

DATED 24 May 2022

RESIDE DEVELOPMENTS LIMITED (1)

and

IAN TOWNS (2)

AND

ARUN DISTRICT COUNCIL (3)

Agreement under Section 106 of The Town & Country Planning Act 1990

relating to

Land at Bayard, Level Mare Lane, Eastergate PO20 3SA

Application Reference: AL/113/21/OUT

Ref: 39589/7/CMC

Minerva House
5 Montague Close
London SE1 9BB

**Winckworth
Sherwood**
Solicitors and
Parliamentary Agents

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THIS DEED is dated

24 May

2022

BY:

- (1) **RESIDE DEVELOPMENTS LIMITED** (registered company number 03425192) whose registered office is at 10 Victoria Road South, Southsea, Hampshire, PO5 2DA ("Developer");
- (2) **IAN TOWNS** of Bayard Level Mare Lane Eastergate Chichester PO20 3SA ("Landowner");
- (3) **ARUN DISTRICT COUNCIL** of Parkside, Chart Way, Horsham RH12 1RL ("Council");

together the "Parties"

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Property is situated.
- (B) The Landowner is the registered proprietor with Title Absolute of that part of the Property registered at HM Land Registry under Title Number WSX151392.
- (C) The Developer has made the Planning Application (reference number AL/113/21/OUT) and is proposing to carry out the Development.
- (D) On 2 February 2022 the Council's planning committee resolved to authorise the Head of Development to grant Planning Permission subject to the conditions of the Planning Permission and the prior completion of this Deed.
- (E) This Deed is intended to create planning obligations for the purposes of Section 106 of the Act.
- (F) The Owner is willing to enter into and be bound by obligations and be subject to the restrictions in this Deed on the terms set out herein.

NOW THIS DEED WITNESSES as follows:-

1. INTERPRETATION

In this Deed:

- 1.1 Words Importing the masculine include the feminine and vice versa
- 1.2 Words importing the singular include the plural and vice versa
- 1.3 Words importing persons include companies and corporations and vice versa
- 1.4 Any reference to a clause or schedule or plan is to a clause schedule or plan in to or attached to this deed
- 1.5 Any reference to a colour or letter is to a colour or letter on the plan attached to this deed
- 1.6 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument,

direction, specification made or issued under the statute or deriving validity from it

1.7 References to any party to this deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their functions as local planning authority and local housing authority.

1.8 The headings are for reference only and shall not affect construction

2. DEFINITIONS

It is hereby agreed between the parties set out in this Deed that the following expressions have the following meanings:

“Act” means the Town and Country Planning Act 1990 as amended;

“Additional First Homes Contribution” means 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 2, the lower of the following two amounts:

- (a) 30% of the proceeds of sale; and
- (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 Homes Owner in connection with the sale of the First Home

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;

“Affordable Housing” means the Affordable Housing Units at the Development comprising First Homes, Affordable Rented Housing and Intermediate Housing provided to eligible households whose needs are not met by the market and which should meet the needs of eligible households, including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices and shall include provision for the home to remain at an affordable price for future eligible households or if these restrictions are lifted

for the subsidy to be recycled for alternative affordable housing provision;

"Affordable Mix"	Housing	means the unit mix of Affordable Housing Units at the Development which shall comprise the following: i. 38% of the Affordable Housing Units to be provided as 1 bed, 2 person flats (minimum of 50sqm); ii. 5% of the Affordable Housing Units to be provided as 2 bed, 4 person flats (minimum of 70sqm); iii. 38% of the Affordable Housing Units to be provided as 2 bed, 4 person houses (minimum of 79sqm) ; iv. 19% of the Affordable Housing Units to be provided as 3 bed, 5 person houses (minimum of 93 sqm), or such other mix as agreed with the Council;
"Affordable Scheme"	Housing	means a scheme to be submitted by the Owner and approved by the Council which will include (unless otherwise agreed in writing with the Council's Housing Officer): (a) the location of the Affordable Housing Units; (b) the tenure mix of the Affordable Housing Units, which may be amended from time to time with the written agreement of the Council;
"Affordable Units"	Housing	means the minimum of 30% of the Dwellings that are to be provided as Affordable Housing comprising a minimum of: (a) 66.5% (fourteen) Affordable Rented Housing Units; (b) 23.5% (five) First Homes; and (c) 9.5% (two) Intermediate Housing Units; (or such other tenure mix as may be agreed with the Council) and such units shall be provided in accordance with the Affordable Housing Mix unless otherwise agreed with the Council

"Affordable Housing"	Rented	means rented housing let by a Registered Provider to eligible households at rent which is no more than 80% (including service charges where applicable) of the local gross market rent;
"Affordable Housing Units"	Rented	means the minimum of 66.5% of the Affordable Housing Units that are to be provided as Affordable Rented Housing unless otherwise agreed with the Council;
"Armed Member"	Services	means 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;
"Commencement Development"	of	means the carrying out of a material operation as defined in Section 56(4) of the Act which is not a Preparatory Operation and "Commencement" "Commenced" and "Commences" shall be construed accordingly;
"Commencement Date"		means the date on which the Commencement of Development occurs;
"Commencement Notice"		means the written notice confirming the Commencement Date referred to in Clause 6.1.1 and served in accordance with Clause 6.3;
"Compliance Certificate"		means the 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 2 applies the Eligibility Criteria (Local);
"Council Monitoring Fee"		means the sum of £1,350 (One Thousand Three Hundred and Fifty Pounds) towards monitoring compliance with this Deed;
"County Council"		means West Sussex County Council of County Hall, West Street, Chichester PO19 1RQ;
"Development"		the development of the Property as described in the Planning Application;
"Discount Market Price"		means a sum which is the Market Value discounted by 30%;

"Disposal"		means 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:
	(a)	a letting or sub-letting in accordance with paragraph 5 of Schedule 2;
	(b)	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;
	(c)	an Exempt Disposal;
		and "Disposed" and "Disposing" shall be construed accordingly;
"Dwelling"		means a residential dwelling forming part of the Development and "Dwellings" shall be construed accordingly;
"Eligibility (National)"	Criteria	means criteria which are met in respect of a purchase of a First Home if:
	(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
	(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);
"Eligibility (Local)"	Criteria	means criteria (if any) published by the Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:
	(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
	(b)	any or all of criteria (i) (ii) and (iii) below are met:
	(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

- (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
- (iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker

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;

“Exempt Disposal”

means the Disposal of a First Home in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner;
- (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner;
- (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;
- (d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 6 of Schedule 2 shall apply to such sale),

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 2;

“First Homes”

means the minimum of 23.5% of the Affordable Housing Units (unless otherwise agreed with the Council) 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;

“First Homes Owner”

means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

- (a) the Owner; or

- (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 that First Home is made available and is disposed of for occupation as a First Home; or
- (c) the freeholder a tenant or sub-tenant of a permitted letting under paragraph 5 of Schedule 2;

"First Time Buyer" means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003;

"Fontwell Avenue Roundabout Contribution" means the sum of £11,316 (Eleven Thousand Three Hundred and Sixteen Pounds) payable to the Council in accordance with paragraph 1 of Schedule 3 towards the junction modification of the A27 Fontwell Avenue Roundabout;

"Income Cap (Local)" means 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);

"Income Cap (National)" means 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;

"Interest" means interest at the rate of 2% above the Bank of England base rate applicable at the Specified Date which shall be calculated on a day to day basis;

"Intermediate Housing" means housing for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above, which can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but are not Affordable Rented Housing Units or such other forms of intermediate tenure as are defined as affordable housing under the National Planning Policy Framework as that definition may be amended from time to time;

"Intermediate Housing Units" means the minimum of 9.5% of the Affordable Housing Units that are to be provided as

Intermediate Housing unless otherwise agreed with the Council;

"Key Worker"

means 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 are 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;

"Local Connection Criteria"

means 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 are 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;

"Market Value"

means the open market value as assessed by a Valuer of a 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;

"Mortgagee"

means 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;

"National Highways"

means National Highways of Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ or its successor in statutory function;

"Occupation"

means occupation for any purpose for which the Planning Permission has been granted by the Council other than occupation for the purposes of construction or fitting out or occupation for

security, marketing or display and "Occupy" and "Occupied" shall be construed accordingly;

"Occupation Date" means the date on which the first Dwelling is Occupied;

"Occupation Notice" means the written notice confirming the Occupation Date referred to in Clause 6.1.2;

"Open Market Units" means those Dwellings that are not delivered as Affordable Housing;

"Owner" means the Landowner and the Developer;

"Plan" means the site plan attached to this deed at Schedule 4;

"Planning Application" means the outline application (with all matters reserved) for planning permission registered by the Council under reference number AL/113/21/OUT for up to 69 no. dwellings with access, parking, landscaping & associated works;

"Planning Permission" means planning permission for the Development granted pursuant to the Planning Application;

"Practically Completed" means practically complete save for minor snagging items such that it is reasonably fit for Occupation or use (and Completion shall not be achieved unless all the services to and from the Dwelling are connected and operating and it is accessible by both vehicles and pedestrians and it is ready for Occupation) and the words "Practical Completion" and "Practically Complete" shall be construed accordingly;

"Preparatory Operation" means an operation or item of work of or connected with or ancillary to:

- (a) archaeological investigation;
- (b) ground investigations;
- (c) exploratory boreholes and trial pits;
- (d) survey of existing structures;
- (e) demolition;
- (f) site clearance (including associated temporary works) and/or site preparation;

- (g) site reclamation and site remediation works;
- (h) preliminary landscaping;
- (i) diversion decommissioning and/or laying of services for the supply or carriage of water, sewerage, gas, electricity, telecommunications or other media or utilities;
- (j) the erection of fences hoardings and scaffolding;
- (k) construction of temporary access and service roads;
- (l) other works and site establishment preparatory to the commencement of construction including ecological works and temporary extinguishment and closure of public rights affecting the Property and
- (m) operations permitted by the Town and Country Planning (General Permitted Development) England Order 2015;

"Price Cap"	means 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) or such other amount as may be published from time to time by the Secretary of State;
"Property"	means land at Bayard, Level Mare Lane, Eastergate PO20 3SA as shown edged red on the Plan;
"Registered Provider"	means a provider of social housing included in the register of registered providers of social housing maintained by the Regulator under the Housing and Regeneration Act 2008 or as redefined in any amendment replacement or re-enactment of such Act;
"Registered Provider Affordable Housing"	means the Affordable Rented Housing Units and the Intermediate Housing Units;
"Reserved Matters Applications"	means the application(s) for Reserved Matters Approval made to the Council in respect of each of the reserved matters pursuant to the Planning Permission;
"Reserved Matters Approvals"	means a reserved matters approval granted by the Council pursuant to a Reserved Matters

Application(s) pursuant to the Planning Permission;

"Residential Travel Plan Monitoring Fee" means the sum of £1,500 (One Thousand Five Hundred Pounds) towards monitoring and auditing the Travel Plan Statement dated July 2021 by Paul Basham Associates that was submitted with the Planning Application;

"SDLT" means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect;

"Secretary of State" means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function;

"Section 73 Consent" means a planning permission granted pursuant to Section 73 of the Act which varies and/or removes any condition subject to which the Planning Permission and/or such planning permission pursuant to Section 73 of the Act was granted;

"Specified Date" means the date upon which an obligation arising under this Deed is due to be performed;

"Valuer" means 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;

"Working Day" means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England;

3. ENABLING PROVISIONS

3.1 This Deed is made pursuant to section 106 of the Act, Section 111 of the Local Government Act 1972, and Section 1 of the Localism Act 2011 and all other enabling powers

4. CONDITIONS PRECEDENT

4.1 This Deed shall come into effect upon the date hereof but the provisions in the Schedules shall only take effect upon:

4.1.1 the granting of Planning Permission; and

4.1.2 the Commencement of Development.

5. COVENANTS

5.1 The Owner covenants with the Council to fully comply with and to perform the obligations contained herein and in the Schedules of this Deed in accordance with the requirements and timescales contained therein.

5.2 The Council covenants with the Owner to fully comply with and to perform the obligations contained herein and in the Schedules of this Deed in accordance with the requirements and timescales contained therein.

6. NOTICES

6.1 The Owner covenants with the Council as follows:

6.1.1 to give the Commencement Notice to the Council not less than 14 days before the anticipated Commencement Date

6.1.2 to give the Occupation Notice to the Council not less than 14 days before the anticipated Occupation Date.

6.2 If the Owner fails to give the notice required by Clause 6.1.1 and Clause 6.1.2 above then the Council shall be entitled in their absolute discretion to determine the Commencement Date and may give notice to the Owner of the Council's determination.

6.3 Any notice certificate or other communication required or permitted to be given hereunder shall be given in writing to the relevant party at the relevant address referred to above or such other address as may be notified in writing to the other party and must be served personally or by registered or recorded delivery post and

6.3.1 in the case of the Council the Owner shall address any notice to the Head of Legal and Democratic Services of the Council.

6.4 Any notice certificate or other communication sent by post shall be deemed (in the absence of evidence of receipt) to have been delivered two Working Days after despatch and in proving the fact of despatch it shall be sufficient to show that the envelope was properly addressed and posted.

6.5 Any notice certificate or other communication delivered personally shall be deemed to have been delivered on the day of its despatch if despatched during or prior to normal business hours on a Working Day but otherwise on the next Working Day thereafter.

7. INTEREST

7.1 The Owner covenants with the Council to pay the Interest on sums due to the Council under this deed but not paid on the Specified Date from the Specified Date until actual payment

8. COSTS AND MONITORING FEE

8.1 The Developer covenants with the Council to pay to the Council on or before the date hereof the Council's reasonable legal costs incurred in preparing and entering into this Deed.

8.2 The Owner covenants with the Council to pay to the Council on or before Commencement the Council Monitoring Fee.

9. GENERAL

It is hereby agreed and declared that:

- 9.1 the covenants hereto to be observed and performed under this Deed shall be treated as Local Land Charges and registered at the Local Land Charges Registry by the Council for the purposes of the Local Land Charges Act 1975;
- 9.2 to the extent that they fall within the terms of Section 106 of the Act the obligations contained in Clause 5 and the Schedules hereof are planning obligations for the purposes of Section 106 of the Act;
- 9.3 this Deed constitutes a deed;
- 9.4 this Deed is enforceable by the Council;
- 9.5 nothing in this deed confers or is intended to confer a benefit on a third party under the Contracts (Rights of Third Parties) Act 1999;
- 9.6 it is hereby agreed by the Owner that failure by the Council at any time to enforce the provisions of this deed or to require performance strictly or otherwise by the Owner of any of the conditions covenants agreements or obligations of this deed or any failure or delay by the Council to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation and shall not affect the validity of this deed or any part thereof or the right of the Council to enforce any provision and any variation of this deed shall not vitiate the remainder of the deed which shall remain in full force and effect subject to such amendment or amendments;
- 9.7 the Owner hereby consents to the registration of this Deed as a Local Land Charge;
- 9.8 if any provision in this deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired;
- 9.9 reference to any statute or statutory provisions includes a reference to:-
- 9.9.1 that statute or statutory provision as from time to time amended extended re-enacted consolidated or replaced; and
- 9.9.2 all statutory instruments or orders made pursuant to it whether before or after the date of this Deed;
- 9.10 this Deed shall be governed by and interpreted in accordance with Laws of England and the Owner submits to the exclusive jurisdiction of the Courts of England;
- 9.11 the obligations in this Deed (with the exception of Clause 10) shall cease to have effect (insofar only as it has not already been complied with) if before the Commencement of Development the Planning Permission:
- (a) expires;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge
- but will remain in full force and effect so far as any subsisting Section 73 Consent is concerned;

- 9.12 the obligations in this Deed shall cease to have effect (insofar only as it has not already been complied with) in so far only as the relevant Section 73 Consent is concerned if before the Commencement of Development the relevant Section 73 Consent:
- (a) expires;
 - (b) is varied or revoked other than at the request of the Owner or
 - (c) is quashed following a successful legal challenge
- but will remain in full force and effect so far as the Planning Permission and any other subsisting Section 73 Consent is concerned;
- 9.13 the Owner (or any person deriving title to the Property from them) shall not be liable for any breach of the restrictions and obligations set out in this Deed where such breach arises after the Owner has parted with its entire interest in the Property or such part of the Property to which such breach relates save in respect of liability for antecedent breach of this Deed;
- 9.14 the obligations in this Deed shall not be enforceable:
- (a) against individual lessees or purchasers and their successors in title occupying or entitled to occupy Dwellings within the Development; or their mortgagees or chargees and successors in title to such mortgagees or chargees save for
 - (i) the provisions of Schedule 1 which shall bind occupants of the Registered Provider Affordable Housing and
 - (ii) the provisions of Schedule 2 which shall bind a First Homes Owner as set out in that Schedule; or
 - (b) against any statutory undertaker whose apparatus may be situated within the Property; or
 - (c) against Registered Providers save for the provisions of Schedule 1; or
 - (d) against the Developer unless and until it acquires an interest in the Property save for clause 8.1; or
 - (e) against mortgagees or chargees or their successors in title unless the breach was committed or continuing at a time when the mortgagee is in possession of all or any part of the Property;
- 9.15 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 applies to the covenants in this Deed;
- 9.16 references to the Property include any part of it;
- 9.17 "including" means "including without limitation";
- 9.18 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 9.19 nothing in this Deed shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning

Permission or any modification variation or amendment thereof) granted after the date of the Planning Permission;

9.20 subject to the proviso to this Clause if any Section 73 Consent is granted after the date of this Deed:

- (a) the obligations in this Deed shall relate to and bind such Section 73 Consent; and
- (b) the definitions of Application, Development and Planning Permission (other than for the purposes of Clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself,

PROVIDED THAT:

- (a) nothing in this Clause shall fetter the discretion of the Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;
- (b) to the extent that any of the obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent.

10. DISPUTE RESOLUTION

10.1 Should a dispute or difference arise between the Owner and the Council concerning anything herein then the provisions of this Clause 10 shall apply.

10.2 All differences and disputes which may arise between the parties hereto concerning this Deed shall:

10.2.1 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/planning counsel agreed upon by the parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales on the application of any of the parties in dispute;

10.2.2 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 any such dispute or difference which may arise between the parties in connection with those works shall be determined likewise.

10.3 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 10.2.1 or 10.2.2 hereto is applicable

10.4 Except as aforesaid any expert appointed pursuant to Clauses 10.2.1 or 10.2.2 or any other person shall:

10.4.1 on his appointment serve written notice thereof on the parties in dispute;

10.4.2 consider any written representations by or on behalf of those parties which are received by him within twenty Working Days of such service and immediately forward a copy of the written representation of one party to the other party;

10.4.3 allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within twenty Working Days of receipt by the other party thereof;

10.4.4 have an unfettered discretion to determine the reference to him;

10.4.5 serve notice of his determination as soon as he has made it;

10.4.6 give full and clear reasons for his decision;

10.4.7 be paid his proper fee and expenses in connection with such reference by the parties in dispute in equal shares or 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 either 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.

10.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, and specific performance, payment of any sum, damages, and any other means of enforcing this Deed and consequential and interim orders and relief.

11. CHANGE IN OWNERSHIP

11.1 SAVE FOR dispositions to individual Occupiers of Dwellings the Owner covenants with the Council to give the Council written notice of any change in ownership of any of its interests in the Property 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 Property or unit of occupation purchased by reference to a plan.

12. CANCELLATION OF ENTRIES

12.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the

Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

- 12.2 Following the performance and full satisfaction of all the terms of this Deed or if this Deed shall cease to have effect pursuant to Clause 9.11 and Clause 9.12 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this Deed.

SCHEDULE 1

AFFORDABLE HOUSING GENERAL PROVISIONS

The Owner covenants with the Council as follows:-

1. To submit the Affordable Housing Scheme as part of a Reserved Matters Application in respect of the Planning Permission and not to Commence Development until the Council has approved the Affordable Housing Scheme in writing
2. To implement the approved Affordable Housing Scheme (and any amendment thereto as may be approved by the Council from time to time) and to construct and deliver the Affordable Housing Units in accordance with the approved Affordable Housing Scheme
3. To provide a vehicular and pedestrian access and connections to adequate foul and surface water sewers and water gas electricity and telecommunication service systems to the Affordable Housing Units linking in each case to the estate roads sewers and service systems to be constructed and laid as part of the remainder of the Development and connected to highways and sewers maintainable at the public expense

Registered Provider Affordable Housing

4. Unless otherwise agreed with the Council, not to Occupy any of the Open Market Units of the Development unless and until either:
 - 4.1. the land upon which the Registered Provider Affordable Housing is to be constructed is the subject of a binding contract that provides for its disposal from the Owner to the Registered Provider together with a contract for the construction of the Registered Provider Affordable Housing; or
 - 4.2. the Registered Provider Affordable Housing is the subject of a binding contract for transfer from the Owner to the Registered Provider in a clean condition and fully serviced unless otherwise agreed in writing by the Council.
5. Unless otherwise agreed with the Council not to permit the Occupation of more than 50% (fifty percent) of the Open Market Units until 75% of the Registered Provider Affordable Housing has been Practically Completed in accordance with the approved Affordable Housing Scheme.
6. Not to permit the Occupation of more than 80% (eighty percent) of the Open Market Units until 100% of the Registered Provider Affordable Housing has been Practically Completed in accordance with the approved Affordable Housing Scheme and a freehold interest or minimum 125-year leasehold interest in the Registered Provider Affordable Housing has been transferred to the Registered Provider in accordance with paragraph 7 below.
7. Within any transfer of any Registered Provider Affordable Housing to the Registered Provider in accordance with paragraph 6 to require or procure the execution by the Registered Provider and delivery to the Council of a deed of nomination substantially

(but subject to such amendments as may be agreed between the Registered Provider and the Council) in the form of the Council's template deed of nomination

8. The obligations in this Schedule will not be binding on:
 - 8.1. any owner or occupier who staircases out by acquiring 100% equity share in an Intermediate Unit; or
 - 8.2. a tenant or occupier who acquires the freehold or leasehold interest in an Affordable Rented Housing Unit pursuant to a statutory right to acquire or right to buy; or
 - 8.3. a mortgagee or chargee (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 (each a "Receiver")) of the whole or any part of the Registered Provider Affordable Housing or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
 - 8.3.1. such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Registered Provider Affordable Housing Units and shall have used reasonable endeavours over a period of 3 (three) months from the date of the written notice to complete a disposal of the Registered Provider Affordable Housing to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
 - 8.3.2. if such disposal has not completed within the 3 (three) month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Registered Provider Affordable Housing free from the obligations in this Schedule which provisions shall determine absolutely

SCHEDULE 2

FIRST HOMES

The Owner covenants with the Council as follows:-

1. OBLIGATIONS

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

1.1.1 paragraphs 2 and 3 shall not apply to a First Homes Owner;

1.1.2 paragraphs 4 and 5 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

1.1.3 paragraph 6 applies as set out therein.

2. QUANTUM OF FIRST HOMES

- 2.1 No less than 23.5% of the Affordable Housing Units shall be identified reserved and set aside as First Homes in accordance with the approved Affordable Housing Scheme and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule.

3. TYPE AND DISTRIBUTION

- 3.1 The mix of First Homes provided within the Property shall be in accordance with the Affordable Housing Scheme.

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 the Eligibility Criteria (Local) (if any).

- 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 meets the Eligibility Criteria (Local) (if any), 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 meets the Eligibility Criteria (Local) (if any)

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 as set out at page 2 of this Deed

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

"means the provisions set out in paragraph 4.1 – 4.8 of Schedule 2 of the S106 Agreement a copy of which is attached hereto as the Annexure."

c) A definition of "S106 Agreement" in the following terms:

"the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between (1) the Council, (2) Ian Towns and (3) Reside Developments Limited"

d) a provision that the Property 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 Property or any part of it other than in accordance with the First Homes Provisions

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 Developer 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 Clauses 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 all reasonable endeavours 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 owner to take to secure the Disposal of the 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 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 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 First Home 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 ²¹~~30~~ working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 4.5 where such restriction has previously been registered against the relevant title;

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 this Schedule 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 Schedule 2 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; and
- 6.2 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the 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; and
- 6.4 following receipt of notification of the Disposal of the relevant First Home the 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 3

FINANCIAL CONTRIBUTIONS

1. The Owner covenants with the Council as follows:-
 - 1.1 To pay the Fontwell Avenue Roundabout Contribution to the Council prior to Commencement of Development and not to Commence Development until it has paid the Fontwell Avenue Roundabout Contribution to the Council; and
 - 1.2 To pay the Residential Travel Plan Monitoring Fee to the Council prior to Occupation of the Development and not to Occupy the Development until it has paid the Residential Travel Plan Monitoring Fee to the Council.
2. The Council covenants with the Owner as follows:
 - 2.1 To pay the Fontwell Avenue Roundabout Contribution to National Highways as soon as practicable once received from the Owner;
 - 2.2 To pay the Residential Travel Plan Monitoring Fee to the County Council as soon as practicable once received from the Owner; and
 - 2.3 To pay to the payee (being the person(s) who made the relevant payment) within 28 working days following a request from the payee any part of the Fontwell Avenue Roundabout Contribution and Residential Travel Plan Monitoring Fee which has not been expended or committed for expenditure in accordance with this Deed within five (5) years of the date of receipt by the Council of such payment.

SCHEDULE 4

PLAN

reside.



NOTES:
Do not scale.
Begin all measurements, errors and omissions.
Verify all measurements on site before commencing any work on site or preparing shop drawings.
All materials, components and assemblies are to comply with the relevant British Standards, Codes of Practice, and appropriate manufacturer's recommendations that can be found in the relevant standards.
For all structural work, see relevant drawings.
The drawings and design are copyright © Clague Architects.
Registration Number: 100 123456789

Site Boundary

Project Name
Proposed Residential Development
Land at Bayards,
Level Mare Lane,
Eastergate

Drawing Description
Plan 1
S100

Scale	Quantity
1:1250 @ A3	CSS
Date	Checked by
May 2022	PO

CLAGUE ARCHITECTS

60 Bayards, Eastergate Plans 01-10	01/21/2022
10 Bayards, Eastergate, Level Mare Lane Plans 11-20	01/21/2022
60 Bayards, Eastergate Plans 21-30	01/21/2022

CLAGUE ARCHITECTS LONDON HARBORVIEW

Drawing Number	Revision
16	A

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

EXECUTED AS A DEED by RESIDE
DEVELOPMENTS LIMITED acting
by a director

[Redacted signature]

[Redacted signature]

In the presence of:

[Redacted signature]

Witness signature

Witness name:

Witness address:

Witness occupation:

[Redacted name]

53 TYNEDALE ROAD, STROUD GREEN,
BETCHWORTH RH3 7JD
OFFICE MANAGER

EXECUTED AS A DEED by IAN
TOWNS

[Redacted signature]

Signature

In the presence of:

[Redacted signature]

Witness name:

Witness address:

Witness occupation:

ALASDAIR CT CAMPBELL
NORTHFIELDS, ENTERGATE,
CHICHESTER, WEST SUSSEX PO20 3SA
SELF-EMPLOYED

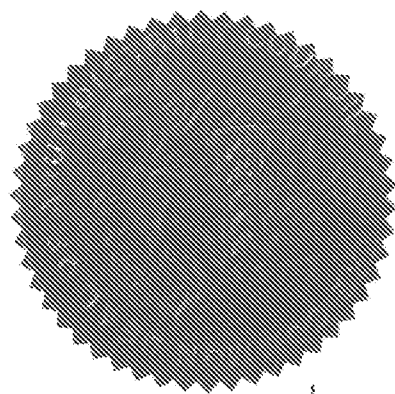
SEALED WITH THE COMMON SEAL OF

ARUN DISTRICT COUNCIL

In the presence of:

Authorised officer:

APRIL HENSLMAN
LAWYER.



289/2022