

SUSTIANING CHOBHAM: MEMBERS DEED

BACKGROUND

(A) The CIC was incorporated on [17 December 2018].

(B) The Member has agreed to enter into this Deed and the Articles for the purposes of regulating their relationship with the Company.

NOW IT IS AGREED as follows:

1. Definitions and Interpretation

In this Deed:

1.1 the following expressions have the following meanings:

Articles	the articles of association of the Company adopted on 17 December 2018 as appended at Schedule 2;
Board	the board of Directors as constituted from time to time;
Business Day	a day when banks are open for business in the City of London;
Director(s)	a director of the Company from time to time;
the Business	the business of the Company being the development, management and long term ownership of a sustainable housing development in Chobam (located in Surrey, England) which will provide the local community with long-term affordable and sustainable housing;

1.2 unless otherwise expressly defined in this Deed, any other words and phrases defined in the Companies Act (as in force at the date of this Deed and excluding for the avoidance of doubt any statutory modification of such Acts not in force on the date of this Deed) or in the Articles bear the same meanings in this Deed;

1.3 unless otherwise specified, the singular includes the plural, words importing any gender include every gender, and words importing persons include bodies corporate and unincorporated and vice versa;

1.4 reference to Clauses and Schedules are references to clauses and schedules of this Deed;

1.5 the Schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed, and any reference to this Deed includes the Schedules;

1.6 a reference to a **Party** shall include that Party's successors and permitted assigns;

1.7 unless the context requires otherwise, words and expressions defined in the Articles shall have the same meaning when used in this Deed; and

1.8 the clause headings shall not affect the interpretation of this Deed.

2. Member obligations

- 2.1 The Member covenants with the Company to adhere to the obligations set out in this Deed and the Articles.
- 2.2 The Member shall:
 - 2.2.1 under no circumstances participate in the removal of a Director (other than the Community Director (as defined in the Articles)) using the provisions of the Companies Act 2006;
 - 2.2.2 at all times act in good faith towards the Board and use their best efforts not to frustrate, interfere with or delay the activities of the Business;
 - 2.2.3 cooperate fully with the Board and all applicable stakeholders of the Company for the benefit of the Business;
 - 2.2.4 communicate with the Company in a constructive way; and
 - 2.2.5 report any issue or matter that is likely to have a material impact on the Business to the Community Director as soon as reasonably possible.

3. Representations and Warranties

The Company and the Member each represent and warrant to one another pursuant to the terms of Schedule 1.

4. Confidentiality

- 4.1 The Member undertakes to the Company that it will not at any time, other than for the sole benefit of the Company, use or divulge or communicate to any person other than to officers or employees of the Company whose province it is to know the same or on the instructions of the Board:
 - 4.1.1 any confidential information relating to the business, accounts, finances, contractual arrangements or intellectual property (whether owned or licensed by the Company) of the Company, or
 - 4.1.2 any other dealings, transactions, affairs or property of the Company which may come to their knowledge and which the Member would (acting reasonably) understand to be sensitive and/ or confidential,

and in each case the Member shall use all their reasonable endeavours to prevent the publication or disclosure of any such information concerning such matters.

5. The Articles

5.1 If, during the continuance of this Deed, there shall be any conflict between the provisions of this Deed and the provisions of the Articles then the provisions of this Deed shall prevail.

5.2 Nothing contained in this Deed shall be deemed to constitute an amendment of the Articles.

6. Disputes

Any dispute between the Parties relating to the terms of this Deed shall where appropriate (and unless resolved between the Parties in a period of one calendar month from the date the applicable dispute arose) be addressed firstly by escalation to the Board for further consideration and if no resolution is found to the reasonable satisfaction of all the Directors it shall be referred to the members of the Company.

7. Costs

The Company shall pay the costs and expenses incurred in relation to the preparation of this Deed. The Member shall pay their own costs in relation to any advice taken in relation to their personal interests.

8. Notices

All notices which are required to be given under this Deed shall be in writing and shall be sent to the address of the recipient set out in this Deed or such other address as the recipient may designate by notice given in accordance with the provisions of this Clause 8. Any such notice may be delivered personally or by first class prepaid letter or by email transmission and shall be deemed to have been served if by personal delivery when delivered, if by first class post on the second Business Day after posting and if by email transmission when despatched to the applicable email address.

9. Assignment

None of the Parties may assign its rights or obligations under it in whole or in part without the prior written consent of the other Parties.

10. Successors bound

This Deed shall be binding on and shall ensure for the benefit of the permitted successors and assigns and personal representatives (as the case may be) of each of the Parties to it.

11. Third Party Rights

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

12. Continuing agreement

All provisions of this Deed shall, so far as they are capable of being performed and observed, continue in full force and effect notwithstanding completion, except in respect of those matters then already performed.

13. Further assurance

The Parties shall, and shall use their respective reasonable endeavours to procure that any necessary third parties shall, do, execute and perform all such further deeds, documents, assurances, acts and things as any of the Parties may reasonably require by notice in writing to the other Parties to carry the provisions of this Deed and the Articles into full force and effect.

14. Entire agreement

This Deed, together with the documents referred to in it, supersedes any previous agreement between the Parties in relation to the matters dealt within it, represents the entire agreement between the Parties in relation to such matters and may not be varied except by a written instrument signed by all the Parties. Each of the Parties acknowledges that in entering into this Deed it has not relied on any representation or warranty save as expressly set out in this Deed or in any document referred to in it, except that nothing in this Clause 14 shall operate to limit or exclude any liability in respect of fraudulent or pre-contractual misrepresentation or fraudulent concealment.

15. Governing Law

This Deed is governed by and shall be construed in accordance with English law and the Parties irrevocably submit to the exclusive jurisdiction of the English courts in respect of any dispute or matter arising out of or connected with it.

16. No partnership

Nothing in this Deed shall constitute or be deemed to constitute a partnership between the member and the Company.

17. Duration

The provisions of this Deed shall remain in full force and effect for so long as the Member holds their membership in the Company.

18. Termination

The termination of this Deed however caused shall be without prejudice to any obligations or rights of any of the Parties which have accrued prior to such termination or cessation and shall not affect any provision of this Deed which is expressly or by implication provided to come into effect on or to continue in effect after such termination or cessation.

19. Waiver

19.1 No failure to exercise and no delay by any of the Parties in exercising any right, power or privilege under this Deed shall operate as a waiver of such right, power or privilege nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise of it or the exercise of any other right, power or privilege. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies otherwise provided by law.

19.2 Each of the Parties may release or compromise the liability of any of the other Parties under this Deed or grant to such party time or other indulgence without affecting the liability of any other of the Parties under this Deed.

20. Severability

Notwithstanding that the whole or any part of any provision of this Deed may prove to be illegal or unenforceable, the other provisions of this Deed and the remainder (if any) of the provision in question shall continue in full force and effect. In relation to any illegal or unenforceable part of this Deed, the Parties agree to amend such part in such manner as may be requested from time to time by any of the Parties provided that such proposed amendment is legal and enforceable and to the maximum extent possible carries out the original intent of the Parties in relation to that part.

21. Counterparts

This Deed may be executed in any number of counterparts and by each party on separate counterparts, each of which shall be an original and together shall be deemed one and the same agreement.

Schedule 1

Representations and Warranties

1. The Member and the Company each represents and warrants to the other as follows:
 - 1.1 that (where applicable) it is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation, has all requisite power and authority, and has taken all necessary corporate action, to enable it to enter into and perform this Deed and all agreements and documents entered into, or to be entered into, pursuant to the terms of this Deed;
 - 1.2 That it has not given or made any misleading statements to any other party in respect of it or its ability to perform its obligations under this Deed;
 - 1.3 That it is not subject to any litigation, mediation or arbitration proceedings in relation to its business;
 - 1.4 That it is not subject to any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body,
 - 1.5 That it is not insolvent or unable to pay its debts within the meaning of the Insolvency Act 1986 or any other applicable insolvency legislation; and
 - 1.6 That it has not stopped paying its debts as they fall due.
 - 1.7 That the execution and delivery of this Deed and the fulfilment and performance of and compliance with the terms of this Deed do not and will not conflict with, violate or result in a breach of the terms, provisions or conditions of any agreement, constitutional document or obligation to which it is bound, or any law, undertaking to, or judgment, order, injunction or decree of any court.

Schedule 2

[Articles](#)