

DATED 4<sup>th</sup> of July 2023

**ROTHER DISTRICT COUNCIL (1)**

and

**TRACY JANE BARKAWAY and RACHEL ANN HARRISON (2)**

and

**EAST SUSSEX COUNTY COUNCIL (3)**

**PLANNING OBLIGATION BY DEED OF AGREEMENT**

made pursuant to Section 106 of the Town and Country  
Planning Act 1990

relating to the development of Sunningdale, The Street,  
Sedlescombe, Battle, East Sussex TN33 0QB

Planning Application: RR/2019/2485/P

Legal Services Manager  
Wealden and Rother Shared Legal Service  
Wealden District Council  
Council Offices  
Vicarage Lane, Hailsham  
East Sussex  
BN27 2AX

This Deed of Agreement is dated 4<sup>th</sup> of July 2023

made between:

- (1) **ROTHER DISTRICT COUNCIL** of Town Hall, Bexhill-on-Sea, East Sussex TN39 3JX ("the Council")
- (2) **TRACY JANE BARKAWAY** of 14 Church View Hartley Wintney Hook Hampshire RG27 8LN and **RACHEL ANN HARRISON** of 20 Brooklands, Headcorn, Kent TN27 9QS ("the Owner")
- (3) **EAST SUSSEX COUNTY COUNCIL** of County Hall, St Anne's Crescent, Lewes, East Sussex BN7 1UE ("the County Council")

## INTRODUCTION

1. The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Land is situated.
2. The Owner by virtue of a Grant of Probate dated 8<sup>th</sup> May 2018 in respect of the demise of Terence Cecil Gregory who died on 2 August 2017 is entitled to enter into this Deed: Terence Cecil Gregory remains the registered freehold owner of the Land registered at the Land Registry under title number ESX353971.
3. The Owner has agreed to enter into this Deed in order to bind their respective interests in the land under section 106 of the 1990 Act.
4. The County Council is the Highway Authority for the purposes of the 1980 Act, a planning authority for the purposes of the 1990 Act and a local authority for the purposes of the 1972 Act for the area within which the Land is situated.
5. The Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained within this Deed.

6. The Council having regard to the provisions of the Rother District Core Strategy 2014 and the Development and Site Allocations Local Plan 2019 and all other material considerations have resolved that the Planning Permission should be granted for the Development subject to the prior completion of this Deed and to the conditions to which the Planning Permission is expressed to be subject.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**OPERATIVE PART**

**1 DEFINITIONS**

- 1.1 For the purposes of this Deed the following expressions shall have the following meanings:

<b>"1972 Act"</b>	the Local Government Act 1972
<b>"1980 Act"</b>	the Highways Act 1980
<b>"1990 Act"</b>	the Town and Country Planning Act 1990
<b>"Additional First Homes Contribution"</b>	<p>in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 4.8, 4.9 or 6 of Schedule 3, the lower of the following two amounts:</p> <p>(a) 30% of the proceeds of sale; and</p> <p>(b) the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First</p>

	<p>Homes Owner in connection with the sale of the First Home</p> <p>and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home.</p>
<b>"Affordable Housing"</b>	housing including Affordable Rented Housing and Shared Ownership and First Homes provided to specified eligible households whose needs are not met by the market.
<b>"Affordable Housing Financial Contribution"</b>	the sum calculated in accordance with the Affordable Housing Contribution Formula and payable to the Council in the event that 40% of the total number of Dwellings approved in a Reserved Matters Approval does not result in a whole number
<b>"Affordable Housing Contribution Formula"</b>	<p>the following formula:</p> <p>Affordable Housing Contribution = (A x B) x C where:</p> <p>A = the size in square metres of the typical two bed 4 person two-storey house (including built in storage areas) as set out in the NDSS</p> <p>B = (Index Linked) being the established available subsidy per square metre of any residential development in Rother on the Payment Date (or such other amount as the Council may reasonably determine)</p> <p>C = the fraction produced by applying the 40% Affordable Housing requirement to the actual number of Dwellings approved under a Reserved Matters Approval and taking away the whole number (for example if 8 Dwellings are approved with 40% as Affordable Housing Units which results</p>

	in a requirement of 3.2 Affordable Housing Units the Affordable Housing Contribution will be based on the fraction of 0.2) and for the avoidance of doubt such figure shall be ascertained and the Affordable Housing Contribution calculated as at the Payment Date.
<b>"Affordable Housing Tenure Mix "</b>	65% Affordable Rented Housing, 25% Shared Ownership Housing and 10% First Homes (unless otherwise agreed by the Council in writing)
<b>"Affordable Housing Units"</b>	40% of the total number of Dwellings within the Development which shall comprise Affordable Housing in the Affordable Housing Tenure Mix (rounded down to the nearest whole figure)
<b>"Affordable Housing Land"</b>	the land on which Affordable Housing Units are to be constructed including their garden areas and parking spaces
<b>"Affordable Rented Housing"</b>	<p>the affordable housing for rent that meets all of the following conditions:</p> <p>(a) the rent is set in accordance with the Government's rent policy for social rent or affordable rent, or is at least 20% below local market rents (including Service Charges where applicable);</p> <p>OR</p> <p>the rent is a guideline target rent determined through the national rent regime;</p> <p>(b) the landlord is a Registered Provider; and</p> <p>(c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision</p> <p>and which shall be offered for rent by a Registered Provider in accordance with the terms of this Deed</p>
<b>"Affordable Rented Units"</b>	all those Affordable Housing Units which are Affordable Rented Housing the exact number and location of which to be approved by the Council

	pursuant to the Affordable Housing Scheme and <b>"Affordable Rented Unit"</b> shall be construed accordingly
<b>"Affordable Housing Scheme"</b>	<p>a scheme (including plans, details and specifications) to be submitted to and approved by the Council which specifies in relation to the Development:</p> <p>(a) the number, type (including no. of bedrooms), tenure and locations on the Development of the Affordable Housing Units and the Affordable Housing Land which shall be determined having regard to the identified housing needs within Rother District and the Affordable Housing Tenure Mix;</p> <p>(b) the timing of the delivery and construction of the Affordable Housing Units within the Development and their phasing in relation to the Occupation of the Open Market Units;</p> <p>(c) details of the proposed Registered Provider and timing of the transfer of the Affordable Housing Units and associated Affordable Housing Land to the Registered Provider</p>
<b>"Application"</b>	the application for outline planning permission in respect of the Land submitted to the Council for the Development and allocated reference number RR/2019/2485/P
<b>"Armed Services Member"</b>	a member of the Royal Navy, the Royal Marines, the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service

<b>"Assistant Chief Executive, Governance Services"</b>	the Assistant Chief Executive, Governance Services at County Hall, St. Anne's Crescent, Lewes, East Sussex BN7 1UE for the time being of the County Council and shall include any successor of his and his duly authorised agents and representatives
<b>"BRMA"</b>	the Broad Rental Market Area set by the Valuation Office Agency on behalf of the Government
<b>"Charge"</b>	a mortgage, charge or other security or loan documentation granting a security interest in the Affordable Housing Land and/or the Affordable Housing Unit(s) (or any one or more of them) in favour of the Chargee
<b>"Chargee"</b>	any mortgagee or chargee of the Registered Provider of the Affordable Housing Land and/or the Affordable Housing Units (or any one or more of them) or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator
<b>"Choice Based Lettings System"</b>	the national system of allocating tenancies by allowing persons on the Council's housing waiting list to bid for properties in the Council's administrative area or any similar system as may replace it from time to time
<b>"Commencement of Development"</b>	<p>the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development pursuant to the Planning Permission begins other than (for the purposes of this Deed and for no other purpose) operations consisting of:</p> <ul style="list-style-type: none"> <li>• site clearance</li> <li>• demolition work</li> <li>• archaeological investigations</li> </ul>

	<ul style="list-style-type: none"> <li>• investigations for the purpose of assessing ground conditions</li> <li>• remedial work in respect of any contamination or other adverse ground conditions</li> <li>• diversion and laying of services</li> <li>• construction of a haul road within the site boundary</li> <li>• off-site highway works</li> <li>• erection of any means of enclosure</li> <li>• the temporary display of site notices or advertisements</li> </ul> <p>and <b>“Commence Development”</b> <b>“Commenced”</b> and <b>“Commencement Date”</b> shall be construed accordingly</p>
<b>“Compliance Certificate”</b>	a certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 4.2 of Schedule 3 applies the Eligibility Criteria (Local)
<b>“Default Notice”</b>	a notice in writing served on the Council by the Chargee under clause 9.2 of the Chargee’s intention to enforce its security over the relevant Affordable Housing Unit(s) and/or applicable Affordable Housing Land
<b>“Development”</b>	the Erection of 8no. additional dwelling houses and access arrangements with all other matters reserved (Existing dwelling retained) pursuant to the Planning Permission
<b>“Director”</b>	the Director of Communities, Economy and Transport for the time being of the County Council and shall include his duly authorised agents and representatives and any successor of his
<b>“Director of Place and Climate Change”</b>	the Director of Place and Climate Change for the time being of the County Council and shall include his duly authorised agents and representatives and



	any successor of his
<b>"Discount Market Price"</b>	in respect of a First Home a discount of 30% from Market Value of that First Home
<b>"Disposal"</b>	<p>a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:</p> <p>(c) a letting or sub-letting in accordance with paragraph 5 of Schedule 3;</p> <p>(d) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner;</p> <p>(c) an Exempt Disposal</p> <p>and "Disposed" and "Disposing" shall be construed accordingly</p>
<b>"Due Date"</b>	the date specified or the occurrence of the event triggering the making of a payment or the undertaking of an act or the cessation of an activity under the terms of this Deed
<b>"Dwelling"</b>	a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission and "Dwellings" shall be construed accordingly
<b>"Eligibility Criteria (Local)"</b>	<p>the criteria (if any) published by the Council at the date of the relevant Disposal of a First Home which if such are published are met in respect of a Disposal of a First Home if:</p> <p>(a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local) (if any); and</p>

	<p>(b) any or all of criteria (i) (ii) and (iii) below are met:</p> <p>i. the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or</p> <p>ii. the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member; and/or</p> <p>iii. the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker</p> <p>it being acknowledged that at the date of this Deed the Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Home</p>
<b>"Eligibility Criteria (National)"</b>	<p>the criteria which are met in respect of a purchase of a First Home if:</p> <p>(a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and</p> <p>(b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National)</p>
<b>"Exempt Disposal"</b>	<p>the Disposal of a First Home in one of the following circumstances:</p> <p>(a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner;</p> <p>(b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy</p>

	<p>following the death of the First Homes Owner;</p> <p>(c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order; or</p> <p>(d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 6 of Schedule 3 shall apply to such sale)</p> <p>provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 5 of Schedule 3</p>
<b>"First Home"</b>	a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap and <b>"First Homes"</b> shall be construed accordingly
<b>"First Homes Housing"</b>	any Dwelling which is delivered as First Homes
<b>"First Homes Owner"</b>	<p>the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:</p> <p>(a) the developer who carries out all of part of the Development; or</p> <p>(b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before</p>

	<p>that First Home is made available and is Disposed of for occupation as a First Home; or</p> <p>(c) the freehold a tenant or sub-tenant of a permitted letting under paragraph 5 of Schedule 3</p>
<b>"First Time Buyer"</b>	a first time buyer as defined by Paragraph of Schedule 6ZA to the Finance Act 2003
<b>'Head of Housing &amp; Community Services'</b>	the Council's Head of Housing & Community Services for the time being or such other person as may be appointed to carry out that function from time to time
<b>"Homes England"</b>	the housing land and regeneration agency for England which expression shall include any successor or replacement organisation to Homes England and as the context so requires the functions conferred on the body known as the Regulator of Social Housing and shall include any successor regulatory body
<b>"Income Cap (Local)"</b>	such local income cap as may be published from time to time by the Council and is in force at the time of the relevant Disposal of the First Home it being acknowledged that at the date of this Deed the Council has not set an Income Cap (Local)
<b>"Income Cap (National)"</b>	eighty thousand pounds (£80,000) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant Disposal of the First Home
<b>"Indexation"</b>	when a sum payable under this Deed is required to reflect changing costs the sum shall be increased or reduced in accordance with the provisions of clause 12 of this Deed and "Index Linked" shall be

	construed accordingly
<b>"Inflation Index"</b>	the UK House Price Index (HPI) published by the Office for National Statistics or such other index as the Council may reasonably nominate in the event that the UK House Price Index (HPI) shall no longer be published or its name or methodology be materially altered
<b>"Interest"</b>	interest at the rate of 4% above the base lending rate of the Bank of England for the time being
<b>"Key Worker"</b>	such categories of employment as may be designated and published by the Council from time to time as the "First Homes Key Worker criteria" and is in operation at the time of the relevant Disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant Disposal of the First Home shall be the "Key Worker" criteria which shall apply to that Disposal it being acknowledged that at the date of this Deed the Council has not designated any categories of employment as Key Worker
<b>"Land"</b>	the land over which the obligations in this Deed are enforceable shown edged red on the Site Location Plan
<b>"Local Connection Criteria"</b>	such local connection criteria as may be designated and published by the Council from time to time as its "First Homes Local Connection Criteria" and which is in operation at the time of the relevant Disposal of the First Home and for the avoidance of doubt any such criteria or replacement criteria in operation at the time of the relevant Disposal of the First Home shall be the "Local Connection Criteria" which shall apply to that Disposal it being acknowledged that at the date of this Deed the Council has not designated any criteria as Local Connection Criteria

<b>"Local Housing Allowance"</b>	the means tested benefit administered by the Council and paid to people who rent privately, with the eligible rent fixed for a household of a given size within the administrative area of the Council or such other similar allowance as may be substituted therefore
<b>"Local Market Values"</b>	a similar property values in adjoining parishes within Rother District calculated by reference to the Red Book or as otherwise agreed between the parties
<b>"Long Lease"</b>	a lease of 125 years from the date of its grant at a peppercorn ground rent and with no unusual or otherwise unduly onerous or burdensome covenants on the lessees, such lease to be in a form approved by Homes England
<b>"Market Value"</b>	the open market value as assessed by a Valuer of Dwelling as confirmed to the Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation
<b>"Monitoring fee"</b>	the sum of £500.00 (FIVE HUNDRED POUNDS) towards the Council's costs of administration and monitoring in relation to this Deed
<b>"Mortgagee"</b>	any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home
<b>"NDSS"</b>	the technical housing standards – nationally described space standard published by the Department of Communities and Local Government

	in March 2015 and includes any amendment or replacement thereof and if withdrawn without replacement refers to such space standards as the Council may itself adopt and apply for the purposes hereof
<b>"Nomination Agreement"</b>	a nomination agreement which is substantially in the form set out in Schedule 5 together with any amendments as may be agreed between the parties thereto
<b>"Occupy, Occupation" and "Occupied"</b>	the occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
<b>"Other Affordable Routes to Home Ownership"</b>	the affordable housing within the definition set out at Annex 2 of the National Planning Policy Framework February 2019 (or replacement document) as agreed by the Council in writing
<b>"Off-Site Highway Works"</b>	the highway works set out in Schedule 4
<b>"Open Market Dwellings"</b>	all of the Dwellings other than the Affordable Housing Units
<b>"Owner"</b>	the Owner jointly and severally and <b>"Owners"</b> shall be construed accordingly
<b>"Part M4 (2)"</b>	Part M4(2) Category 2: Accessible and Adaptable Dwellings of Schedule 1 to the Building Regulations 2010 as supported by "Approved Document M: Access to and use of buildings, volume 1: Dwellings" (2015 edition incorporating 2016

	amendments) or such approved document may be amended updated or replaced from time to time or such other equivalent standard as approved by the Council
<b>"Part M4 (3)(2)(b)"</b>	Part M4(3)(2)(b) Category 3: Wheelchair Accessible Dwellings of Schedule 1 to the Building Regulations 2010 as supported by "Approved Document M: Access to and use of buildings, volume 1: Dwellings" (2015 edition incorporating 2016 amendments) or such approved document may be amended updated or replaced from time to time or such other equivalent standard as approved by the Council
<b>"Planning Permission"</b>	the full planning permission subject to conditions to be granted by the Council pursuant to the Application and shall include any planning permission granted or obtained in respect of the Planning Permission pursuant to an application relating to the Planning Permission under section 73 of the 1990 Act unless the Council advises the Owner that the Council requires fresh planning obligations to be entered into in relation to such planning permission
<b>"Practical Completion"</b>	the stage reached when the construction of a First Home is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied
<b>"Price Cap"</b>	the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed two hundred and fifty thousand pounds (£250,000.00) or such other amount as may be published from time to time by the Secretary of State and is in force at the time of the relevant Disposal of the First Home



<p><b>“Protected Occupier”</b></p>	<p>in respect of an Affordable Housing Unit means a person who:</p> <p>(a) has exercised the right to acquire pursuant to section 180 of the Housing and Regeneration Act 2008 and governed by the Housing Act 1985 and modified by the Housing (Right to Acquire) Regulations 1997 or any equivalent statutory provision for the time being in force in respect of a particular Affordable Rented Unit</p> <p>has exercised any statutory right to buy or statutory preserved right to buy pursuant to the Housing Act 1985 or any equivalent statutory provision for the time being in force in respect of a particular Affordable Rented Unit</p>
<p><b>“Qualifying Person With a Local Connection”</b></p>	<p>in respect of Affordable Rented Units means a person who is in need of Affordable Housing who is not easily able to compete in the local housing market who has a “Local Connection” which shall mean (in no particular order) one or more of the following:</p> <p>(a) has resided in the District of Rother for a period of at least 3 out of the preceding 5 years as their only or principal home (not in a caravan that is sited on an unlicensed site, or a non-permanent or holiday site)</p> <p>(b) has close relatives who reside in the District of Rother as their only or principal home and have done so for at least the previous 5 years (close relatives being parents, adult children or brothers or sisters, including corresponding step relationships (and grandparents, grandchildren, aunts or uncles and non adult children will only be</p>

	<p>considered as a local connection in certain circumstances as agreed by the Council;</p> <p>(c) has (or any family member included in the application has) permanent paid employment (or a confirmed offer of such) in the District of Rother</p> <p>(d) applicants who the Council has accepted as homeless or threatened with homelessness under Part VII of the Housing Act 1996</p> <p>and the above is subject to any changes made to the Council's adopted allocations policy</p>
<b>"Red Book"</b>	the RICS Valuation – Global Standards (November 2021) or such other document amending, consolidating or replacing it
<b>"Registered Provider"</b>	any registered provider from the list set out in Schedule 6 or any other provider which is registered with Homes England pursuant to the Housing and Regeneration Act 2008 and has not been removed from the register and which is first approved in writing by the Council (such approval not to be unreasonably withheld or delayed)
<b>"Sale"</b>	the transfer of a freehold or leasehold interest of a Dwelling and "Sell" and "Sold" shall be construed accordingly
<b>"Section 278 Agreement"</b>	an agreement substantially in the form of the County Council's standard draft with such amendments as may be agreed in writing with the County Council and made under section 278 of the 1980 Act to secure the carrying out of the Off-Site Highway Works
<b>"SDLT"</b>	the Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect

<b>"Service Charge"</b>	a charge in addition to any rent payable in respect of an Affordable Housing Unit which covers repairs, maintenance and cleaning for communal areas, the structure of the building, buildings insurance and the landlord's administration or management charges and the term <b>"Service Charges"</b> shall be construed accordingly
<b>"Shared Ownership Housing"</b>	a type of Affordable Housing which allows a purchaser to buy a share of a shared ownership unit under a long lease in a form prescribed by Homes England to ensure that leases are mortgageable and which contains provisions whereby there is a limit on the initial equity share to be sold off and a restricted rent on the balance of the equity unsold as at the date of the grant of the long lease
<b>"Shared Ownership Units"</b>	all those Affordable Housing Units together with ancillary land, parking spaces and private amenity space which are Shared Ownership Housing and <b>"Shared Ownership Unit"</b> shall be construed accordingly
<b>"Site Location Plan"</b>	the plan attached to this Deed at Appendix 1
<b>"Valuer"</b>	a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity
<b>"Working Days"</b>	any day other than a Saturday Sunday a bank holiday or a public holiday in England

## 2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and the County Council the successors to their statutory function.
- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 Words in the singular include the plural and words in the plural include the singular.

### **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act section 111 of the 1972 Act and section 1 of the Localism Act 2011 and all other powers so enabling the parties to enter into this Deed.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner, under this Deed create planning obligations pursuant to section 106 of the 1990 Act and are enforceable by the Council as local planning authority for the area within which the Land is situated against the Owner.
- 3.3 The obligations in this Deed comply with regulation 122 of the Community Infrastructure Levy Regulations 2010.

#### **4        CONDITIONALITY**

This Deed shall come into effect immediately upon completion of this Deed save for clause 5 (Covenants) which is conditional upon the grant of the Planning Permission **SAVE THAT** there is no requirement to comply with any obligation which is not a pre-Commencement obligation until after Commencement of Development.

#### **5        COVENANTS**

The Owner hereby covenants with the Council and the County Council to observe the covenants, restrictions and obligations contained in this Deed including those contained in the schedules.

#### **6        MISCELLANEOUS**

- 6.1    On completion of this Deed the Owner shall pay to the Council and to the County Council their reasonable legal costs incurred in the negotiation, preparation and execution of this Deed including liaison between the Council and the County Council for the purposes of this Deed and shall also pay to the Council the Monitoring fee.
- 6.2    This Deed shall be registrable as a Local Land Charge by the Council.
- 6.3    Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Director of Place and Climate Change and on behalf of the County Council by the Director.
- 6.4    Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 6.5    This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) if it is modified by any statutory procedure or expires prior to the Commencement of Development.

- 6.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission).
- 6.8 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council or the County Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.
- 6.9 The covenants and obligations given by any of the parties hereto shall attach to the Land and each and every part of it and shall bind their successors in title and assignees or any person claiming by, under or through them.
- 6.10 This Deed may be varied only by deed between the parties hereto or their respective successors in title and assigns provided that the Council may approve changes or variations in writing where specifically provided for in this Deed and for the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 it is hereby AGREED AND DECLARED that the parties to this Deed (and their respective successors in title) may rescind or vary this agreement without the consent of any third party.
- 6.11 The Owner hereby AGREES and DECLARES that permission shall be granted to authorised officers of the Council upon reasonable notice and request and at reasonable times (except in an emergency) and subject to any instructions which any contractor may give to ensure safety for officers of the Council (or their nominated representatives) at their own or at the Council's risk to gain access to the Land in order to monitor compliance with this Deed following Commencement of Development.
- 6.12 All approvals certificates consents agreements satisfactions confirmations or calculations (or anything of a similar nature) that may be requested by the Owner and/or given by the Council or the County Council or their officers in accordance with this Deed shall be in addition to any other approvals consents agreements or confirmations that may be required by the 1990 Act or by any other statute or regulations.

6.13 Where this Deed imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Due Date the Owner covenants with the Council that if the notice of a Due Date is not given in accordance with this Deed the Council shall be entitled in its reasonable discretion to determine the Due Date and shall give notice thereafter to the Owner of its determination.

6.14 Where payment of any sum payable as aforesaid is made after the Due Date Interest shall be payable on that sum from the Due Date until the date of actual payment.

## **7 WAIVER**

No waiver (whether expressed or implied) by the Council or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **8 DISPUTES**

8.1 All differences and disputes which may arise between the parties hereto concerning this Deed may at the option of any party:-

8.1.1 where the difference or dispute relates to the construction or interpretation of this Deed be referred to the determination (as an expert and not as an arbitrator) of an independent leading conveyancing solicitor or planning counsel agreed upon by the parties in dispute but who in default of such agreement shall be appointed by the President of the Law Society of England or the President of the Bar Association (as applicable) on the application of any of the parties in dispute;

8.1.2 where the difference or dispute relates to the carrying out of works or construction be referred to the determination (as expert and not as an arbitrator) of an independent chartered surveyor or civil engineer as appropriate being a partner or director practising in a leading firm of surveyors or civil engineers based in the South East of England or London and experienced in the matter in dispute agreed upon by the parties in dispute but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers as

appropriate on the application of any of the parties in dispute PROVIDED THAT where a contract for the relevant works has been let and provides that the dispute or difference under it shall be referred to arbitration or the court or otherwise any such dispute or difference which may arise between the parties in connection with those works shall be determined likewise;

- 8.1.3 where the difference of dispute relates to the Council refusing or failing to give its agreement, approval or consent or confirmation of satisfaction or to the viability provisions in this Deed be referred to the determination (as expert and not as arbitrator) of an independent chartered surveyor being a partner or director practising in a leading firm of surveyors based in the South East of England or London and experienced in the matter in dispute agreed upon by the parties in dispute or in default of that agreement appointed by the President of the Royal Institute of Chartered Surveyors on the application of any of the parties in dispute.
- 8.2 If the parties in dispute shall fail to agree on the nature of the difference or dispute between them then any of them may apply to the President of the Law Society to appoint an independent solicitor being a partner in a leading firm of solicitors practising in the South East of England or London to decide (as expert and not as arbitrator) in relation to any such matter which of clauses 8.1.1 or 8.1.2 or 8.1.3 hereto is applicable
- 8.3 Except as aforesaid any expert appointed pursuant to clauses 8.1.1 or 8.1.2 or 8.1.3 or any other person shall:-
  - 8.3.1 on his appointment serve written notice thereof on the parties in dispute;
  - 8.3.2 consider any written representations by or on behalf of those parties which are received by him within 20 Working Days of such service and immediately forward a copy of the written representation of one party to the other party;
  - 8.3.3 allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within 15 Working Days of receipt by the other party thereof;
  - 8.3.4 have an unfettered discretion to determine the reference to him;
  - 8.3.5 serve written notice of his determination as soon as he has made it and in any event not more than 25 Working Days after the conclusion of any hearing that



takes place or 25 Working Days after he received any file or written representation;

8.3.6 give full and clear reasons for his decision; and

8.3.7 be paid his proper fee and expenses in connection with such reference by the parties in dispute in such shares as he may determine and his determination shall be final and binding on the parties in dispute (save in the case of manifest error) PROVIDED THAT if any such expert shall die become insolvent or of unsound mind or if any of the parties in dispute shall serve on him written notice in their opinion he has unreasonably delayed making his determination he shall be ipso facto discharged and be entitled only to his reasonable expenses prior to such discharge and another person shall be appointed in his place as such expert.

8.4 The provisions of this clause shall not affect the ability of any party to apply for and be granted any of the following: declaratory relief, injunction, specific performance, consequential and interim orders and relief.

## **9. COVENANTS NOT BINDING**

9.1 This Deed shall not be enforceable against or binding on:

9.1.1 any statutory undertaker who has an interest in the Land solely for the purposes of carrying out its statutory functions in connection with the provision of services necessary for the Development;

9.1.2 an individual owner, occupier or tenant or mortgagee of an Open Market Dwelling in their capacity as such EXCEPT where there is a provision restricting the Occupation of a certain number of Open Market Dwellings in which case the Council and the County Council shall be able to enforce any restriction on the Occupation of the Open Market Dwellings until the provision or covenant has been complied with; and

9.1.3 an individual owner, occupier or tenant or mortgagee of an Affordable Housing Unit in their capacity as such, except for the obligations regulating the use of the Affordable Housing Units as contained in Schedules 2 and 3 save that the said obligations regulating the use of the Affordable Rented Housing Units and Shared Ownership Housing Units in Schedule 2 shall not be binding on Protected Occupier(s) or any successor in title to such Protected Occupier(s)

or in respect of First Homes the successors in title to a First Homes that is subject to an Exempt Disposal or paragraph 4.8.2 of Schedule 3 and in all cases their mortgagees and their successors in title

PROVIDED ALWAYS that (for the avoidance of doubt) the release of liability in this Clause 9.1 shall not apply to any person carrying out the Development.

- 9.2 The obligations contained in Schedule 2 of this Deed shall not be binding on a Chargee or any persons or bodies deriving title through such Chargee PROVIDED THAT prior to seeking to dispose of the Affordable Housing Land (or part thereof) and/or Affordable Rented Housing Units and/or Shared Ownership Units (or any number of them) (as applicable) pursuant to a default under the terms of the Charge such Chargee shall first serve a Default Notice and shall have used reasonable endeavours over a period of three (3) months from the date of service of the Default Notice on the Council to complete a disposal of the Affordable Housing Land (or part thereof) and/or Affordable Rented Housing Units and/or Shared Ownership Units (or any number of them) (as applicable) to another Registered Provider for a consideration not less than the amount due and outstanding under the terms of the relevant Charge including all accrued principal monies, interest and costs and expenses; and if such disposal has not completed within the three (3) month period, the Chargee shall not be bound as aforesaid.

## **10 NOTICE OF COMMENCEMENT DUE DATES AND CHANGE IN OWNERSHIP**

The Owners agree with the Council to give to the Council and in relation to clauses 10.1, 10.2 and 10.3, the County Council:

- 10.1 written notice of the intended Commencement Date 7 Working Days prior to that date;
- 10.2 within 7 Working Days after the actual Commencement of Development written notice of the Commencement of Development;
- 10.3 written notice of the intended date of first Occupation of the Development 10 Working Days before that date;

- 10.4 written notice of any change in ownership of any of its interests in the Land other than a Sale occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan BUT for the avoidance of doubt no notice will be required to be given pursuant to this clause when the new Owner becomes the registered proprietor of the Land.

## **11. NOTICES**

- 11.1 Any notice consent approval or other communication required to be given under this Deed shall be in writing and shall be delivered personally or sent by prepaid first class post or recorded delivery post.
- 11.2 The address for service of any such notice, consent, approval or other communication shall be on all of the parties at the addresses set out at the head of this Deed or such other address for service as shall have been previously notified in writing and in the case of the County Council shall be addressed to the Assistant Chief Executive, Governance Services.
- 11.3 Notices to any successor in title to the Owner shall be that successor in title's last known address.
- 11.4 A notice, consent, approval or other communication under this Deed shall be deemed to have been served as follows:
- 11.4.1 if personally delivered, at the time of delivery;
- 11.4.2 if sent by pre-paid first class post, at the expiration of 2 Working Days after envelope containing the same was delivered into the custody of the postal authority within the United Kingdom;
- 11.4.3 if sent by recorded delivery, at the time delivery was signed for; and
- 11.4.4 if a notice, consent approval or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served at 9:00am on the next Working Day
- 11.5 For the avoidance of doubt, where proceedings have been issued in an English Court the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

## **12. INDEXATION**

- 12.1 The Affordable Housing Contribution shall be Index Linked to the Inflation Index so that the sum actually payable shall be recalculated by the application of the following formula:

$$A = (B \times C) \div D$$

Where:

A is the recalculated sum actually payable on the date of payment of the Affordable Housing Contribution

B is the amount of the Affordable Housing Contribution specified in this Deed

C is the Inflation Index for the month preceding the relevant date of payment of the Affordable Housing Contribution (or part thereof)

D is the Inflation Index for the month preceding the date of this Deed

C divided by D is equal to or greater than 1

## **13. JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England.

## **14. DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

## **SCHEDULE 1**

### **Details of the Owner's title**

#### **and description of the Land and Warranty**

1. The Owners are the executors of the estate of Terence Cecil Gregory whom is still registered as the owner of ESX353971 registered at H.M Land Registry.
2. The Land comprises the whole of freehold title number ESX353971 and is known as Sunningdale, The Street, Sedlescombe, Battle, East Sussex TN33 0QB.
3. The Owners warrant that no person other than the Owners have any legal or equitable interest in the Land.

## **SCHEDULE 2**

### **AFFORDABLE HOUSING**

The Owners covenant with the Council as follows:

1. Not to Commence Development or cause or permit the Commencement of Development unless and until the following has occurred:
  - 1.1 the Affordable Housing Scheme has been submitted to the Council which shall conform with the Affordable Housing Tenure Mix (or such other similar size or tenure mix as may be approved by the Council) and the Head of Housing & Community Services has approved such scheme and any accompanying plans and details in writing;
  - 1.2 the Head of Housing & Community Services has approved in writing the identity of the Registered Provider with responsibility for the delivery of the Affordable Housing Units (other than the First Homes);
  - 1.3 that the Development shall be carried out in accordance with the Affordable Housing Scheme;
  - 1.4 the Owners have entered into an unconditional and binding contract to transfer the Affordable Housing Units and the Affordable Housing Land to the Registered Provider; and
  - 1.5 the Owners have provided the Head of Housing & Community Services with a certified copy of the contract referred to in paragraph 1.4 above
2. Not to Occupy or permit Occupation of more than 33% of the Open Market Dwellings until:
  - 2.1 all the Affordable Housing Units have been constructed ready for Occupation; and
  - 2.2 the Affordable Housing Units and Affordable Housing Land (other than the First Homes and associated land) has been transferred to the Registered Provider

and written evidence of such transfer has been provided to the Council such transfer:

2.2.1 to be at nil consideration to the Registered Provider and

2.2.2 to be free from financial encumbrances; and

2.2.3 to include all rights of access (including to a highway built to adoption standards over a road to be built to adoption standards) and rights to passage of services and utilities and provision of services and utilities to the Affordable Housing Land and the Affordable Housing Units of sufficient capacity for their use together with all other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Land and the Affordable Housing Units and with no unusual or onerous covenants included in the transfer which conflict with the nature of the use of the Affordable Housing Land and the Affordable Housing Units.

3. That none of the Affordable Housing Units (save for the First Homes) shall be Occupied until a Nomination Agreement has been entered into with the Council and until such time as the Nomination Agreement is entered into, not to Occupy or allow the Occupation of the Affordable Housing Units, other than in accordance with the form of Nomination Agreement set out in Schedule 5.
4. That the specification of the Affordable Housing Units shall conform to the NDSS and Building Regulations Part M4(2).
5. Not to make the Affordable Rented Units available to rent other than on fixed term assured shorthold tenancies and in accordance with the Council's Tenancy Strategy 2012 (or superseding strategy) or such other similar document as may replace it from time to time and for nomination by the Council as to 100% of the initial lettings and 75% of all subsequent lettings through the Choice Based Lettings System in accordance with the Nomination Agreement.
6. Not to use or Occupy or dispose of or permit or allow the use or Occupation of any Shared Ownership Unit other than for Shared Ownership Housing by way of a Long Lease and for nomination by the Council as to 100% of the

initial leases and 75% of all subsequent assignments in accordance with the Nomination Agreement.

7. In nominating persons for the Affordable Housing Units pursuant to the Nominations Agreement, the Council will give priority to persons (or couples) where one person who being on its housing register are Qualifying Persons with a Local Connection subject to the provisions of the Nomination Agreement.
8. Not to dispose of any shared equity unit except at a price of no more than 80% of Local Market Values with the remaining twenty per cent (20%) held by the Registered Provider as a legal charge to protect the discounted share and with no rent or charge (including interest charge) payable on the twenty per cent (20%) share owned by the Registered Provider.
9. Not to use or Occupy or dispose of or permit or allow the use or Occupation of any Affordable Rented Unit other than as Affordable Rented Housing by virtue of an Assured Tenancy pursuant to the Housing Act 1988 and the Housing Act 1996 or for such other tenancy as may be prescribed from time to time by Homes England or be approved in writing by the Council's Head of Housing & Community Services and on initial lets of such Affordable Rented Unit where a rent and service charge equivalent to 80% of market rent exceeds Local Housing Allowance nor to make such Units available for rent other than at a rent and service charge of no more than the current level of Local Housing Allowance.
10. If any tenant of an Affordable Rented Unit is in arrears for a period of 3 consecutive months (equal to 3 consecutive months of gross rent) then the Owners (being a Registered Provider) shall consult with the Head of Housing & Community Services on how to best support and advise the tenant on how to meet his or her rent obligations.



### **Affordable Housing Financial Contribution**

1. Prior to Occupation of the third Open Market Dwelling to pay to the Council the Affordable Housing Financial Contribution together with any Interest or Indexation payable under this Deed.
2. Not to Occupy more than three Open Market Dwellings until the Affordable Housing Financial Contribution has been paid to the Council together with any Interest or Indexation payable under this Deed.

## **SCHEDULE 3**

### **FIRST HOMES**

#### **1. OBLIGATIONS**

Unless otherwise agreed in writing by the Council, the Owners for and on behalf of itself and its successors in title to the Land with the intention that the following provisions shall bind the Land and every part of it into whosoever's hands it may come covenants with the Council as below save that:

1.1. Paragraph 2 shall not apply to a First Homes Owner;

1.2. Paragraphs 3 and 4 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner; and

1.3. Paragraph 5 applies as set out therein.

#### **2. QUANTUM**

If any of the Dwellings on the Land shall be identified as a First Home in the Affordable Housing Scheme approved by the Council pursuant to Paragraph 1 of Schedule 1, such First Home shall be provided, reserved and set aside and retained as a First Home in perpetuity subject to the terms of this Schedule **SAVE THAT** the numbers of First Homes set out in the Affordable Housing Tenure Mix or the Affordable Housing Scheme approved by the Council shall be reduced by the equivalent number of Affordable Rented Units and/or Shared Ownership Units that are to be provided over that set out in the Affordable Housing Tenure Mix so that the total number of Affordable Housing Units and First Home (if any) shall be 10 or such other number that is agreed in writing between the Owners and/or the Registered Provider and the Council.

#### **3. DEVELOPMENT STANDARD**

All First Homes shall be constructed to no less than the standard applied to the Open Market Dwellings.

#### 4. DELIVERY MECHANISM

4.1. The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

4.1.1. the Eligibility Criteria (National); and

4.1.2. if such criteria has been published, the Eligibility Criteria (Local).

4.2. If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who only where such criteria has been published meets the Eligibility Criteria (Local) Paragraph 4.1.2 shall cease to apply.

4.3. Subject to Paragraphs 4.6 to 4.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee.

4.4. No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

4.4.1. The Council has been provided with evidence that:

4.4.1.1. the intended purchaser meets the Eligibility Criteria (National) and unless Paragraph 4.2 applies and unless such criteria has been published meets the Eligibility Criteria (Local) ;

4.4.1.2. the Dwelling is being Disposed of as a First Home at the Discount Market Price; and

4.4.1.3. the transfer of the First Home includes:

a) a definition of the "Council" which shall be Rother District Council

b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in the S106 Agreement a copy of which is attached hereto as the Annexure."

- c) a definition of " S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated 4<sup>th</sup> July 2023] made between the Council (1) Tracy Jane Barkaway and Rachel Ann Harrison (2) and the County Council (3)
- d) a provision that the Land is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Land or any part of it other than in accordance with the First Homes Provisions; and
- e) a copy of the First Homes Provisions in an Annexure.

4.4.2. The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of Paragraphs 4.3 and 4.4.1 have been met.

4.5. On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

*"No disposition of the registered estate (other than a charge) 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 certificate signed by [Local Authority] of [address] or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"*

4.6. The owner of a First Home (which for the purposes of this clause shall include the Owner and any First Homes Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

4.6.1. the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Paragraphs 4.1 and 4.2 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and reasonable endeavours to the satisfaction of the Council have been made to Dispose of the Dwelling as a First Home but it has

not been possible to Dispose of that Dwelling as a First Home in accordance with Paragraphs 4.3 and 4.4.1; or

4.6.2. requiring the First Homes Owner to undertake active marketing for the period specified in Paragraph 4.6.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship.

4.7. Upon receipt of an application served in accordance with Paragraph 4.6 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is Disposed of to it at the Discount Market Price.

4.8. If the Council is satisfied that either of the grounds in Paragraph 4.6 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with Paragraph 4.6 that the relevant Dwelling may be Disposed of:

4.8.1. to the Council at the Discount Market Price; or

4.8.2. (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from Paragraph 4.10 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home.

4.9. If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in Paragraph 4.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with Paragraph 4.6 serve notice on the owner of the relevant Dwelling setting out the further steps it requires the said owner to take to secure the Disposal of the relevant Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the said owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with Paragraph 4.6 following which the Council must within twenty eight (28) days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.

4.10. Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with Paragraphs 4.8 or 4.9 above the owner of the relevant Dwelling shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.

4.11. Upon receipt of the Additional First Homes Contribution the Council shall:

4.11.1. within ten (10) working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in Paragraph 3.5 where such restriction has previously been registered against the relevant title; and

4.11.2. apply all monies received towards the provision of Affordable Housing.

4.12. Any person who purchases a First Home free of the restrictions in Schedule 2 of this Deed pursuant to the provisions in Paragraphs 4.9 and 4.10 shall not be liable to pay the Additional First Homes Contribution to the Council.

## 5. USE

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 5.1 – 5.4 below.

5.1. A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.

5.2. A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances a) – f) below:

- a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
- b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
- c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
- d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
- e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
- f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.

5.3. A letting or sub-letting permitted pursuant to Paragraph 5.1 or 5.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.

5.4. Nothing in this Paragraph 5 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

## 6. MORTGAGEE EXCLUSION

The obligations in Paragraphs 1-5 of this Deed in relation to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:

- 6.1. such Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home;

- 6.2. once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the District Council the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to Paragraph 6.3;
- 6.3. following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution.
- 6.4. following receipt of notification of the Disposal of the relevant First Home the District Council shall:
  - 6.4.1. forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in Paragraph 4.5; and
  - 6.4.2. apply all such monies received towards the provision of Affordable Housing.



## **SCHEDULE 4**

### **OFF-SITE HIGHWAY WORKS**

The Owners covenant with the Council and the County Council as follows:

#### **Part 1 – Section 278 Agreement**

1. Prior to Commencement of Development the Owner will enter into the Section 278 Agreement with the County Council to secure the carrying out of the Off-Site Highway Works.
2. The Owner shall not Commence Development until it has entered into the Section 278 Agreement paying all of the County Council's proper and reasonable legal costs relating to the Section 278 Agreement.

#### **Part 2 – Off-Site Highway Works**

3. The Off-Site Highway Works are to include the provision of the new access into and out of the Land from Gregory Walk. Unless otherwise agreed in writing with the County Council, the access will require a minimum width of five (5.0) metres and a footway proposed on the east side of the access will require a minimum width of two (2.0) metres.

together with any other ancillary works reasonably required by the Director.

#### **Part 3 – Timetable for completion of Off-Site Highway Works**

4. The Owner shall complete the Off-Site Highway Works in accordance with the provisions of the Section 278 Agreement prior to first Occupation of the Development.
5. The Owner shall not Occupy or cause or allow the Occupation of the Development until it has completed the Off-Site Highway Works in accordance with the provisions of the Section 278 Agreement.

**SCHEDULE 5**

**NOMINATION AGREEMENT**

**DEED OF NOMINATION RIGHTS**

**DATED**

**20**

**ROTHER DISTRICT COUNCIL**

**and**

**[XXX]**

**Deed of Nomination Rights relating to [XXX]  
East Sussex**

Wealden & Rother District Council's joint Legal Services  
Council Offices  
Vicarage Lane  
Hailsham  
East Sussex BN27 2AX  
Ref: MKN

THIS DEED OF NOMINATION RIGHTS is made the                      day of                      20

BETWEEN:

- (1) ROTHER DISTRICT COUNCIL of Town Hall, Bexhill on Sea, East Sussex  
TN39 3JX ('the Council')
- (2) [XXX] (the "Registered Provider")

## RECITALS

1. The Registered Provider has acquired the **[Affordable Housing Land which is registered at HM Land Registry under Title Number(s) XXX]** and pursuant to the provisions of the Main Agreement the Registered Provider has agreed to grant to the Council the nomination rights hereinafter contained in respect of the Affordable Housing Units.

1

## NOW THIS DEED WITNESSES AS FOLLOWS:

### 1. DEFINITIONS AND INTERPRETATION

***[REMEMBER TO CHECK AGAINST THE MAIN AGREEMENT DEFINITIONS TO ENSURE ALL TERMS USED IN THIS NOMINATION AGREEMENT ARE EITHER DEFINED IN THE MAIN AGREEMENT OR SET OUT BELOW AT CLAUSE 1.2]***

- 1.1 The terms defined in the Main Agreement shall have the same meaning herein unless specified otherwise in clause 1.2 below or if the context otherwise requires.
- 1.2 In this Deed the following expressions shall have the following meanings:

<b>Affordable Housing Units</b>	means the <b>[XXX]</b> Dwellings comprising the [Affordable Rented Units] and [Shared Ownership Units] as set out in the schedule hereto;
<b>Allocation Scheme</b>	means the scheme adopted by the

	Council from time to time for determining priorities and the procedure to be followed in allocating housing accommodation;
<b>Alternative Tenant</b>	means a person nominated by the Registered Provider being a Qualifying Person with a Local Connection;
<b>Capital Funding Guide</b>	means the rules and procedures published by Homes England on 4 <sup>th</sup> November 2016 (as amended) or any successor documents issued by Homes England;
<b>Charge</b>	means a mortgage, charge or other security or loan documentation granting a security interest in the Affordable Housing Land and/or the Affordable Housing Unit(s) (or any one or more of them) in favour of the Chargee;
<b>Chargee</b>	means any mortgagee or chargee of the Registered Provider of the Affordable Housing Land and/or the Affordable Housing Units (or any one or more of them) or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a

	housing administrator;
<b>Chargee's Duty</b>	means the tasks and duties set out in [XXX] of the Main Agreement;
<b>Data Protection Legislation</b>	means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;
<b>Eligible Purchaser</b>	means a shared ownership buyer who meets the Help to Buy: Shared Ownership eligibility assessment AND the Registered Provider Assessment;
<b>Handover Notice</b>	means the prior written notice given in accordance with clause 4.3.1 by the Registered Provider to the Council of the Handover Date;
<b>Handover Date</b>	means the date(s) that the Shared Ownership Unit(s) will be ready for occupation;
<b>Help to Buy Agents</b>	means the body nominated by Homes England who assume administrative responsibility for all low cost home ownership products in a given area and the body to

	whom local authorities and housing providers must direct all households that are interested in accessing Help to Buy: Shared Ownership or any successor in function;
<b>Help to Buy: Shared Ownership</b>	means the government scheme for low cost home ownership products administered by the Help to Buy Agents and "Help to Buy" shall be construed accordingly or such other scheme as may replace it;
<b>Homemove</b>	means the letting scheme for the Affordable Rented Units or such other replacement scheme;
<b>Housing Needs Manager</b>	means the Council's Housing Needs Manager for the time being or such other person as may be appointed to carry out that function from time to time;
<b>Initial Let</b>	means the first letting of each newly constructed and previously unoccupied Affordable Rented Unit;
<b>Initial Sale</b>	means the first sale of a newly constructed and previously unoccupied Shared Ownership Unit;
<b>Initial Sale Nomination Period</b>	means the period of twelve (12) weeks commencing from the Handover Date;
<b>Leaseholder Notice</b>	means a notice received by the Registered Provider in relation to any existing Shared Ownership Unit from an existing leaseholder of a

	proposed onward sale or assignment in accordance with the alienation provisions (or equivalent) contained within the [lease];
<b>Main Agreement</b>	means the Agreement made under (inter alia) Section 106 of the Act in respect of the Site and dated [XXX] (a copy of which is annexed hereto) and which relates to planning permission reference [XXX];
<b>Nominated Tenant</b>	means in relation to Affordable Rented Units, a person being a Qualifying Person with a Local Connection nominated by the Council pursuant to its rights set out in this Deed;
<b>Nominated Purchaser</b>	means in relation to Shared Ownership Units, shared ownership buyers being a Qualifying Person with a Local Connection (part 2 only) nominated by the Council pursuant to its rights set out in this Deed;
<b>Nomination Rights</b>	means the rights granted by the Registered Provider to the Council to nominate in accordance with this Deed;
<b>Qualifying Person with a Local Connection</b>	(1) in respect of the Affordable Rented Units means a person who is in need of Affordable Housing and is eligible to join the Council's housing register who is not easily able to compete in the local



	<p>housing market and who has a 'Local Connection' which shall mean (in no particular order one or more of the following):-</p> <p>a) Has resided in the District of Rother for a period of at least three (3) out of the preceding five (5) years as their only or principal home (not in a caravan that is sited on an unlicensed site, or a non-permanent or holiday site)</p> <p>b) Has close relatives who reside in the District of Rother as their only or principal home and have done so for at least the previous five (5) years (close relatives being parents, adult children or brothers or sisters, including corresponding step relationships (and grandparents, grandchildren, aunts or uncles and non adult children will only be considered as a local connection in certain circumstances as agreed by the Service Manager -Community and Economy);</p> <p>c) Has (or any family member included the application has) permanent paid employment (or a confirmed offer of such) in the District of Rother</p> <p>d) applicants who the Council has accepted as homeless or threatened</p>
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	<p>with homelessness under Part VII of the Housing Act 1996</p> <p>(2) in respect of the Shared Ownership Units means a person who is in need of Affordable Housing and the household or member of the same household can demonstrate a local connection to Rother by either; permanent residency, employment or family living in the district and; where initial eligibility assessments have been approved by the Help to Buy Agent, and subject to the Registered Provider Assessment including the Capital Funding Guide;</p>
<b>Registered Provider Assessment</b>	<p>means the assessment conducted by the Registered Provider of individual applicants to ensure that they meet all eligibility criteria;</p>
<b>Re-Sale Shared Ownership Units</b>	<p>means any existing Shared Ownership Units in respect of which the Registered Provider:-</p> <p>(a) has received from the existing leaseholder thereof notice of a proposed onward sale or assignment in accordance with the alienation provisions (or equivalent) contained within the [lease] of the same; or</p> <p>(b) is entitled to dispose via the grant of a fresh [lease] (whether</p>

	as a result of a surrender or forfeiture of the previous [lease] or otherwise) and "Re-Sale Shared Ownership Unit" and "Re-Sale" shall be construed accordingly;
<b>Re-Sale Nomination Period</b>	means the period of twelve (12) weeks commencing from the date the Council receive notification from the Registered Provider that a Shared Ownership Unit has become available for Re-Sale under clause 4.4.2;
<b>Re-Sale Event</b>	means any existing Shared Ownership Unit which has become available for purchase (whether as a result of a surrender or forfeiture of the previous [lease] or otherwise);
<b>Working Days</b>	means any day from Monday to Friday (inclusive) but not including Christmas Day, Good Friday or any statutory bank holiday;

1.3 Words importing the masculine include the feminine and vice versa.

1.4 Words importing the singular include the plural and vice versa.

## 2. AGREEMENT

The parties hereby agree to comply with the provisions of this Deed for a period of ONE HUNDRED AND TWENTY FIVE (125) YEARS from the date hereof.

## 3. NOMINATION TERMS

- 3.1 The Council agrees to make nominations to the Affordable Housing Units using the procedures in use by the Council at the time of nomination.
- 3.2 The Registered Provider covenants with the Council:
- 3.2.1 to use the Council's Standard procedures to give notice when a vacancy arises;
  - 3.2.2 to grant the Nomination Rights to the Council upon the terms contained in this Deed and that the Affordable Housing Units shall only be occupied by persons who meet the criteria set out in this Deed and in accordance with the Allocation Scheme (unless otherwise agreed in writing by the Housing Needs Manager);
  - 3.2.3 to comply with the covenants in the Main Agreement in relation to the use and occupation of the Affordable Housing Units provided or to be provided at the [Site] and acknowledges and agrees that a 'Local Connection' is required to be demonstrated and it will need to be evidenced with copies of any documentary evidence submitted to the Council to demonstrate eligibility within the terms of this Deed and the Council shall decide whether such evidence meets the requirements of a 'Local Connection'.
- 3.3 The Council reserves the right to exercise its discretion when considering allocation under the terms of this Deed in order to ensure a balanced and mixed community is maintained.
- 3.4 Nothing contained or implied in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.
- 3.5 Both parties will comply with all applicable requirements of the Data Protection Legislation.

**4. NOMINATION PROCEDURE FOR AFFORDABLE RENTED HOUSING AND SHARED OWNERSHIP UNITS**

- 4.1 In respect of the Affordable Housing Units constructed on the [Site] the Registered Provider covenants with the Council that the Council shall have the right to nominate up to 100% of the Initial Lets and Initial Sales of the Affordable Housing Units and [XXX] of subsequent lettings and Re-Sales.

#### **Affordable Rented Units**

- 4.2 Before all Initial Lets of the Affordable Rented Units:

4.2.1 The Registered Provider shall give to the Council a minimum of 24 hours written notice prior to the Registered Provider publishing an advert via Homemove providing the anticipated date on which each Affordable Rented Unit will be available for occupation and the Council shall within five (5) Working Days of the Affordable Rented Unit being advertised on Homemove supply to the Registered Provider the names and addresses of at least three (3) Nominated Tenants in respect of each Affordable Rented Unit;

4.2.2 Save as provided for in clauses 4.2.7 and 4.2.8 below the Registered Provider will by notice in writing offer an assured tenancy of the Affordable Rented Unit to the first Nominated Tenant and such Nominated Tenant shall have three (3) Working Days from the date of receipt of the notice in which to accept such an offer in writing; and

4.2.3 If the first Nominated Tenant does not accept such offer in writing within three (3) Working Days the Registered Provider will by notice in writing offer a tenancy of the Affordable Rented Unit to the second Nominated Tenant who shall have three (3) Working Days from the date of receipt of the notice in which to accept such offer in writing;

4.2.4 If the second Nominated Tenant does not accept such offer in writing within three (3) Working Days the Registered Provider will by notice in writing offer a tenancy of the Affordable Rented Unit to the third Nominated Tenant who shall have three (3) Working Days from the date of receipt of the notice in which to accept such offer in writing; and

- 4.2.5 In circumstances where any of the three (3) nominations referred to above have been offered to a Nominated Tenant whom the Council have assessed as statutorily homeless and where the Nominated Tenant has refused an offer of accommodation (hereinafter referred to as a 'Relevant Nomination'), the Registered Provider must not offer a tenancy to the next Nominated Tenant unless and until the following have occurred:
- 4.2.5.1 the Registered Provider has served notice on the Council of the reasons why the Relevant Nomination has been refused; and
  - 4.2.5.2 the Registered Provider has confirmed the Nominated Tenant was informed that the offer from the Registered Provider would be regarded as an offer from the Council in the discharge of its statutory duty;
  - 4.2.5.3 the Council has confirmed the Registered Provider can proceed to offer a tenancy of the Affordable Rented Unit to the next Nominated Tenant;
- 4.2.6 For the avoidance of doubt the procedure set out in clauses 4.2.1 to 4.2.5 shall be repeated (which process may include the Register Provider re-advertising the relevant Affordable Rented Unit on Homemove if advised by the Council to do so) until such time as the Council notify the Registered Provider that they are permitted to offer a tenancy of an Affordable Rented Unit to an Alternative Tenant.
- 4.2.7 Subject to clause 4.2.8, in the event of the Registered Provider declining to accept a Nominated Tenant the Registered Provider shall update Homemove within 24 hours and confirm to the Council within three (3) Working Days written reasons for refusal ("the Refusal Notice") of the name of the Nominated Tenant and the Council shall within three (3) Working Days of receipt of the Refusal Notice supply to the Registered Provider the name and address of a further Nominated Tenant in respect of the Affordable Rented Unit by way of replacement and this process shall be repeated until such time as the Council confirm in writing that the Registered Provider can offer a tenancy of an Affordable Rented Unit to an Alternative Tenant.

- 4.2.8 If having received a Refusal Notice the Housing Needs Manager shall be of the opinion that the Refusal Notice has been issued unreasonably then the Housing Needs Manager shall, instead of nominating another person, inform the Registered Provider in writing with reasons that the Refusal Notice is rejected and request the Registered Provider withdraw it and if the Registered Provider shall refuse to do so the provisions of clause 9 (dispute resolution) shall be applied and in no circumstances should the Registered Provider proceed to the next nomination where a nomination has been declined, without first obtaining agreement from the Council in writing to do so.
- 4.2.9 The Registered Provider shall not decline a Nominated Tenant where the Council has a statutory duty to house them under the current homelessness legislation unless there is a reasonable risk to other residents in that location from a member of the household of the Nominated Tenant or any other reason that must be agreed by the Council in writing.
- 4.2.10 Where an Affordable Housing Unit has been advertised and the ready to let date has been either delayed or withdrawn the Registered Provider shall inform the Council within twenty four (24) hours of becoming aware of any changes.
- 4.2.11 Subsequent Lettings
- The Registered Provider further grants to the Council the right to nominate from its housing register a Nominated Tenant in respect of [XXX] of the Affordable Rented Units which become a true void. Where required to do so the Registered Provider may from time to time be asked to provide evidence of all voids generated and offered to the Council within a twelve (12) month period to demonstrate compliance with the Councils overall Nomination Rights. For the purpose of this Deed the definition of true and non true voids shall be as follows:

True voids comprise:

1. Voids within new build/newly rehabilitated schemes

2. Voids created through tenant moves to landlords where no reciprocal arrangements exist
3. Voids created through tenant transfers to another local authority where no reciprocal arrangements exist
4. Voids created by the death of a tenant where there is no statutory right of succession
5. Voids created by tenants buying or renting their own property in a private sector
6. Voids created by eviction or abandonment of property
7. Voids created by permanent decants

Non true voids comprise:

8. Voids created through tenant transfers where tenants move within the Registered Provider's own Housing Stock
9. Voids created through re housing via mobility schemes or other mobility schemes where a reciprocal arrangement exists
10. Voids created by decants who are returning

For the avoidance of doubt the nomination provisions set out in clause 4.2 shall apply to all Initial Lets and [XXX] of re-lets of the Affordable Rented Units.

### **Shared Ownership Units**

#### **4.3 Before the Initial Sale of all Shared Ownership Units:**

- 4.3.1 The Registered Provider shall give the Council the Handover Notice not less than eight (8) weeks prior to the Handover Date and at all times during any period of marketing prior to the Handover Date the Registered Provider shall ensure that at least one Shared Ownership Unit is available for prospective purchasers to view; and
- 4.3.2 Shared Ownership Units shall only be allocated to a Nominated Purchaser during any period of marketing before the Handover Date and during the Initial Sale Nomination Period SAVE THAT if no suitable Nominated Purchaser is available to be put forward after the Initial Sale Nomination Period AND the Council has been provided with such evidence, as it may reasonably require in order to



demonstrate that sufficient marketing has taken place locally in Rother prior to the Handover Date and during the Initial Sale Nomination Period then after the expiration of the Initial Sale Nomination Period the Registered Provider may make its own allocation in respect of the relevant Shared Ownership Unit PROVIDED ALWAYS that all shared ownership buyers must be an Eligible Purchaser AND FURTHER PROVIDED ALWAYS that where a Nominated Purchaser has applied following the expiration of the Initial Sale Nomination Period, priority over first refusal shall be given to such Nominated Purchasers in respect of all remaining Shared Ownership Units AND secondly, to prioritise offers to any Eligible Purchaser from adjoining districts.

4.4 In the case of [XXX] of all Re-Sale Shared Ownership Units:

4.4.1 On receipt of a Leaseholder Notice or on occurrence of a Re-Sale Event the Registered Provider must:

4.4.2 within twenty eight (28) Working Days of either receipt of a Leaseholder Notice or occurrence of a Re-Sale Event (as applicable), notify the Council in writing that a Shared Ownership Unit has become available for Re-Sale, such notification to include confirmation of the date of any Leaseholder Notice and the date on which the relevant Re-Sale Shared Ownership Unit is advertised and the means of advertisement;

4.4.3 the Re-Sale Shared Ownership Units shall be allocated to a Nominated Purchaser SAVE THAT if no suitable Nominated Purchasers are available to be put forward within the Re-Sale Nomination Period AND the Council has been provided with such evidence, as it may reasonably require in order to demonstrate that sufficient marketing has taken place locally in Rother prior and during the Re-Sale Nomination Period then after the expiration of the Re-Sale Nomination Period the Registered Provider may make its own allocation in respect of the relevant Re-Sale Shared Ownership Unit PROVIDED ALWAYS that all shared ownership buyers must be an Eligible Purchaser.

## 5. ENFORCEMENT

It is hereby agreed that the provisions of this Deed shall not be binding upon nor enforceable against the following:-

- 5.1 *[Note: to cross reference any applicable mortgagee protection provisions within the Main Agreement]* any Chargee disposing of the Affordable Housing Units (or any one or more of them) pursuant to any default under the terms of its mortgage or charge PROVIDED THAT the Chargee has first complied with the [Chargee's Duty] EXCEPT THAT the Council will retain the Nomination Rights as set out in this Deed in the event of a disposal of the Affordable Housing Units (or any one or more of them) (as applicable) to another registered provider of [affordable housing];
  - 5.2 a tenant of an Affordable Rented Unit who has exercised the right to acquire the whole of the Dwelling pursuant to section 180 of the Housing and Regeneration Act 2008 (or any equivalent statutory provision for the time being in force) in respect of a particular Affordable Housing Unit or any mortgagee or chargee of such tenant exercising any of its powers by or pursuant to its mortgage of the Affordable Rented Unit or any successor in title to or person deriving title from such tenant, mortgagee or charge; and
  - 5.3 a Shared Ownership Unit lessee who has acquired the freehold reversion of the Affordable Housing Unit (if a house) or 100% equity in the [lease] of the Shared Ownership Unit (if a flat) or any mortgagee or chargee of such lessee exercising any of its powers by or pursuant to its mortgage of the Shared Ownership Unit or any assignee, transferee or successor in title to or person deriving title from such lessee, mortgagee or chargee.
6. The obligations contained in this Deed are covenants for the purpose of the Section 33 of the Local Government (Miscellaneous Provisions) Act 1982.

7. If the Registered Provider shall transfer the [Affordable Housing Units or any of them] to another registered provider the said transfer shall require that the new registered provider enter into an agreement with the Council in similar terms to those contained herein.

8. The Registered Provider shall pay to the Council on or before the date of this Deed the Council's reasonable legal costs together with all disbursements incurred in connection with the preparation, negotiation and completion of this Deed.

**9. DISPUTE RESOLUTION**

9.1 In the event that any difference or dispute arises between the parties with regard to this Deed such matter shall in the first instance be referred to the Housing Needs Manager for the Council and [Lettings Manager or Sales Manager] for the Registered Provider (or any persons nominated by them to act on their behalf) who shall within ten (10) Working Days of the referral to them, negotiate in good faith and attempt to resolve the dispute. The parties agree that the Allocations Policy shall be the primary policy used to resolve disputes.

9.2 If the matter cannot be resolved as provided for in clause 9.1 then it shall be referred to the respective Chief Executive Officers of the Registered Provider and the Council (or any persons nominated by them to act on their behalf) who shall within twenty eight (28) Working Days of the referral to them negotiate in good faith and attempt to resolve the dispute.

9.3 If the matter cannot be resolved as provided for in clause 9.2 then either person referred to in clause 9.2 may refer it to be determined by a person chosen by the Chief Executive for the time being of the Chartered Institute of Housing. That person shall act as an expert and not an arbitrator but shall consider written representations made to him/her by the parties.

9.4 The parties agree that the decision of the person named in clause 9.3 shall be binding and that each party shall bear its own costs of resolving the dispute and share equally the costs of such person (unless otherwise directed by such person).

## **10. NOTICES**

- 10.1 Any notice, confirmation, agreement, consent or other communication required or permitted to be given under this Deed shall be given in writing and addressed to:

10.1.1 For the Council: the Housing Needs Manager at the following e-mail address

[housing-needs@rother.gov.uk](mailto:housing-needs@rother.gov.uk)

10.1.2 for the Registered Provider: [XXX]

or to such other person or address as one party shall notify to the other in writing from time to time.

- 10.2 Any notice provided in accordance with clause 10.1 shall be deemed to be served as described in clause 10.2.1 unless the actual time of receipt is proved.

10.2.1 By email to a party will be deemed served if sent on a business day before 4. pm on that day; or in any other case, on the next business day after the day on which it was sent.

## **11. SUPPLY OF INFORMATION AND MONITORING MEETINGS**

- 11.1 The Registered Provider shall promptly provide to the Council upon reasonable request at any time any information in relation to the Affordable Housing Units relating to:-

11.1.1 waiting lists, allocation criteria, vacancies, allocations and (where applicable) rent levels and any policy relating to rent in advance payments;

11.1.2 any proposed or actual sales pursuant to any statutory or contractual right to buy;

11.1.3 any proposed or actual staircasing to 100% under any [lease];

11.1.4 such other information that the Council may reasonably require in order to enable it to ensure that the Registered Provider is at all times complying with the provisions of this Deed

11.2 If so requested by the Council and upon reasonable written notice from the Council the Registered Provider will attend monitoring meetings to consider and discuss its compliance with the provisions of this Deed and in particular the Registered Provider shall ensure that:-

11.2.1 any information requested by the Council pursuant to clause 11.1 shall be provided to it not less than five (5) Working Days prior to any such meeting; and

11.2.2 staff and agents with reasonable seniority and experience of the subject matter of this Deed attend any such meeting

<sup>1</sup> PROVIDED THAT the Council shall not call such meetings more than once annually, unless the Council has reasonable grounds to believe that the Registered Provider is in material breach of any of its any obligations under this Deed (in which event the Council will set out these grounds in its written notice to the Registered Provider requesting such meeting)

## **12. GOVERNING LAW**

This Deed shall be governed and interpreted in accordance with the law of England.

In witness whereof the parties hereto have duly executed this Deed on the day and year first before written

### SCHEDULE OF AFFORDABLE HOUSING UNITS

Plot	Postal No.	Street	Town	Postcode	Type	Tenure

THE COMMON SEAL of  
ROTHER DISTRICT COUNCIL  
was affixed in the presence of

Executive Director

Member of the Council

SIGNED as a DEED by  
affixing the Common Seal of  
[ ] in the presence of

Authorised Signatory

Authorised Signatory

**SCHEDULE 6**  
**THE APPROVED REGISTERED PROVIDERS - IN NO PARTICULAR ORDER**

Hyde Housing Association Limited

Southern Housing

Orbit Housing Association

Saxon Weald Housing Association

Places for People Group Limited

English Rural Housing Association

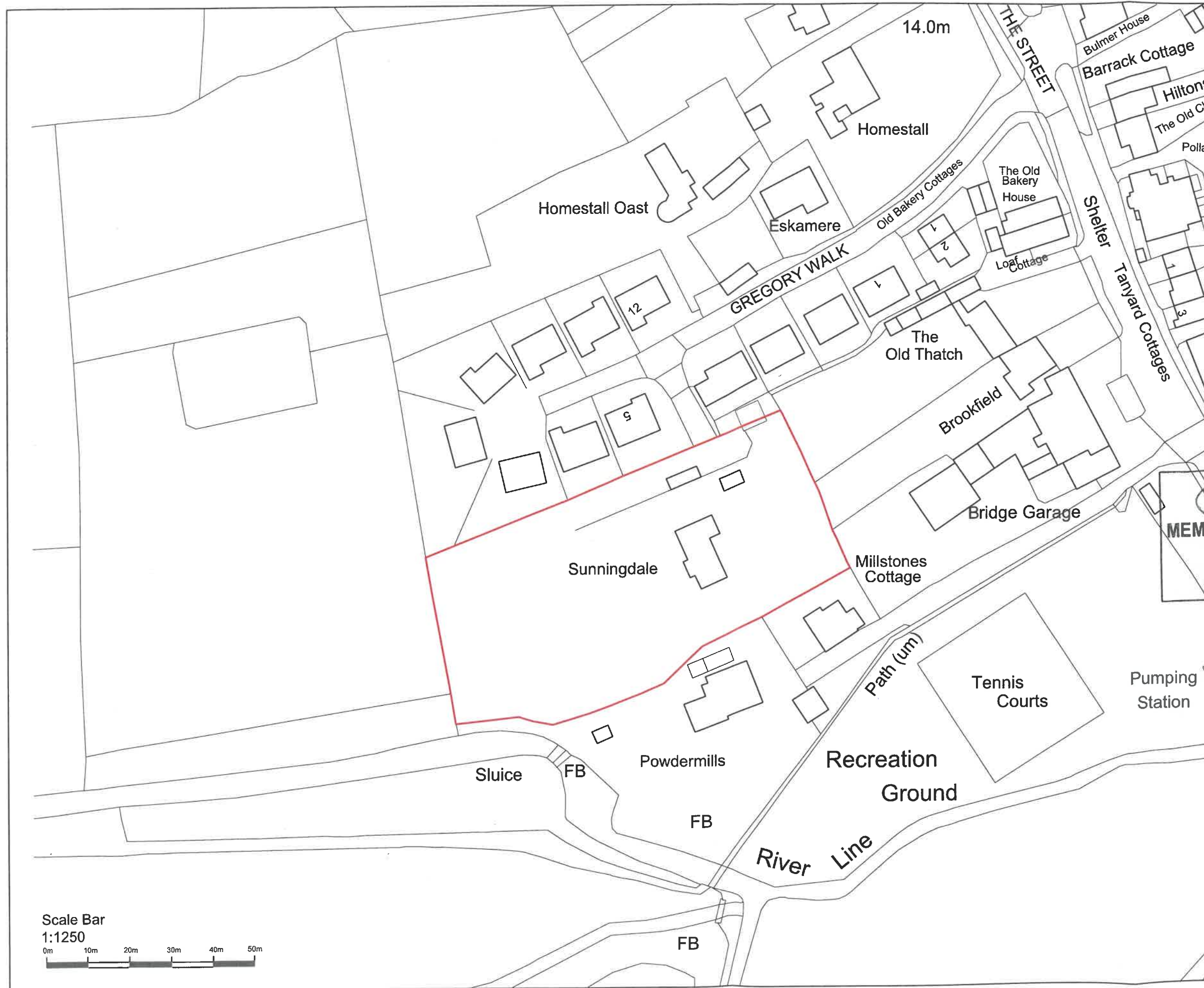
Hastoe Housing Association

and any other Registered Provider that the Council may approve in writing from time to time



**APPENDIX 1**

**SITE LOCATION PLAN**



PS

*Transit*

*Adrian*

**MEMBER OF THE COUNCIL**  
CLIENT *NOV-2019*  
**CHIEF EXECUTIVE**

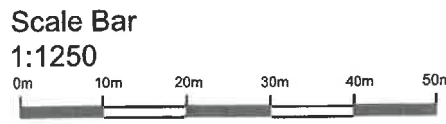
No. in Seal Register  
11285

**SITE**  
Sunningdale  
The Street  
Sedlescombe  
Battle, TN3 0QB  
**TITLE**  
Site Location Plan

DATE	SCALE	DWG No.
December 2019	1:1250 A4	02a

REVISIONS	REF No.
	P.02.063

**bloomfields**  
CHARTERED TOWN PLANNERS  
77 Commercial Road, Peacock Wood, Kent TN12 6DS Tel: 01892 831 600  
info@bloomfieldshd.co.uk www.bloomfieldshd.co.uk  
OS LICENCE NO. 1001322432  
Certificates must verify all dimensions on site prior to commencement of works. DO NOT scale from this drawing FOR PLANNING PURPOSES ONLY. Drawing to be used in accordance with other schematic documentation. It is the responsibility of the client/employer to ensure a suitably qualified specialist to confirm with the requirements of the current CDM 2015 Regulations. Client/employer to appoint a personal design contractor, as required under the HSE legal requirements. Refer to www.hse.gov.uk for further guidance. © Drawings and designs are copyright of Bloomfields and must not be copied without prior consent.



IN WITNESS whereof the parties hereto have executed this Deed on the day and year  
first before written

THE COMMON SEAL of **ROTHER DISTRICT  
COUNCIL** was hereunto affixed in the  
presence of: }

Member of the Council

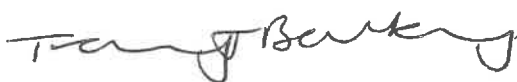


Chief Executive



SIGNED as a Deed by

**TRACY JANE BARKAWAY**



In the presence of **JULIE SUZANNE KIRBY**

Witness signature:



Witness Name: **JULIE SUZANNE KIRBY**

Witness Address: **11 CHURCH VIEW, HARTLEY WINTNEY,  
HANTS, RG27 8LN**

SIGNED as a Deed by

**RACHEL ANN HARRISON**



In the presence of **JULIE SUZANNE KIRBY**

Witness signature:



Witness Name: **JULIE SUZANNE KIRBY**

Witness Address: **11 CHURCH VIEW, HARTLEY WINTNEY,  
HANTS, RG27 8LN**

THE COMMON SEAL of **EAST SUSSEX  
COUNTY COUNCIL** was hereunto affixed in  
the presence of: }



Authorised Signatory

