest year at the commencement of this Agreement; and

9.3.2 annual accounts and reports produced by the [Developer] [Registered Provider] during the period of this Agreement;

9.4 In complying with clauses 9.1 and 9.2 above the [Developer] [Registered Provider] shall make such accounts and reports available for inspection by the any relevant authority that is entitled to inspect them and by the Council or its authorised representative upon reasonable notice.

9.5 The [Developer] [Registered Provider] shall meet all relevant statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns.

9.6 The [Developer] [Registered Provider] must have its accounts externally audited (or independently evaluated, where appropriate).

9.7 The Capital Grant must be shown in the [Developer] [Registered Provider]’s accounts as a restricted fund and not be included under general funds.

9.8 The provisions of this clause 9 shall apply from the date of this Agreement until the expiry of six (6) years from the end of the Term.

10 MONITORING AND REPORTING

10.1 The [Developer] [Registered Provider] shall closely monitor the delivery and success of the Scheme throughout the Term and adherence to the aims and objectives of the Scheme.

10.2 The [Developer] [Registered Provider] shall submit an annual financial and operational statement to the Council on its delivery of the Scheme during the Term in such formats as the Council may reasonably require. The Council shall provide the [Developer] [Registered Provider] with the statement within three months after the last day of the twelfth month following the date of issue of the Certificate of Practical Completion.
10.3 The [Developer] [Registered Provider] shall on request provide the Council with such further information, explanations and documents as the Council may reasonably require in order for it to establish that the Scheme is being delivered in accordance with this Agreement.

10.4 The [Developer] [Registered Provider] shall permit any person authorised by the Council such reasonable access to its employees, agents, premises, facilities and records for the purpose of discussing, monitoring and evaluating the [Developer] [Registered Provider]’s fulfillment of the provisions of this Agreement and shall, if so, required, provide appropriate oral or written explanations from them.

10.5 The [Developer] [Registered Provider] shall provide the Council with a final report on completion of the Term which shall confirm whether the Scheme has been successfully and properly undertaken.

11 STATE AID

11.1 The Council and the [Developer] [Registered Provider] agree that the Capital Grant is being made in accordance with the Commission Decision.

11.2 Notwithstanding recital E to this Agreement and the provisions of Clause 11.1 the Council shall incur no liability to the [Developer] [Registered Provider] if the Capital Grant is not made in accordance with the Commission Decision.

11.3 If the Council is required:

11.3.1 pursuant to the Commission’s Decision in relation to public sector compensation granted to certain undertakings entrusted with the operation of services of general economic interest to recover any amount of overcompensation (as described in the Commission’s Decision); or

11.3.2 under other Legislation to recover any amount of the Capital Grant
the [Developer] [Registered Provider] shall repay and the Council will be entitled to recover any such amount from the [Developer] [Registered Provider].

12 LIABILITIES AND INDEMNITIES

12.1 Neither Party to this Agreement limits its liability for:
12.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Contractors; or
12.1.2 fraud by it or its employees; or
12.1.3 breach of any obligation as to title implied by statute; or
12.1.4 any other act or omission, liability for which may not be limited under Legislation.

12.2 The [Developer] [Registered Provider] shall indemnify the Council against all liabilities, costs, expenses, damages and losses (including any direct or indirect consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) (each a “Claim”) suffered or incurred by the Council arising out of or in connection with:
12.2.1 any breach of the Representations and Warranties;
12.2.2 the [Developer] [Registered Provider]’s breach of this Agreement;
12.2.3 any claim made against the Council for actual or alleged infringement of a third party’s Intellectual Property Rights arising out of or in connection with this Agreement;
12.2.4 any claim made against the Council by a third party for death, personal injury, loss or damage of any time arising out of or in connection with this Agreement, the Scheme, the Site and the Premises and any activities carried out thereon to the extent that the default is attributable to the acts or omissions of the [Developer] [Registered Provider], its employees, agents or Contractors.

12.3 If any third party makes a Claim, or notifies an intention to make a
Claim, against the Council which may reasonably be considered likely to give rise to a liability under this indemnity (a “Relevant Claim”), the Council shall:

12.3.1 as soon as reasonably practicable, give written notice of the Relevant Claim to the [Developer] [Registered Provider], specifying the nature of the Relevant Claim in reasonable detail;

12.3.2 not make any admission of liability, agreement or compromise in relation to the Relevant Claim without the prior written consent of the [Developer] [Registered Provider], provided that the Council may settle the Relevant Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the [Developer] [Registered Provider], but without obtaining the [Developer] [Registered Provider]'s consent) if the Council reasonably believes that failure to settle the Relevant Claim would be prejudicial to it in any material respect;

12.3.3 subject to the [Developer] [Registered Provider] providing security to the Council to the Council's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the [Developer] [Registered Provider] may reasonably request to avoid, dispute, compromise or defend the Relevant Claim.

12.4 If a payment due from the [Developer] [Registered Provider] under this clause 12 is subject to tax (whether by way of direct assessment or withholding at its source), the Council shall be entitled to receive from the [Developer] [Registered Provider] such amounts as shall ensure that the net receipt, after tax, to the Council in respect of the payment is the same as it would have been were the payment not subject to tax.

12.5 Nothing in this clause shall restrict or limit the Council’s general obligation at law to mitigate a loss which it may incur as a result of a matter giving rise to a Claim.

12.6 The Council shall not be liable, except as provided in clause 12.1:

12.6.1 to any person for any matter arising in connection with the Works, the Development or the Scheme;

12.6.2 to the [Developer] [Registered Provider] for any loss or damage
arising directly or indirectly as the result of the [Developer] [Registered Provider] complying with the terms of this Agreement;

12.6.3 to the [Developer] [Registered Provider] for any losses or costs that arise from a failure by the Council to make the Capital Grant payments on any agreed date; and

12.6.4 to the [Developer] [Registered Provider] for any losses or costs that arise directly or indirectly as the result of the Council exercising its rights under clause 5.

13 INSURANCE

13.1 The [Developer] [Registered Provider] shall maintain a public liability insurance policy with a reputable insurance company providing cover of not less than ten million pounds (£10,000,000.00) for each and every claim, act or occurrence or series of claims, acts or occurrences, or such greater sum as the Council shall reasonably require.

13.2 The [Developer] [Registered Provider] shall maintain an employer’s liability insurance policy with a reputable insurance company providing cover of not less than ten million pounds (£10,000,000.00) for each and every claim, act or occurrence or series of claims, acts or occurrences, or such greater sum as the Council shall reasonably require.

13.3 The [Developer] [Registered Provider] shall insure or cause to be insured the Premises and the Building Works with a reputable insurance company for their full reinstatement value against all usual comprehensive risks.

13.4 The [Developer] [Registered Provider] must produce satisfactory evidence on request of the maintenance of the insurances required in this clause 12 to the Council at the commencement of this Agreement and thereafter on request.

13.5 The [Developer] [Registered Provider] shall ensure that from the date of this Agreement throughout the duration of the Term it informs the Council in writing within five (5) Business Days after it has become
aware of any significant loss or damage to the Building Works or the Premises (including any chattel or fixture forming part of the Premises where such loss or damage would have a Material Adverse Effect on the ability of the [Developer] [Registered Provider] to operate the Premises in accordance with this Agreement).

13.6 Following the occurrence of any damage to or destruction of the Building Works or the Premises:

13.6.1 the [Developer] [Registered Provider] shall use reasonable endeavours to obtain all Consents necessary to enable the Building Works to be reinstated or the Premises to be rebuilt and reinstated in accordance with the original plans, elevations and Scheme Details with any variations the Council agrees having regard to the Legislation affecting the Site and

13.6.2 after all necessary Consents have been obtained the [Developer] [Registered Provider] must apply the proceeds of the policy of insurance received for that purpose in reinstating the Building Works or rebuilding and reinstating the Premises as soon as may reasonably be practicable and to make up any deficiency in the proceeds out of its own resources and at no cost to the Council.

14 ASSIGNMENT

14.1 The [Developer] [Registered Provider] shall not be entitled to transfer or assign all or part of this Agreement.

14.2 The Council will be entitled to transfer or assign all or part of this Agreement.

15 EQUALITIES

15.1 The [Developer] [Registered Provider] shall not unlawfully discriminate within the meaning and scope of the Equalities Act 2010 or any other Legislation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment or in
exercise of the Extra Care Purpose or in the performance of their obligations under this Agreement.

15.2 The [Developer] [Registered Provider] shall take all reasonable steps to secure the observance of clause 15.1 by all servants, employees, agents or Contractors of the [Developer] [Registered Provider] employed in connection with the Scheme.

16 HEALTH AND SAFETY

16.1 The [Developer] [Registered Provider] shall at all times comply with the obligations, requirements and duties arising under the HSA and the CDM Regulations in connection with the Works and the Scheme.

16.2 The [Developer] [Registered Provider] shall at all times procure the compliance with all obligations, requirements and duties arising under the HSA by any and all Contractors and all other parties appointed in connection with the Works or allowed on the Site in connection with the Scheme.

16.3 The [Developer] [Registered Provider] shall maintain an accurate record of all health, safety and environmental incidents which occur on or in connection with the Scheme.

16.4 The [Developer] [Registered Provider] shall ensure that any information and data relevant to demonstrating its compliance with clause 16.1 above is made available to the Council on request.

16.5 The [Developer] [Registered Provider] shall notify the Council immediately in the event of the occurrence of any incident which arises out of or in connection with the Scheme where that incident causes any personal injury or damage to property that could give rise to personal injury.

16.6 The [Developer] [Registered Provider] shall inform the Council of any Health and Safety regulatory intervention that impacts on or relates to the delivery of the Scheme.

17 SAFEGUARDING OF VULNERABLE ADULTS

17.1 The Registered Provider shall assess throughout the Term whether or not any of the activities undertaken by it and its personnel constitute a
Regulated Activity;

17.2 If and when any activities undertaken by the Registered Provider or the
Registered Provider’s personnel in the provision of the Extra Care
Purpose do constitute a Regulated Activity then:

17.2.1 the Registered Provider shall comply with all statutory obligations
applicable to it as a Regulated Activity Provider with ultimate
responsibility for the management and control of the Regulated
Activity in the provision of the Extra Care Purpose and for the
purposes of the Safeguarding Vulnerable Groups Act 2006 and

17.2.2 The [Developer] [Registered Provider] shall require any of its
Contractors engaged in the provision of a Regulated Activity at
the Premises to comply with the provisions of clause 17.2(a).

18 CONFIDENTIAL INFORMATION

18.1 Each Party shall keep the other Party's Confidential Information
confidential and shall not:

18.1.1 use such Confidential Information except for the purpose of
exercising or performing its rights and obligations under this
Agreement ("Permitted Purpose"); or

18.1.2 disclose such Confidential Information in whole or in part to any
third party, except as expressly permitted by this clause 18.

18.2 A Party may disclose the other Party's Confidential Information to those
of its Representatives who need to know such Confidential Information
for the Permitted Purpose, provided that:

18.2.1 it informs such Representatives of the confidential nature of the
Confidential Information prior to disclosure; and

18.2.2 at all times, it is responsible for such Representatives’
compliance with the confidentiality obligations set out in this
clause 18.

18.3 A Party may disclose Confidential Information to the extent required by
law, by any governmental or other regulatory authority or by a court or
other authority of competent jurisdiction provided that, to the extent it is
legally permitted to do so, it gives the other Party as much notice of
such disclosure as possible.
18.4 The Council, in line with the Government’s ongoing drive to open up the activities of the public sector to greater scrutiny, has prepared its transparency agenda and the [Developer] [Registered Provider] hereby agrees that, notwithstanding anything set out in this clause 18 or elsewhere in this Agreement, the Council shall be entitled to publish this Agreement in whole or in part (including from time to time any agreed changes to the Agreement), in whatever form the Council may decide. The [Developer] [Registered Provider] further agrees that the Council may publish any payments made by the Council to the [Developer] [Registered Provider] under this Agreement.

18.5 On termination of this Agreement, each Party shall:

18.5.1 return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party’s Confidential Information;

18.5.2 erase all the other Party's Confidential Information from its computer systems (to the extent possible); and

18.5.3 certify in writing to the other Party that it has complied with the requirements of this clause, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.

18.6 The provisions of this clause 18 shall survive for a period of six (6) years from termination of this Agreement.

19 DATA PROTECTION

19.1 The [Developer] [Registered Provider] shall at all times comply with the DPA including, where appropriate maintaining a valid and up to date registration or notification under the DPA.

20 FREEDOM OF INFORMATION ACT

20.1 The [Developer] [Registered Provider] acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Council (at the [Developer] [Registered
Provider]'s expense) to enable the Council to comply with these information disclosure requirements.

20.2 The [Developer] [Registered Provider] shall and shall procure that its Contractors shall:

20.2.1 transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request for Information;

20.2.2 provide the Council with a copy of all information in its possession or power in the form that the Council requires within five (5) Business Days (or such other period as the Council may specify) of the Council requesting that information; and

20.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information.

20.3 The Council shall be responsible for determining at its absolute discretion whether any commercially sensitive information and/or any other information:

20.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;

20.3.2 is to be disclosed in response to a Request for Information.

20.4 In no event shall the [Developer] [Registered Provider] respond directly to a Request for Information, unless expressly authorised in writing to do so by the Council.

20.5 The [Developer] [Registered Provider] acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIR to disclose Information:

20.5.1 without consulting with the [Developer] [Registered Provider]; or

20.5.2 following consultation with the [Developer] [Registered Provider] and having taken its views into account.

provided always that where clause 20.5.1 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the [Developer] [Registered Provider]
advanced notice, or failing that, to draw the disclosure to the [Developer] [Registered Provider]'s attention after any such disclosure.

20.6 The [Developer] [Registered Provider] shall ensure that all information produced in the course of this Agreement or relating to this Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

20.7 The [Developer] [Registered Provider] acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 20.5.

21 REPRESENTATIONS AND WARRANTIES

21.1 Without prejudice to any other term of this Agreement, the [Developer] [Registered Provider]:

21.1.1 represents and warrants to the Council on the date hereof and on each day until and including the date upon which the [Developer] [Registered Provider] receives the last payment of Capital Grant payable under this Agreement in the terms of the Representations and Warranties; and

21.1.2 acknowledges and agrees that the Council is relying on such representations and warranties and that each of such warranties and representations shall be separate and independent and, save as expressly provided to the contrary, shall not be limited by reference to any of them or by any other provisions of this Agreement.

22 TERMINATION AND EXPIRY

22.1 The following circumstances shall constitute a Termination Event:

22.1.1 the [Developer] [Registered Provider] is unable to make the representations and give the warranties set out in Representations and Warranties (in any case in whole or in part); or

22.1.2 an Insolvency Event has occurred in relation to the [Developer]
[Registered Provider]; or
22.1.3 a Prohibited Act has been committed by or on behalf of the [Developer] [Registered Provider]; or
22.1.4 the [Developer] [Registered Provider] has ceased to operate; or
22.1.5 the [Developer] [Registered Provider] has undergone a Change of Control unless the Council has confirmed its agreement to the Change of Control; or
22.1.6 the [Developer] [Registered Provider]’s status as a Registered Provider is removed or withdrawn; or
22.1.7 there has been a Disposal of the Site by the [Developer] [Registered Provider]; or
22.1.8 the Premises fail to be or cease to be used for the Extra Care Purpose following the issue of the Certificate of Practical Completion; or
22.1.9 a breach of the obligations set out in clause 9; or
22.1.10 a breach of the obligations set out in clause 10; or
22.1.11 a breach of the obligations set out in clause 16; or
22.1.12 any other breach of this Agreement which has a Material Adverse Effect; or
22.1.13 the Council has determined not to make payment of the Capital Grant or has required repayment of the Capital Grant in accordance with clauses 5, 6 or 7; or
22.1.14 Failure to comply with EU Procurement Regime.

22.2 Where a Termination Event is:

22.2.1 an occurrence specified in clause 22.1.2, 22.1.3 22.1.4, 22.1.5, 22.1.6, 22.1.7, 22.1.9 or 22.1.13 the Council shall be entitled without any liability to the [Developer] [Registered Provider] to terminate the Agreement by notice in writing to the [Developer] [Registered Provider] with immediate effect.

22.2.2 An occurrence specified in clauses 22.1.1 (in circumstances
where the Council is not entitled to terminate the Agreement in accordance with clause 22.2.1), 22.1.8, 22.1.10, 22.1.11, 22.1.12 or 22.1.14 the Council may serve notice on the [Developer] [Registered Provider] requiring the Development to use its reasonable endeavours to remedy the breach and if within a period of thirty (30) Business Days following service of such notice the breach has not been remedied the Council shall be entitled without liability to the [Developer] [Registered Provider] to terminate this Agreement on giving to the [Developer] [Registered Provider] not less than twenty (20) Business Days’ notice in writing.

22.3 Upon the expiry or termination of this Agreement:

22.3.1 The provisions of clause 6 shall apply;

22.3.2 Subject to repayment of any Capital Grant due to the Council in accordance with clause 6 and to the [Developer] [Registered Provider] having no outstanding liabilities to the Council under the terms of this Agreement the Council will agree to the removal of the restriction registered on the registered title to the Site and the Premises in accordance with clause 24.1 and shall discharge any legal charge required in accordance with clause 24.2.

23 CHANGES TO SCHEME

23.1 The [Developer] [Registered Provider] must obtain in respect of any change to the Development, the Scheme, the Programme, the Scheme Appraisal, the Scheme Details, the Planning Permission or the [Developer] [Registered Provider]’s Intentions the prior written confirmation of the Council that such change shall not cause the suspension, cessation or repayment of Capital Grant.

23.2 The Council shall not unreasonably withhold confirmation under clause 23.1 to any changes to the Programme where such changes reflect extensions of time properly granted to the Building Contractor under the terms of the Building Contract and are not due to the act, omission or default of the [Developer] [Registered Provider] provided that the
estimated date for the issue of the Certificate of Practical Completion shall not be later that the Longstop Date.

24 SECURITY

24.1 The [Developer] [Registered Provider] agrees to enter the following restriction against the title to the Site:

“Until the [ ] 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 written consent signed on behalf of Hampshire County Council of The Castle Winchester, SO23 8UJ or by its Head of Legal Services”.

24.2 The [Developer] [Registered Provider] shall if the requested by the Council grant at its own expense grant to the Council a legal charge over the Site substantially in the form set out in [Schedule 4] which charge must be a first charge on the title to the Premises.

24.3 The [Developer] [Registered Provider] shall execute such further documents and provide such assistance as the Council may reasonably require in order to effect the registration of the restriction referred to in clause 24.1 and the legal charge referred to in clause 24.2 and the [Developer] [Registered Provider] shall make the necessary registrations at Companies House and/or the Land Registry and supply the Council with evidence of such registrations.

24.4 If the [Developer] [Registered Provider] is a charity and it gives a legal charge in accordance with clause 24.2 it shall comply with the provisions of section 38 of the Charities Act 1993 (as amended).

24.5 The [Developer] [Registered Provider] shall provide a solicitor’s certificate of title confirming good and marketable title in respect of the Site and the Premises in such form as the Council may require.

24.6 Following the issue of the Certificate of Practical Completion subject to:

24.6.1 the Capital Grant or any part of it not having become repayable
to the Council in accordance with clause 6; or
24.6.2 the Capital Grant or any part of it which has become repayable to the Council in accordance with clause 6 having been repaid
the Council will agree to the discharge of any legal charge required in accordance with clause 24.2.

25 DURATION OF THIS AGREEMENT
25.1 Except where otherwise specified this Agreement will take effect on the date of this Agreement and shall apply until the later of:
25.1.1 The expiry of the Term;
25.1.2 So long as any Capital Grant monies remain unspent by the [Developer] [Registered Provider];
25.1.3 So long as any payments due from the [Developer] [Registered Provider] in accordance with clause 6 remain outstanding; and
25.1.4 So long as any other terms of this Agreement remain unperformed.

26 RESOLUTION OF DISPUTES
26.1 Any question or difference or dispute arising in connection with the construction, meaning or operation of this Agreement or any matter arising out of or in connection with this Agreement, shall in the first instance be referred to officers nominated by the Parties for discussion and resolution. If the matter is not resolved within ten (10) Business Days of such referral, the matter shall be referred to the next level of the Council’s and the [Developer] [Registered Provider]’s management which shall be directors or other senior representatives of the Parties with authority to settle the dispute.
26.2 If the dispute is not resolved under clause 26.1 the Parties will attempt to settle it by mediation in accordance with the Centre for Effective
Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing ("ADR notice") to the other Party to the dispute requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than twenty five (25) Business Days after the date of the ADR notice.

26.3 No Party may commence any court proceedings or arbitration in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other Party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

26.4 If the unresolved matter is having a serious effect on the Scheme, the Parties shall use every reasonable endeavour to reduce the elapsed time in completing the process. Neither Party may initiate any legal action until the process has been completed, unless such Party has reasonable cause to do so to avoid damage to its business or to protect or preserve any right of action it may have.

27 ACKNOWLEDGEMENT AND PUBLICITY

27.1 It is a condition of the Capital Grant that the [Developer] [Registered Provider] publicises the award of the Capital Grant and Scheme and gives due reference to the Council’s investment. In this regard the [Developer] [Registered Provider] must:

27.1.1 not issue any press statements or otherwise publicise the Capital Grant until the Capital Grant is confirmed;

27.1.2 Acknowledge the Capital Grant in its annual report and accounts, including an acknowledgement of the Council as the source of the Capital Grant;

27.1.3 Not publish any material referring to the Scheme or the Council without the prior written agreement of the Council; and

27.1.4 Acknowledge the support of the Council in any materials that refer to the Scheme and in any written or spoken public
presentations about the Scheme. Such acknowledgements (where appropriate or as requested by the Council) shall include the Council’s name and logo (or any future name or logo adopted by the Council) using the templates provided by the Council from time to time. Details can be found on the website www.hants.gov.uk/logos.

27.2 The [Developer] [Registered Provider] shall display appropriate signage in a prominent position displaying the Council’s signage on the Premises.

27.3 In using the Council’s name and logo, the [Developer] [Registered Provider] shall comply with all reasonable branding guidelines issued by the Council from time to time.

27.4 The [Developer] [Registered Provider] agrees to participate in and cooperate with publicising activities relating to the Scheme that may be instigated and/or organised by the Council.

27.5 The Council may acknowledge the [Developer] [Registered Provider]’s involvement in the Scheme as appropriate without prior notice.

27.6 The [Developer] [Registered Provider] shall arrange an official opening ceremony for the Premises within a reasonable period after its completion, at which the Council may be represented. Details of the event shall be sent to [ ].

27.7 The [Developer] [Registered Provider] shall comply with all reasonable requests from the Council to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Council in its publicising activities relating to the Scheme and its Extra Care Housing strategy.

28 HUMAN RIGHTS ACT 1998

28.1 The [Developer] [Registered Provider] shall (and it shall use its reasonable endeavours to procure that its staff shall ) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the [Developer] [Registered Provider] were a public body (as defined in the Human Rights Act 1998).
28.2 The [Developer] [Registered Provider] shall undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

29 INTELLECTUAL PROPERTY

29.1 The Council and the [Developer] [Registered Provider] agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, know-how and any other Intellectual Property Rights whatsoever owned by either the Council or the [Developer] [Registered Provider] before the date of this Agreement or developed by either Party during the Term, shall remain the property of that Party.

29.2 Where the Council has provided the [Developer] [Registered Provider] with any of its Intellectual Property Rights for use in connection with the Scheme (including without limitation its name and logo), the [Developer] [Registered Provider] shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Council.

29.3 No Party shall infringe the other Party’s or any third party’s Intellectual Property Rights in connection with this Agreement.

30 EXCLUSION OF THIRD PARTY RIGHTS

30.1 A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999. The rights of the Parties to terminate rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a party to this Agreement.

31 VARIATION TO THE DEED
31.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by the Parties and executed as a deed.

32 THE COUNCIL’S STATUTORY FUNCTIONS

32.1 Nothing in this Agreement shall prejudice or affect the Council’s rights, powers, duties and obligations in relation to the exercise of its functions as a local authority.

33 MONETARY UNION CLAUSE

33.1 Should the United Kingdom enter into the European Monetary Union during the period of the Agreement, any additional costs, duties and responsibilities falling on the parties will be borne by the [Developer] [Registered Provider].

34 FORCE MAJEURE

34.1 For the purposes of this Agreement the expression “Force Majeure” shall mean any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or any industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected Party, its agents or employees.

34.2 Neither Party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of the Capital Grant whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform, or resume performance of, such
obligations hereunder for the duration of such Force Majeure event.

34.3 If either Party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other Party by the most expeditious method then available and shall inform the other Party of the period which it is estimated that such failure or delay shall continue.

34.4 Where any such failure or delay resulting from a Force Majeure event results in the Certificate of Practical Completion not being granted by the Longstop Date the Parties shall agree a revised Longstop Date.

34.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

35 FURTHER ASSURANCE

35.1 At any time upon the written request of the Council the [Developer] [Registered Provider]:

35.1.1 shall promptly execute and deliver or procure the execution and delivery of any and all such further instruments and documents as may be necessary for the purpose of obtaining for the Council the full benefit of this Agreement and of the rights and powers herein granted [and the [Developer] [Registered Provider] irrevocably appoints the Council as its attorney solely for that purpose].

35.1.2 Shall perform and use its reasonable endeavours to procure that any third party performs such acts as may be reasonably required for the purposes of giving full effect to this Agreement.

36 ENTIRE AGREEMENT

36.1 This Agreement together with the Schedules and Annexures (if any) constitute the entire agreement between the Parties and, subject always to clause 31 may only be varied or modified in writing by
agreement under deed executed by the Parties.

36.2 The [Developer] [Registered Provider] acknowledges that save as set out or referred to in this Agreement there are and have been no representations made by or on behalf of the Council of whatever nature on the faith of which they are entering into this Agreement.

37 NOTICE

37.1 Any notice or other communication required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each Party required to receive the notice or communication at its address as set out herein or as otherwise specified by the relevant Party by notice in writing to each other Party.

For the Council

Name:
Address:

For the [Developer] [Registered Provider]

Name:
Address:

37.2 Any notice or other communication shall be deemed to have been duly received:

37.2.1 if delivered personally, when left at the address referred to in this clause; or

37.2.2 if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or

37.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

37.3 A notice required to be given under this Agreement shall not be validly given if sent by e-mail or facsimile transmission.

37.4 The provisions of this clause 36 shall not apply to the service of any
proceedings or other documents in any legal action.

38 SEVERABILITY

38.1 If any provision of this Agreement is held invalid, unlawful or unenforceable to any extent, such provision shall to that extent be omitted from this Agreement and shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

39 WAIVER

39.1 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

39.2 The rights and remedies provided by this Agreement may be waived only in writing by the authorised representative of the relevant Party in a manner that expressly states that such waiver is intended for and shall only be operative with regard to, the specific circumstances referred to in the notice of waiver.

40 CUMULATIVE RIGHTS AND ENFORCEMENT

40.1 Any rights and remedies provided for in this Agreement in favour of the Council or the [Developer] [Registered Provider] are cumulative and in addition to any further rights or remedies which may otherwise be available to those Parties.

40.2 The Parties acknowledge that money damages alone may not properly compensate the Council for any breach by the [Developer] [Registered Provider] of its obligations under this Agreement and the Parties agree that in the event of the breach or threatened breach of any such obligation in addition to any other rights or remedies the Council may have in law, in equity or otherwise the Council shall be entitled to seek
injunctive or other equitable relief compelling specific performance of and other compliance with the terms of such obligations.

41 NO PARTNERSHIP OR AGENCY

41.1 Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the Parties, nor constitute any Party the agent of the another Party for any purpose. No Party shall have authority to act as agent for, or to bind, the other Party in any way.

41.2 Nothing in this Agreement shall be construed as creating the relationship of employer and employee between the Council and the [Developer] [Registered Provider]. Neither the [Developer] [Registered Provider] nor any of their employees shall at any time hold themselves out to be employees of the Council.

42 PROHIBITED ACT

42.1 The [Developer] [Registered Provider] shall not, and shall procure that all Contractors and all the [Developer] [Registered Provider]’s and Contractor’s personnel shall not, in connection with this Agreement commit a Prohibited Act; and

42.2 In the event of a Prohibited Act being committed the Council shall be entitled to terminate this Agreement and to recover from the [Developer] [Registered Provider] the amount of any loss resulting from such termination.

43 CO-OPERATION

43.1 Each Party undertakes to co-operate in good faith with the other to facilitate the proper performance of this Agreement. Without prejudice to the generality of the foregoing the [Developer] [Registered Provider] shall co-operate fully and in a timely manner with any reasonable request from time to time:
43.1.1 of any auditor (whether internal or external) of the Council; and/or
43.1.2 of the Council where the Council is required under any Legislation to provide any document relating to the Scheme to any person.

44 SURVIVAL OF THIS AGREEMENT

44.1 Insofar as any of the rights and powers of the Council provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.

44.2 Insofar as any of the obligations of the [Developer] [Registered Provider] provided for in this Agreement remain to be discharged after the termination or expiry of this Agreement the provisions of this Agreement shall survive and remain in full force and effect notwithstanding such termination or expiry.

44.3 Without limitation the provisions of clauses 1 (Definitions and Interpretation), 3 [Developer] [Registered Provider]’s Obligations), 5 (Cessation, Suspension or Repayment of Capital Grant), 6 (Repayment of Capital Grant), 7 (Duplicate Funding, Receipt of Additional Income and Cost Savings), 9 (Records and Information), 10 (Monitoring and Reporting), 11 (State Aid), 12 (Liabilities and Indemnities), 17 (Confidential Information), 18 (Data Protection), 19 (Freedom of Information), 20 (Warranties and Representations), 21 (Termination and Expiry), 25 (Resolution of Disputes), 26.2 – 26.7 (Acknowledgement and Publicity), 28 (Intellectual Property), this Clause 43, clause 45 (Governing Law and Jurisdiction), Schedule 3 (Representations and Warranties) and such other provisions of this Agreement as are necessary to give effect to such clauses are expressly agreed to survive the termination or expiry of this Agreement.
45 EXECUTION

45.1 This Agreement may be executed in any number of counterparts and each counterpart will when executed be an original of this Agreement and all counterparts together will constitute one instrument.

46 GOVERNING LAW AND JURISDICTION

46.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and subject to the provisions of clause 25 the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
This Agreement has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED AS A DEED by
Hampshire County Council
whose CORPORATE COMMON SEAL
was hereto affixed in the presence of:

Authorised Signatory: ______________________

Insert execution clause for [Developer]
[Registered Provider]

____________________________

___________________________
Schedule 1

Programme
[To be inserted]
Schedule 2

Payment Schedule

The Council shall pay the Capital Grant to the [Developer] [Registered Provider] in accordance with the payment schedule:

<table>
<thead>
<tr>
<th>Instalment</th>
<th>Amount £</th>
<th>Payment Trigger</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>£</td>
<td>Completion of Phase One</td>
</tr>
<tr>
<td>2</td>
<td>£</td>
<td>Completion of Phase Two</td>
</tr>
<tr>
<td>3</td>
<td>£</td>
<td>Completion of Phase Three</td>
</tr>
</tbody>
</table>
Schedule 3

Representations and Warranties

1. Powers, vires and consents

1.1 It is duly incorporated under the law of England and Wales and has the corporate power to own its assets and to carry on the business which it conducts or proposes to conduct;

1.2 it has the power to enter into and to exercise its rights and perform its obligations under this Agreement and has taken all necessary action to authorize the execution by it of and the performance by it of its obligations under this Agreement;

1.3 It is not subject and will not become subject to any other obligation, compliance with which will or is likely to, have a Material Adverse Effect.

1.4 Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms.

1.5 The execution, delivery and performance by it of this Agreement do not:

1.5.1 insofar as it is aware contravene any applicable law or directive or any judgment, order or decree of any court having jurisdiction over it;

1.5.2 conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party or any licence or other authorization to which it is subject or by which it or any of its property is bound; or

1.5.3 contravene or conflict with its Memorandum and Articles of Association or Rules (as applicable) from time to time.

1.6 All consents, required by it in connection with the execution, delivery, issue, validity, performance or enforceability of this Agreement have been obtained and have not been withdrawn.

1.7 So far as it is aware, it is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets which has or could have a Material Adverse Effect.

1.8 To the best of its knowledge, no claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or to
the best of its knowledge, pending or threatened against it or any of its assets which will or might have a Material Adverse Effect.

1.9 To the best of its knowledge, no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator or similar officer in relation to any of its assets or revenues and without limitation no Insolvent Event has occurred in relation to it.

1.10 It has not committed any Prohibited Act.

2. Scheme Deliverability

2.1 No person having any Security over the Site or the Premises or any other assets of the [Developer] [Registered Provider] has enforced or given notice of its intention to enforce such security.

2.2 It has obtained or will by expiry of Phase Three have obtained all Consents and to the extent that such Consents have been obtained they have not been withdrawn.

2.3 It is not aware, after due enquiry, of anything which materially adversely affects the successful completion of the Works or the carrying out and performance of the Scheme.

2.4 So far as it is aware no Termination Event has occurred and is continuing.

2.5 All information supplied by or on behalf of it to the Council or its employees in connection with the Scheme and the Capital Grant was at the time of submission and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects.

2.6 It has informed the Council of any material change that has occurred since the date of submission of the information referred to in paragraph 2.5 of which it is aware (or ought to be aware) having made all reasonable and proper enquiries which would render such information untrue, incomplete or inaccurate in any material respect including without limitation the provision or offer of any Public Sector Subsidy.

2.7 Its status as a Registered Provider has not been removed or withdrawn.

2.8 Its status or that of its Contractor as a provider of care services in connection
with the Extra Care Purpose has ceased to be registered for the Regulated Activity of providing personal care in respect of the [Scheme / Loss of registration of Regulated Activity]

2.9 It continues to operate.

3. State Aid
3.1 It is not aware of any reason why payment of the Capital Grant would infringe EU rules relating to state aid.

4. Application of Capital Grant
4.1 All Capital Grant is being and will be applied by it to the [Development Costs]
Schedule 4 – Form of Legal Charge
Annexure 1

Design Guide
Annexure 2

Planning Permission
Annexure 3

Site Plan