DATED 16 September 2016

(1) HOMES AND COMMUNITIES AGENCY

(2) TIDEBANK UK LIMITED

OVERAGE DEED
relating to property at Phase 1, Daedalus Park, The Solent Enterprise Zone, Lee-on-the Solent

Pinsent Masons

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THIS DEED is made on 16 September 2016

BETWEEN:-

(1) **HOMES AND COMMUNITIES AGENCY** having its principal place of business at Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH (the "**Agency**"); and

(2) **TIDEBANK UK LIMITED** (Company Number 07024441) whose registered office is at 49 North Shore Road, Hayling Island, Hampshire PO11 0HN (the "**Developer**").

BACKGROUND:-

(A) By a transfer dated the same date as this Deed, the Agency transferred the Land to the Developer.

(B) The Developer has agreed to pay additional consideration to the Agency on the terms of this Deed.

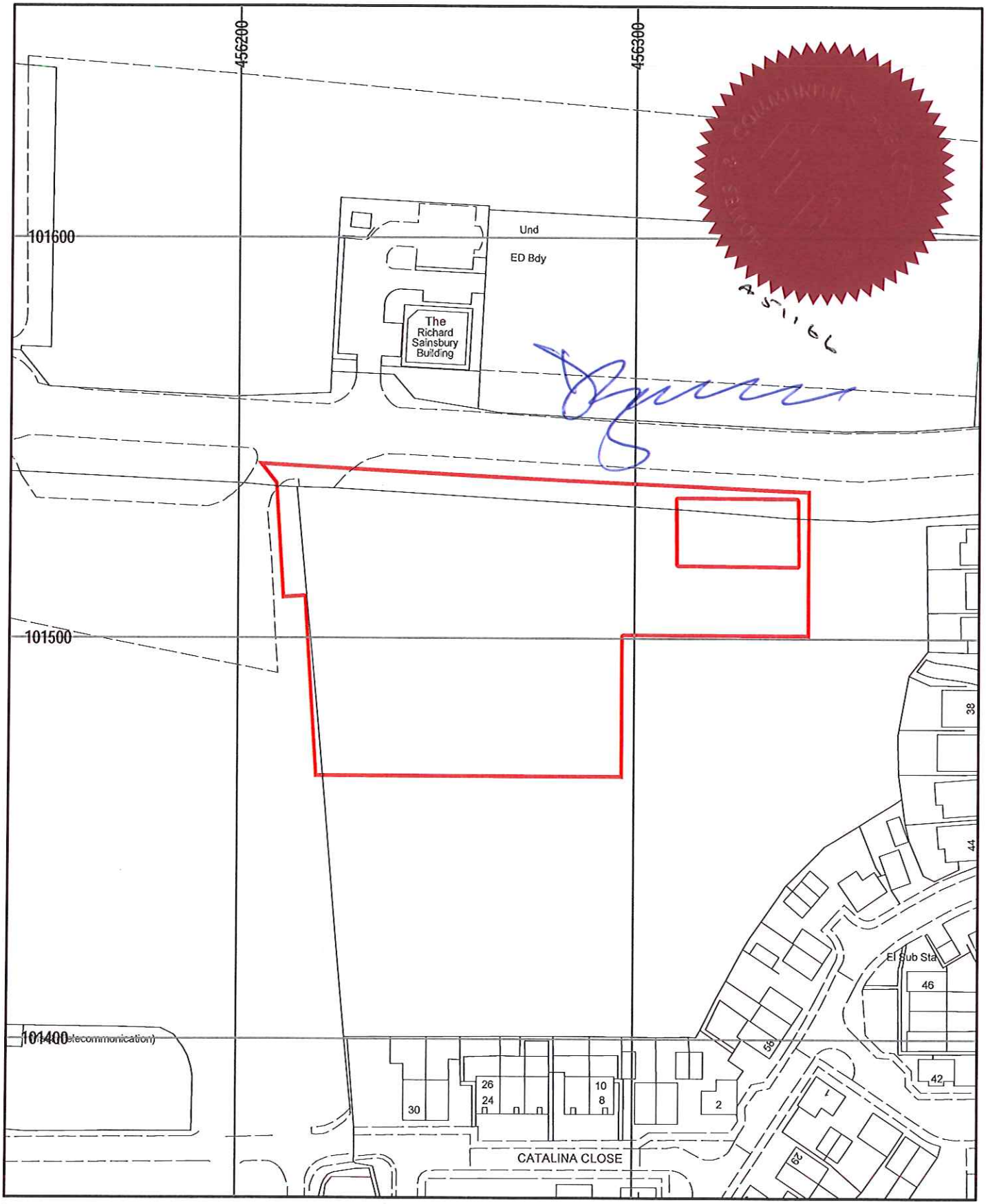
IT IS AGREED as follows:-

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this Deed:-

"Act of Circumvention"	means any transaction or series of transactions entered into by the Developer with any person or persons the principal purpose or purposes of which is or are to depress or reduce the level of any Change of Use Overage Payment as defined below, due under this Deed
"Base Value"	means:- (i) the value of the Land (on the part having the benefit of a planning permission pursuant to a Planning Application) on the day prior to the Change of Use Date as is regarded by the possibility of a Further Permission ("**First Base Value**"); (ii) in respect of each subsequent Change of Use Dates – the Open Market Value as at the previous Change of Use Date and "**relevant Base Value**" shall be construed accordingly
"Change of Use Date"	means a date that a Further Permission is obtained and "**relevant Change of Use Date**" shall be construed accordingly
"Change of Use Overage Payment"	means each and every payment calculated pursuant to Clause 2 below
"EIR"	means the Environmental Information Regulations 2004 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation
"EIR Exception"	means any applicable exemption to EIR
"Exempted Information"	means any Information that is designated as falling or potentially falling within the FDA Exemptions or the EIR Exceptions
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation

"**FOIA Exemption**"	means any applicable exemption to FOIA
"**Further Permission**"	means each and every planning permission for the use or development of the Land or any Unit within that Land or any part of it (together with other property where relevant) for any use other than for use within Use Classes B1, B2 and/or B8 of the Town and Country Planning (Use Classes) Order 1987 (as at the date of this Deed) and "**relevant Further Permission**" shall be construed accordingly
"**Information**"	means:- (a) in relation to FOIA has the meaning given under section 84 of the FOIA; and (b) in relation to EIR has the meaning given under the definition of "**environmental information**" in section 2 of EIR
"**Land**"	means the land at Daedalus Park and being part of the Solent Enterprise Zone Lee-on-the Solent being part of the land registered at the Land Registry under title numbers HP666937, HP668344 and HP667125 and being shown edged red on the Plan
"**Open Market Value**"	means in relation to a Change of Use Overage Payment the open market value of the whole of the Land or Unit (or part thereof) as the case may be as at the relevant Change of Use Date with the benefit of the relevant Further Permission and otherwise determined in accordance with the relevant practice statement of the RICS – Valuation Professional Standards of if no longer in existence or applicable at the time of valuation, such equivalent valuation guidance recommended by the Royal Institution of Chartered Surveyors
"**Payment Date**"	means 28 days after any Further Permission is implemented
"**Plan**"	means the plan annexed to this Deed
"**Planning Application**"	means an application for planning permission which will result (as the may be) in a change of use in respect of the Land or Unit from the then permitted use
"**Regional Director**"	means Kevin Bourner or such other person holding the position of Regional Director of the Agency as the Agency shall confirm to the Developer in writing from time to time
"**Relevant Period**"	means the period of 25 years from and including 16 February 2016
"**Request for Information**"	shall have the meaning set out in FOIA or any request for information under EIR which may relate to the Land, this Deed or any activities or business of the Landlord
"**Unit**"	means any buildings and structures erected on the Land including but not limited to industrial buildings for use within Use Classes B1, B2 and or B8 of the Use Classes Order 1987 and their immediate curtilage and any, parking spaces, or forecourts relating to such buildings/structures



TITLE

Land remaining Phase 1
Swann Hangar
Daedalus Waterfront
Fareham
Hampshire

0.7606 hectare

N

Homes & Communities Agency

Spatial and Market Intelligence
Tel: 0300 1234500
Email - spatial.intelligence@hca.gsi.gov.uk
www.homesandcommunities.co.uk

ITP NO.	PARCEL REF		
-	13519		
DRG NO.	DATE	SCALE	SIZE
MXP22745	15/08/2016	1:1,250	A4

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"VAT"	means value added tax charged under the Value Added Tax Act 1994 and shall include any interest, fine, penalty or surcharge in respect of value added tax charged
"Working Day"	means any day except Saturday, Sunday or any public holiday in England

1.2 In interpreting this Deed:-

1.2.1 Where a Party includes two or more persons, the covenants made by that Party are made by those persons jointly and severally.

1.2.2 Words implying one gender include all other genders; words implying the singular include the plural and vice versa and words implying persons include any person or entity capable of being a legal person.

1.2.3 A covenant by the Developer not to do any act or thing includes a covenant by the Developer not to permit or suffer such act or thing to be done.

1.2.4 A reference to any enactment includes all modifications, extensions, amendments and re-enactments of such statute in force for the time being and all instruments, orders, notices, regulations, directions, bye-laws, permissions and plans for the time being made, issued or given under them or deriving validity from them.

1.2.5 Provisions are to be construed independently and, if any provision is void or wholly or partly unenforceable, then that provision, to the extent that it is unenforceable, shall be deemed not to form part of this Deed, but the validity and enforceability of the remainder of that provision or of the Lease shall not be affected.

1.2.6 A reference to a numbered clause, schedule or paragraph is a reference to the relevant clause, schedule or paragraph in this Deed.

1.2.7 Headings to clauses, schedules and paragraphs are for convenience only and do not affect the meaning of this Deed.

1.2.8 The words including and in particular shall be construed as being by way of illustration or emphasis only and shall not limit the generality of the preceding words.

1.2.9 References to the completion of a transfer or other disposal mean the execution and delivery of the necessary documents, not their subsequent registration.

1.2.10 Any right or exception granted or excepted in favour of the Agency shall be deemed to be granted or excepted in addition in favour of any other person authorised by the Agency.

1.2.11 Where the consent or approval of the Agency is required such consent or approval must be in writing and be signed by the Regional Director (or such other officer as shall have been notified in writing by the Agency to the Developer as being the appropriate officer for such purposes).

2. CHANGE OF USE OVERAGE PAYMENT

2.1 Following each Change of Use Date, the Developer shall pay a Change of Use Overage Payment to the Agency on each relevant Payment Date.

2.2 Each Change of Use Overage Payment shall be 50% of the difference between the relevant Base Value and the Open Market Value immediately after the grant of the relevant Further Permission which has triggered the relevant Change of Use Date.

2.3 The Developer shall within 10 working days of obtaining a Further Permission send a copy of the Further Permission, the Developer's valuation of the Open Market Value and the Developer's calculation of the relevant Change of Use Overage Payment to the Agency for approval.

2.4 The Agency shall be entitled to obtain its own valuation of the Open Market Value as at the relevant Change of Use Date.

2.5 If any amount calculated under Clause 2.2 is a negative amount then the relevant Overage Payment shall be nil.

2.6 If the Developer does not pay a Change of Use Overage Payment on the relevant Payment Date then it shall pay such Change of Use Overage Payment with Interest for the period commencing on the relevant Payment Date and ending on the date payment is actually received by the Agency.

2.7 Any sums payable by the Developer to the Agency under this Clause 2 shall be exclusive of VAT which shall where it is chargeable be paid in addition to the relevant sum at the time when the sum is due to be paid.

3. DISPUTE RESOLUTION

3.1 In the event that any Change of Use Overage Payment has not been agreed or in the absence of agreement in respect of the relevant Open Market Value within 30 working days after the relevant Change of Use Date then either the Agency or the Developer may require that the determination of the same be referred to an expert to be agreed upon by the parties, or failing agreement, to an expert nominated by the President for the time being of the Royal Institution of Chartered Surveyors and the expert's determination of the calculation or valuation shall be conclusive and binding.

3.2 Any costs payable by reason of the provisions of this Clause 3 shall be borne initially in equal proportions by the Agency and the Developer and thereafter as may be adjusted by the award or awards pursuant to the provisions thereof.

4. FURTHER COVENANT BY THE DEVELOPER

The Developer covenants not to use or permit the use of all or any part of the Land as residential accommodation or as a retail food store.

5. RESTRICTIONS

5.1 The Developer shall not sell transfer charge or grant a lease or underlease for a term of more than 15 years or permit the assignment of any such lease or underlease of the Land or any part of it during the Relevant Period unless the following requirements are satisfied:-

5.1.1 the transferee/charge/lessee must first enter into a deed of covenant with the Agency (in the form set out in Schedule 1 or in such other form as the Agency may reasonably require) in which the transferee/charge/lessee covenants with the Agency:-

(a) to observe and perform the covenants and obligations on the part of the Developer contained in this Deed (including this Clause 5 relating to any Change of Use Overage Payment); and

(b) to apply to the Land Registry to enter a restriction in the registered title for the Unit in the terms set out below; and

5.1.2 where the transfer/charge/lease is made after a Payment Date has occurred, the relevant Change of Use Overage Payment must first be paid prior to completion of the transfer/charge.

5.2 The Developer will apply to the Land Registry for the entry of a restriction against its title to the Land in Land Registry Form RX1 as set out below:-

"Up to and including 15 February 2041 no disposition of the Registered Land (other than a charge) by the Proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by the conveyancer acting for the Homes and Communities Agency confirming that the provisions of Clause 5.1 of a Deed dated the 16 day of September 2016 have been complied with or confirming that they do not apply to the disposition".

5.3 Without prejudice to any antecedent breaches or claims, the Agency acknowledges that upon a transferee entering into the deed of covenant with the Agency in accordance with Clause 5.1 above in respect of a freehold transfer of all or part of the Land the Developer shall be released from its obligations under this Deed to the extent that they relate to the property transferred which arise after the date of such deed of covenant save for obligations relating to a Change of Use Date which occurred prior to the date of such deed of covenant.

6. MISCELLANEOUS

6.1 The Developer covenants with the Agency not to enter into any Act of Circumvention and not to assist cause or permit any other party to enter into such Act of Circumvention.

6.2 The Developer agrees that it shall act in the upmost good faith in relation to this Deed.

6.3 No partnership has been created or is intended to be created between the parties.

7. PLANNING OBLIGATIONS

7.1 The Developer shall as soon as practicable keep the Agency informed in writing of all development and any change of use proposed in relation to the Land or Unit (as the case may be).

7.2 Any Planning Application pursuant to which this Deed shall apply shall be submitted to the Agency for approval such approval not to be unreasonably withheld or delayed.

7.3 Other than a Planning Application made in accordance with this Deed no application for planning permission shall be made in respect of the Land by or on behalf of the Developer.

7.4 In complying with its obligations in this Clause 7 the Developer will:-

7.4.1 keep the Agency fully informed of the progress of all Planning Applications;

7.4.2 give reasonable prior notice to the Agency of any meetings with the local planning authority so as to allow them to attend at such meetings and to participate at them;

7.4.3 have due regard to the requirements of the Agency;

7.4.4 promptly following receipt supply the Agency with copies of any Planning Application and any Further Permission;

7.4.5 notify the Agency within 3 working days of the receipt of any planning decision in relation to a Planning Application (whether an original amended resubmitted or additional application); and

7.4.6 promptly notify the Agency of any proposal as to the amending resubmission of or, the making of any additional Planning Application.

8. AGENCY'S POWERS AND LIABILITY

Nothing herein contained or implied shall prejudice or affect the Agency's rights, powers, duties and obligations in pursuance of its objects as a statutory body and the rights, powers, duties and obligations of the Agency under all public or private statutes, byelaws, orders and regulations may be as fully and effectually exercised in relation to the Land as if the Agency had not executed this Deed.

9. **NOTICES**

9.1 Any notice, decision, direction, approval, authority, permission or consent to be given by the Agency under this Deed must be in writing and shall be valid and effectual (unless express provisions be made to the contrary) if signed by the director or such other officer or agent as the Agency may from time to time by resolution designate for the purpose.

9.2 Any notice, decision, direction, approval, authority, permission or consent to be given by a Party shall be sufficiently served, in the case of anything to be served on the Developer, by being left or sent by post to the Developer at its registered office for the time being and, in the case of anything to be served on the Agency, by being left or sent by prepaid registered post or by recorded delivery to the Agency at Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH and marked for the attention of the Regional Director with a copy to Homes and Communities Agency, Bridge House, 1 Walnut Tree Close, Guildford GU1 4GA marked for the attention of Jeremy Herring (or such other address or reference as may be notified in writing by the Agency to the Developer for such purpose).

10. **FREEDOM OF INFORMATION**

10.1 The Developer acknowledges that the Agency is subject to legal duties which may require the release of Information under FOIA and/or EIR and that the Agency may be under an obligation to provide Information subject to a Request for Information. The parties acknowledge that such Information may include matters relating to, arising out of or under this Deed and any information provided by the Developer prior thereto.

10.2 The Agency shall be responsible for determining in its absolute discretion whether:-

10.2.1 any Information is Exempted Information or remains Exempted Information; or

10.2.2 any Information is to be disclosed in response to a Request for Information

and in no event shall the Developer respond directly to a Request for Information to which the Agency is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the Agency, unless otherwise expressly authorised to do so by the Agency.

10.3 Subject to Clause 10.4 below the Developer acknowledges that the Agency may be obliged under FOIA or EIR to disclose Information:-

10.3.1 without consulting the Developer; or

10.3.2 following consultation with the Developer and having taken (or not taken, as the case may be) its views into account.

10.4 Without in any way limiting Clauses 10.2 and 10.3, in the event that the Agency receives a Request for Information the Agency will, where relevant, as soon as reasonably practicable notify the Developer.

10.5 The Developer will assist and co-operate with the Agency as requested by the Agency to enable the Agency to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its employees, agents and sub-contractors will) at their own cost:-

10.5.1 transfer any Request for Information received by the Developer to the Agency as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

10.5.2 provide all such assistance as may be required from time to time by the Agency and supply such data or information as may be requested by the Agency;

10.5.3 provide the Agency with any data or information in its possession or power in the form that the Agency requires within five Working Days (or such other period as the Agency may specify) of the Agency requesting that Information;

10.5.4 ensure that all Information produced in the course of this Deed or relating to this Deed is retained for disclosure; and

10.5.5 permit the Agency to inspect all records retained in accordance with Clause 10.5.4 as requested from time to time.

10.6 Nothing in this Deed will prevent the Agency from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and/or EIR in relation to any Exempted Information

11. **LAW**

This Deed is governed by and shall be construed in accordance with English law and subject to the exclusive jurisdiction of the English courts.

12. **COMMENCEMENT**

For the avoidance of doubt the provisions of this document (other than those contained in this clause) shall not have any effect until this document has been dated.

13. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

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

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

SCHEDULE 1

FORM OF DEED OF COVENANT

THIS DEED IS MADE ON [ ]

BY [ ] (No [ ]) of/whose registered office is at [ ] (the "**New Owner**")

IN FAVOUR OF:

HOMES AND COMMUNITIES AGENCY having its principal place of business at Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH (the "Covenantee").

BACKGROUND:-

(A) This Deed is entered into pursuant to the obligations contained in the Overage Deed.

(B) The New Owner has purchased the Property from the [Tidebank UK Limited] / [Outgoing Owner]

IT IS AGREED as follows:-

1. **DEFINITIONS**

1.1 In this Deed:-

"**Original Covenantor**"	means Tidebank UK Limited
["**Outgoing Owner**"[1]	means [insert details of seller of Property if not Tidebank]]
"**Overage Deed**"	means the overage deed dated [ ] and made between (1) the Covenantee and (2) the Original Covenantor
"**Property**"	means the freehold property at [ ] [registered at the Land Registry under Title Number [ ] transferred by the [Original Covenantor]/[Outgoing Owner] to the New Owner by a transfer dated the same date as this Deed]

2. **COVENANT**

The New Owner [jointly and severally] covenants with the Covenantee to:-

2.1 observe and perform the obligations and covenants on the part of the Original Covenantor contained in the Overage Deed so far as they relate to the Property as though references to the "Developer" were to the New Owner; and

2.2 apply to the Land Registry for the entry of a restriction against its title to the Property in Land Registry Form RX1 as set out below:-

"Up to and including [insert expiry of Relevant Period] no disposition of the Registered Land (other than a charge) by the Proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by the conveyancer acting for the Homes and Communities Agency confirming that the provisions of Clause 5.1 of a Deed dated the [ ] day of [ ] 201[ ] have been complied with or confirming that they do not apply to the disposition".

[1] Definition only required if seller of Property is not the Original Covenantor.

3. **GOVERNING LAW AND JURISDICTION**

3.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the laws of England and Wales.

3.2 Subject to Clause 3 of the Overage Deed, the parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Deed or its subject matter or formation (including non-contractual disputes or claims).

EXECUTED AS A DEED by the New Owner on the date which first appears in this Deed.

EXECUTED (but not delivered	)
until the date hereof)	)
AS A DEED by	)
[ ]	)
acting by a director and its secretary	)
or two directors	)

Director

Director/Secretary

THE COMMON SEAL of
HOMES AND COMMUNITIES AGENCY
was hereunto affixed in the presence of:-)
)
)



Authorised Signatory

Bayo Dosunmu
Assistant Chief Executive

EXECUTED (but not delivered until the date hereof)
AS A DEED by **TIDEBANK UK LIMITED** acting by

a director

)
)
)
)
)
)

Director

Witness (signature)

in the presence of:

Name of Witness

Address of Witness

Occupation of Witness