

Appendix 16
DEED OF COVENANT

DATED 201[]

- (1) Insert name of current owner of the Site [The Transferor]
- (2) [The Transferee]
- (3) The Mayor and Burgesses of the London Borough of Hammersmith and Fulham

DEED OF COVENANT

Relating to

[full address of the Property]

THIS DEED is made on

20[]

BETWEEN

- (1) [Insert details of the Site Owner here] (*the Transferor*) whose registered office is situated at [
- (2) [The Transferee] (*the Transferee*) of [address]; and
- (3) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF Hammersmith and Fulham (*the Council*) of Town Hall, King Street, London W6 9JU

1 Recitals

- 1.1 The Council is the local planning authority for the purposes of this Deed for the area within which the Property is situated and by whom the obligations in the Agreement are enforceable
- 1.2 The Transferor is the registered proprietor at HM Land Registry of the Property with title absolute under title number [**]
- 1.3 By a transfer of even date the Transferee is entitled to be registered at HM Land Registry with leasehold title absolute of the Property pursuant to an agreement for lease of the Property dated [] and made between the Transferor and the Transferee
- 1.4 The Transferor and the Transferee are required to enter into this Deed by the Council under the Agreement which imposes obligations as to the identity of potential owners and occupiers and limitations on the sale price of Discount Market Sale Units (as such units are defined in the Agreement)

2 Definitions

In this Deed, the following words shall have the following meanings:-

Agreement

means the Section 106 Agreement entered into by (1) EC Properties GP Limited and EC Properties Nominee Limited (2) The Mayor and Burgesses of the London Borough of Hammersmith & Fulham (3) The Royal Borough of Kensington and Chelsea (4) London Underground Limited (5) Transport for London dated [] 2013

Availability Notice

means a written notice from the Transferee served on the Council (marked for the attention of the Director of Community Services or such other officer as is nominated by the Council from time to time) indicating the Transferee's intention to dispose of the Property

Hammersmith and Fulham Home Buy

means the organisation that is responsible for all low cost home ownership products in the London Borough of Hammersmith & Fulham or any successor organisation or any other body or organisation the Council delegates authority to or nominates

Deed of Further Covenant

means the deed in the form attached at Schedule 1

Deed of Release

means a deed in the form attached as the Second Schedule to this deed

Determining Surveyor

means an independent person suitably qualified and jointly appointed by the Transferee and London Borough of Hammersmith & Fulham

Development

means the development of the Site permitted by the planning permission granted pursuant to the planning application allocated statutory registration no: 2011/02001/OUT

Disposal

means

- (a) any freehold transfer of the Property or
- (b) the grant or transfer of any Lease or Tenancy of the Property or any part of it for a term in excess of 21 years

and "Dispose" "Dispossee" and "Disposed" shall be construed accordingly

Equity Payment

[] *note: this will be the difference between the difference between the Open market Value and Relevant Discounted Sale Price set at the initial sale. Such sum is then fixed for subsequent resales*

H& F Home Buy Register

means a register compiled and managed by the Hammersmith & Fulham Home Buy listing those people who have expressed an interest in purchasing intermediate housing

Nominations List

means a written list to be provided by the Council which identifies those persons whom the Council consider to be eligible persons of suitable occupiers/purchasers of the Property

Nominations Procedure

means the procedure set out in the Appendix to this Deed of Covenant (or such replacement procedure as the Council may adopt)

Open Market Value

Means the price at which the sale of an interest in the property would have been completed unconditional for cash consideration on the date of valuation assuming:

- (a) a willing purchaser and a willing seller
- (b) That prior to the date of valuation there had been a reasonable period (having regard to the nature of the Property and the state of the market) for the proper marketing of the interest for the agreement of the price and terms and for the completion of the sale;
- (c) that the state of the market level of values and other circumstances were on any earlier assumed date of exchange of contracts the same as on the date of valuation;
- (d) that the seller will provide the purchaser with vacant possession upon completion of the transaction;
- (e) that both parties to the transaction had acted knowledgeably prudently and without compulsion; and
- (f) that no account is taken of any additional bid by a prospective purchaser with a special interest.

Property

means the property known as [full address of the unit] as shown edged red on the attached plan

Relevant Discounted Sale Price

means the Open Market Value of the Property at the date on which contracts are exchanged for the resale of the Property less the Equity Payment

Transferee

means [name of the purchaser of the unit] of [address] and their successors in title to the Property and where the context so admits the term "Transferee" shall include their mortgagee and their personal representatives

Transferor

means the Owner of the Property whose registered office is situated at [] and its successors in title

Working Day

means any day (other than a Saturday or Sunday or bank holiday) on which banks are usually open for business in England & Wales

3 Transferee's Covenants

Subject to clause 8 hereof unless the Council expressly agrees in writing to the contrary the Transferee for itself and its successor in title to the Property and each and every part thereof HEREBY COVENANTS with the Transferor and the Council as follows:-

- 3.1 The Transferee shall not sublet the Property
- 3.2 The Transferee shall not enter into a contract to Dispose of the Property unless the Transferee shall have first served an Availability Notice on the Council in respect of the Property
- 3.3 In the event that
 - 3.3.1 the Council requires the Transferee not to Dispose of the Property until it has entered into a Deed of Release and covenanted to pay the Equity Payment to the Council upon legal completion of that disposal PROVIDED ALWAYS that in the event that the Council has not responded in writing to an Availability Notice within 15 Working Days after receipt of the same then it shall be deemed not to require the Transferee to enter into a Deed of Release; and
 - 3.3.2 the Transferee executes a Deed of Release then the Council and the Transferor shall use reasonable endeavours to execute the Deed of Release within 15 Working Days after each of them receives the said Deed of Release and the Council and the Transferor will take all appropriate steps to remove the restriction referred to in Clause 4 below from the charges register of the Property
- 3.4 In the event that the Council does not require it to enter into a Deed of Release pursuant to Clause 3.3 of this Deed
 - 3.4.1 the Transferee shall not Dispose of the Property otherwise than in accordance with the provisions of the Agreement and the Nominations Procedure and the Council and the Transferee hereby agree to be mutually bound by the

provisions of clauses 5, 6, 7, and 8 as if the same had been incorporated into this Deed mutatis mutandis; and

3.4.2 the total consideration payable upon a Disposal of the Property by a Transferee to a Disposee shall not exceed a sum equivalent to 100% of the Open Market Value of the Property less the Equity Payment as defined in this Deed; and

3.4.3 the Transferee shall not Dispose of the Property without first procuring that (in the case of a purchaser or lessee) such Disposee enters into a Further Deed of Covenant in the form of deed contained in the First Schedule to this Deed

4 The Restriction

4.1 The Transferor and the Transferee and the Council hereby apply to the Chief Land Registrar for the following Restriction to be entered in the Register of the title to the Property:-

"No disposition of the registered estate (other than a charge or a disposal by the proprietor of any registered charge over the Property pursuant to its legal power of sale) by the proprietor of the registered estate is to be registered without a certificate signed by the Transferor or his conveyancer and the Council that the provisions of a Deed dated [] 2013 between the (1) the Transferor and (2) the Transferee; and (3) The Mayor and Burgesses of the London Borough of Hammersmith & Fulham have been complied with

4.2 The Council and the Transferor covenant to use reasonable endeavours to provide a signed certificate within 15 Working Days of being requested so to do

5 Release of the Transferee's covenants

5.1 In the event that the Transferee wishes to have the covenants in Clause 3 above released then:-

5.1.1 the Transferee may apply at any time to the Council in writing to make the Equity Payment for the Property; and

5.1.2 in the event that the Council accepts the application (which is a matter wholly for the Council's discretion):-

(a) the Transferee making the application shall make the Equity Payment to the Council; and

(b) the Council and the Transferor shall release in writing the Transferee and any subsequent disposees from the covenants at Clause 3 above and the Council and the Transferor will take all appropriate steps to remove the restriction referred to in Clause 4 above from the charges register of the Property

5.2 The Transferee hereby agrees to meet the reasonable costs of the Council and the Transferor in releasing the Transferee from the covenants in Clause 3 of this Deed (including valuation and marketing fees) but in the event that the release is at the Council's request then all parties shall bear their own costs

6 Satisfaction of the requirements under the Agreement

The Transferee is required to enter into this covenant by the Transferor and the Council in order to meet the requirements of paragraphs [22.13 and 22.15] of Schedule 5 of the Agreement

7 Severability

If any term, condition or provision contained in this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Deed

8 Mortgagees

The terms of this Deed of Covenant will apply to and bind the Property and any mortgagee of any interest in the Property save to the following extent:

8.1 in the event that the Transferee defaults on any mortgage taken out to assist the purchase of the Property and the mortgagee needs to exercise its power of sale to realise its security on the Property, the mortgagee shall be free to dispose of the Property at its Open Market Value and such that any Disposee in such circumstances shall take free from the provisions of this Deed provided always that:

8.1.1 in the event of any such disposal of the Property in such circumstances the Transferee shall be liable to pay the Equity Payment to the Council upon completion of such disposal;

8.1.2 the mortgagee shall pay from and account for the proceeds of sale of the Property in the following order of priority:

8.1.2.1 in settlement of the costs and expenses reasonably and properly incurred in connection with such sale;

- 8.1.2.2 in payment to the Council in or towards the discharge of the Transferee's liability to pay to the Council, an amount equal to a minimum of 50% of the Equity Payment (if such sale of the Property is completed within the first three years after the original loan was made by such mortgagee or the whole of the Equity Payment if the sale takes place more than three years after the original loan was made
- 8.1.2.3 in repayment of the original principal loan taken out by the Transferee with the mortgagee in order to purchase the Property and any accrued unpaid interest thereon;
- 8.1.2.4 (to the extent that the whole of the Equity Payment has not been paid to the Council under sub-clause 8.1.2.2) in payment of any remaining unpaid amount (up to the whole of the Equity Payment) to the Council in or towards the discharge of the Transferee's liability to pay the Equity Payment to the Council; and
- 8.1.2.5 any balance (after settlement of all the above sums in full) to the Transferee; and
- 8.1.2.6 any payment to be made to the Council in accordance with sub-clauses 8.1.2.2 and 8.1.2.4 above shall be paid no later than 21 days after the date of completion of such sale of the Property.

9 Notices

Any notice required to be served under this Deed shall be sufficiently served on the Council if sent by registered post or delivered by hand to Town Hall, King Street , Hammersmith, London W6 9JU marked for the attention of the Head of Community Services and on the Transferee if sent by registered post or left for him at the Property addressed to him such notices shall be deemed to have been served if sent by registered post on the third working day after sending and if delivered by hand on the day of delivery

THE FIRST SCHEDULE

Further Deed of Covenant

THIS DEED OF COVENANT is made the _____ day of 20[]

BETWEEN :-

- (1) [the disposee] of [address] or whose registered office is at [address] ("the Covenantor")
- (2) [insert details of site owner current at the time] of [address details] and The Mayor and Burgesses of the London Borough of Hammersmith and Fulham of Town Hall (together "the Covenantee")

NOW THIS DEED WITNESSES as follows:-

1 RECITALS

This deed is entered into pursuant to the obligations to do so contained in paragraphs [] of a section 106 deed dated [] and made between (1) EC Properties GP Limited and EC Properties Nominee Limited (2) The Mayor and Burgesses of the London Borough of Fulham (3) The Royal Borough of Kensington and Chelsea (4) London Underground (5) Transport for London

2 DEFINITIONS

For the purposes of this Deed of Covenant a Deed of Release shall mean a deed in the form attached as the Appendix to this Deed and Deed shall mean the Deed of Covenant to be entered in of the same date as this Further Deed of Covenant

3 COVENANTS

The Covenantor jointly and severally covenants with each of the named parties herein as Covenantee as a separate covenant to each of them (and enforceable as such) that the Covenantor will at all times after the date of this deed or until a Deed of Release is given by the Disposee (having the same meaning as in the Deed) will observe and perform the covenants and obligations contained in Clause 3 of the Deed as if the Covenantor had been original Covenantor under such Clause

This document has been executed as a deed and is delivered and takes effect at the date stated at the beginning of it.

THE COMMON SEAL of THE MAYOR)
BURGESSES OF THE LONDON)
BOROUGH OF HAMMERSMITH AND)
FULHAM was hereunto affixed to this)
deed in the presence of:)

Duly Authorised Signatory

Executed as a Deed by)
[The Covenantor])
acting by:)

Executed as a Deed by)
[THE COVENANTEE])
in the presence of:)

THE SECOND SCHEDULE

Deed of Release

Dated

201[]

THE MAYOR AND BURGESSES OF THE LONDON

BOROUGH OF HAMMERSMITH AND FULHAM

and

[OWNER OF THE SITE]

and

[THE TRANSFEREE]

THIS DEED is dated 200[]

PARTIES

- (1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAMMERSMITH & FULHAM of Town Hall, King Street, London W6 9.IU (*the Council*)
- (2) [Owner of the Site] (Company Registration Number) whose registered office is situated at the xx (*the Transferor*)
- (3) [THE TRANSFEREE] of [] (*the Transferee*)

AGREED TERMS

1 Interpretation

1.1 The definitions and rules of interpretation set out in this clause apply to this Deed.

"Covenants"

means the covenants contained in clause 3 of the Original Deed

"Equity Payment"

means [] % of Open Market Value

"Original Deed"

means the deed of covenant dated [] and made between (1) XXXXX Transferor (2) XXXXXX and (3) The Council

"Property"

means the property known as [full address of the unit] and comprised in title number [insert title number]

"Restriction"

means the restriction contained in clause 4 of the Original Deed

1.2 Except where a contrary intention appears, a reference to a clause or Schedule, is a reference to a clause or, or Schedule to, this Deed and a reference in a Schedule to a paragraph is to a paragraph of that Schedule.

1.3 Clause, schedule and paragraph headings do not affect the interpretation of this Deed.

1.4 Where the Council or the Transferor or the Transferee is for the time being two or more individuals the terms "Council" and "Transferor" and "Transferee" include the

plural number and obligations expressed or implied to be made by or with such a party are deemed to be made by such individuals jointly and severally.

1.5 Words importing one gender include all other genders and words importing the singular include the plural and vice versa.

1.6 A reference to a "person" includes an individual, corporate or unincorporated body.

2 Release

2.1 Where this Deed of Release is entered into pursuant to Clause 5.1 of the Original Deed then in consideration of the Equity Payment paid by the Transferee to the Council (receipt of which the Council acknowledges) the Council and the Transferor respectively release with full title guarantee the Property and each and every part of it from the Covenants to the intent that the Covenants are extinguished with effect from the date of this Deed

2.2 Where this Deed of Release is entered into pursuant to Clause 3.3 of the Original Deed the Council and the Transferor shall upon payment of the Equity Payment respectively release with full title guarantee the Property and each and every part of it from the Covenants to the intent that the Covenants are extinguished with effect from the date of this Deed

3 Cancellation of registrations

The Council and the Transferor agree to within thirty (30) days of the date of this Deed apply to the Land Registry for cancellation of Entry [] of the Charges Register of the register of title of the Property and removal of the Restriction from Entry [] of the Charges Register of the register of title of the Property.

4 [Consent of Mortgagee

The Mortgagee consents to the release of the Covenants and consents to the cancellation of the registrations referred to in clause 6.]

5 Continuing effect

5.1 Nothing in this Deed shall waive any breach by any party of its respective obligations contained in the Original Deed which may have occurred before the date of this Deed.

5.2 Except for the release contained in clause 2 the Original Deed shall remain in full force and effect.

6 **Contracts (Rights of Third Parties) Act 1999**

Any person who is not a party to this Deed may not enforce any of its terms under the Contract (Rights of Third Parties) Act 1999.

This document has been executed as a deed and is delivered and takes effect at the date stated at the beginning of it.

THE COMMON SEAL of **THE MAYOR**)
BURGESSES OF THE LONDON)
BOROUGH OF HAMMERSMITH AND)
FULHAM was hereunto affixed to this)
deed in the presence of:)

Duly Authorised Signatory

THE COMMON SEAL of)
)
)
was hereunto affixed to this)
deed in the presence of:)

Director/Secretary

Director/Secretary

Executed as a Deed by)
[THE TRANSFEREE])
in the presence of:)

Director / Secretary

Director / Secretary

Appendix

Appendix to Deed of Covenant - Nominations Procedure

The nominations procedure shall be as follows:

1. The Transferee serves on the Council an Availability Notice (as defined in the Deed of Covenant).
2. At the same time as (1), the Transferee shall provide the Council in writing with two viewing dates, one of which must be on a weekend.
3. Within 15 days of receipt of the Availability Notice the Council shall carry out a valuation of the Open Market Value of the Property
4. The Council shall provide a copy of the valuation to the Transferee/notice to the Transferee of the Open Market Value of the Property for the Transferees approval, such approval to be given to the Council in writing within [] Working Days.
5. If the Transferee disputes the Open Market Value of the Property as stated in a notice served pursuant to paragraph 3 it shall notify this to the Council in writing within [] Working Days in which case:
 - 5.1 the Owner and LBHF shall endeavour to agree the Open Market Value of the said unit within [] Working Days but if this does not happen then;
 - 5.2 a Determining Surveyor shall be appointed within 5 (five) Working Days after notification of such dispute and be required to provide his assessment of the Open Market Value of the said Property and both Parties shall (save in the case of manifest error) affect the Determining Surveyor's assessment of the Open Market Value as binding.
6. Within 5 Working Days of the last viewing arranged in accordance with the dates given in (2) above (or as otherwise agreed between the Parties), the Council shall provide to the Transferee its Nominations List.
7. Subject to (8), upon receipt of the Nominations List, the Transferee shall:
 - 7.1 offer to sell the Property to the Nominees names on the Nominations List in the order of priority as set out therein; and

7.2 use reasonable endeavours to sell the Property to Nominees named on the Nominations List in the order of priority as set out therein.

8. If an offer has been made by the Transferee to a Nominee identified in the Nominations List and has not been accepted by that Nominee within 3 Working Days, the Transferee shall repeat the process in (7) by offering the Property to the next Nominee who have priority as identified on the Nominations List and so on.
9. If after 8 weeks following receipt of the Availability Notice by the Council and following the marketing of the Property either.
 - (a) the Council does not nominate any Nominees; or
 - (b) the Transferee, having used reasonable endeavours to exchange contracts for sale with the Nominee has not been able to do so within a reasonable time period

the Transferee shall be free to sell the Property at the Relevant Discounted Sale Price to persons not identified on the Nominations List Provided Always such person falls within the LBHF Target Income Groups (as defined in the Agreement)