

DATED 13 April

2021

ARUN DISTRICT COUNCIL

-and-

SIGMA HOMES (ANGMERING) LIMITED

-and-

VIVID HOUSING LIMITED

DEED OF VARIATION OF AGREEMENT PURSUANT TO
SECTIONS 106 AND 106A OF THE TOWN AND COUNTRY PLANNING ACT 1990

RELATING TO THE DEVELOPMENT OF

SITE AT LAND TO REAR OF FORMER SHRUBLANDS NURSERY, ROUNDSTONE LANE, ANGMERING
BN16 4AT

PLANNING REFERENCE A/64/21/PL

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PARTIES

- 1) **ARUN DISTRICT COUNCIL** of The Civic Centre, Maltravers Road, Littlehampton BN17 5LF (the "Council")
- 2) **SIGMA HOME (ANGMERING) LIMITED** (Company Registration No 10453262) whose registered office is at Ashbourne House, The Guildway, Old Portsmouth Road, Guildford, Surrey GU3 1LR (the "Owner") and
- 3) **VIVID HOUSING LIMITED** (Community Benefits Society Registered Number 7544) whose registered office is Peninsular House, Wharf Road, Portsmouth PO2 8HB (the "RP")

RECITALS

- A The Owner is the freehold owner of the Affordable Housing Units on the Site as defined within the Original Agreement.
- B The Council is the local planning authority for the purposes of this Deed under the Act and for the area in which the Site is situated and by whom the obligations within this Deed are enforceable.
- C The Council entered into a Section 106 Agreement dated 22 November 2021 and made between the Council (1) Luigi De Bellis, Innocenzo De Bellis and Mario De Bellis (2) Valerie Diane Ward (3) and Kentcoast Limited (4) ("the Original Agreement") which secured the provision of affordable housing and other planning obligations in respect of the Site.
- D The Owner acquired the Site from Luigi De Bellis, Innocenzo De Bellis and Mario De Bellis, Valerie Diane Ward, and Kentcoast Limited on 4 April 2022 by way of three separate TR1s. The TR1s are pending registration at the Land Registry.
- E The RP has an equitable interest in that part of the Site, shown edged red on the attached plan marked "Plan" (including twelve (12) Affordable Housing Units and two (2) Open Market Dwellings, by virtue of a contract dated 8 November 2022 and made between the Owner (1) and the RP (2).
- F The RP is to be the Affordable Housing Provider as required under the terms of the Original Agreement.
- G The parties hereto agree to vary the terms of the Original Agreement in relation to the Affordable Housing Units to amend the mortgagee exclusion provisions, affordable housing provider definition and carve out clause within the Original Agreement.

- H Without prejudice to the terms of the other covenants contained in the Original Agreement, the Council agrees with the Owner to vary the terms of Original Agreement as set out in this Deed.
- I Without prejudice to the terms of the other covenants contained in the Original Agreement, the Council pursuant to its delegated powers decided to agree with the Owner and the RP to vary the terms of Original Agreement as set out in this Deed
- J The Council is satisfied that the obligations in this Deed are in the interests of the proper planning of the Council's administrative area. They meet the tests of planning obligations set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, being necessary to make the Site acceptable in planning terms, directly related to the Site and fairly and reasonably related in scale and kind to the Site.

1. CONSTRUCTION OF THIS DEED

- 1.1 The provisions of the Original Agreement relating to its interpretation apply to this Deed except to the extent that they are expressly varied by this Deed.
- 1.2 The Original Agreement shall be varied in the manner set out in clause 3 of this Deed.
- 1.3 The definitions, clauses, obligations and provisions of the Original Agreement shall remain in full force and effect except as varied or added to by this Deed and shall continue to be applicable to the Site as defined in the Original Agreement and remain to be performed to the extent that they have not already been performed.
- 1.4 Save where the context otherwise requires the expressions used in this Deed shall have the same meaning or meanings as those stated in the Original Agreement.
- 1.5 Headings contained in this Deed are for reference purposes only and are not incorporated into the Deed and shall not be deemed to be an indication of the meaning of the parts of this Deed to which they relate.
- 1.6 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. LEGAL BASIS

- 2.1 This Deed is supplemental to the Original Agreement and is made pursuant to sections 106 and 106A of the 1990 Act, Section 111 of the Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003, Section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The covenants obligations restrictions and requirements imposed upon the Parties by this Deed:
 - 2.2.1 are entered into pursuant to the provisions of section 106 of the 1990 Act;
 - 2.2.2 are planning obligations for the purposes of section 106 of the 1990 Act;

- 2.2.3 relate to the Site;
 - 2.2.4 are entered into with intent to bind the Owner's and the RP's interest(s) in the Site and each and every part thereof into whosoever hands the same may come;
 - 2.2.5 are enforceable by the Council as local planning authority; and
 - 2.2.6 are executed by the respective Parties as a deed.
- 2.3 To the extent that any obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into by the Council pursuant to the powers contained in section 111 of Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 Section 1 of the Localism Act 2011 and all other powers so enabling.
- 2.4 This Deed shall take effect upon the date hereof.

3. VARIATIONS TO THE ORIGINAL AGREEMENT

- 3.1 The parties agree that the Original Agreement shall be varied as set out within this clause 3.
- 3.2 The definition of "Affordable Housing Provider" shall be deleted and replaced with:
- "Affordable Housing Provider"** means either one or a combination of:
- (a) a registered provider of Affordable Housing registered under the Housing and Regeneration Act 2008 with Homes England (or any successor regulator of social housing); or
 - (b) a registered provider who is on the Council's list of approved registered providers (annexed as Annex 3); or
 - (c) any other provider of Affordable Housing who is approved by the Council in writing; or
 - (d) Arun District Council.
- 3.3 The definition of "RP Mortgagee" shall be deleted and replaced with:
- "RP Mortgagee"** means 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 Affordable Housing Units"
- 3.4 A new clause 6.10 shall be inserted as follows:
- "6.10** Save for the provisions in relation to the Affordable Housing included in Schedule 1, the provisions of this Deed shall not be enforceable against the Affordable Housing Provider or a RP Mortgagee."

3.5 Paragraph 5 of Schedule 1 shall be deleted and replaced with:

"5 The affordable housing provisions in this Deed shall not be binding on a RP Mortgagee or any persons or bodies deriving title through such RP Mortgagee Provided That:

(a) such RP Mortgagee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units 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

(b) if such disposal has not completed within the three month period, the RP Mortgagee shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Deed which provisions shall determine absolutely."

4. AGREEMENT

It is agreed that the Original Agreement (as varied by this Deed) shall remain in full force and effect.

5. COVENANTS OF THE OWNER AND THE REGISTERED PROVIDER

The Owner and the RP covenant to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this Deed.

6. MISCELLANEOUS

- 6.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Deed.
- 6.2 This Deed shall be registered as a local Site charge by the Council.
- 6.3 The Owner and the RP warrant that no person other than the Owner and the RP has any legal or equitable interest in the Affordable Dwellings.
- 6.4 The Council acknowledges that where either the Owner or the RP are an Affordable Housing Provider then there is no restriction upon the Owner or the RP utilising any of the Open Market Dwellings for any of the purposes that fall within the definition of affordable housing in Annex 2 of the National Planning Policy.
- 6.5 For the avoidance of doubt, the Parties acknowledge that the Open Market Dwellings will not be subject to the restrictions contained in Schedule 1 of the Original Agreement even if such Open Market Dwellings are utilised for any of the purposes that fall within the definition of affordable housing in Annex 2 of the National Planning Policy.

7. JURISDICTION

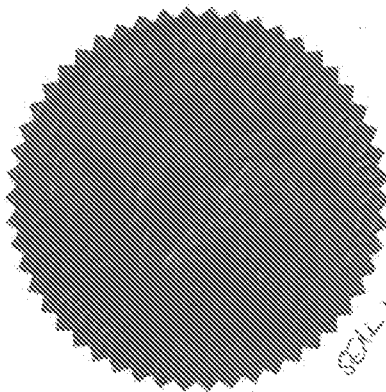
- 7.1 This Deed including its construction, validity, performance and enforcement and any dispute arising or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes and claims) shall be governed by and interpreted in accordance with English law.
- 7.2 The Parties irrecoverably agree that the English courts shall have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes and claims).

8. DELIVERY

This Deed is delivered on the date written at the start and 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.

IN WITNESS whereof these presents have been executed by the parties hereto as a Deed and delivered on the day and year first before written

EXECUTED AS A DEED by)
the Common Seal of the)
ARUN DISTRICT COUNCIL)
was hereunto affixed in the presence of:)



SEAL NO 67/2023

Authorised Signatory [Redacted]
JUMA AHMED
SOLICITOR.

EXECUTED as a DEED by)
SIGMA HOMES (ANGMERING))
LIMITED acting by a director)
in the presence of:

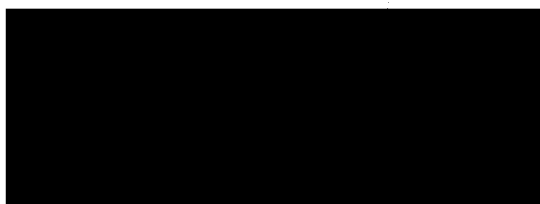


Witness Signatur

Witness Name:

Witness Address: High Timbers, Fareham, Portsmouth, PO20 4NE

EXECUTED as a DEED by
Sharratts (London) LLP
acting by [Redacted] a member,
as attorney under a power of attorney dated
for VIVID HOUSING LIMITED



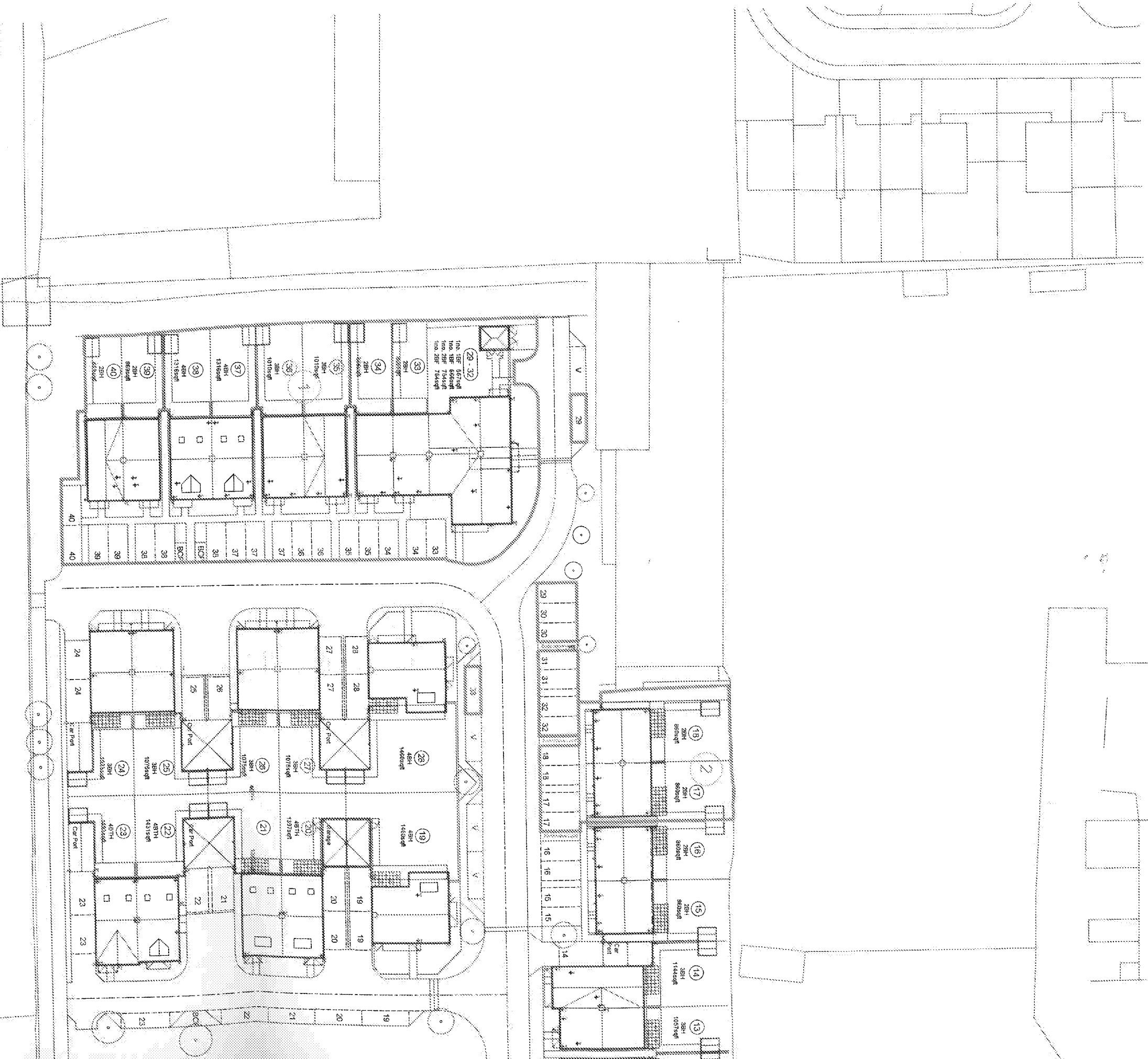
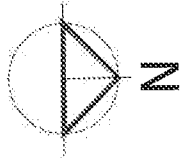
in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Sharratts (London) LLP
1 The Old Yard
Rectory Lane
Brasted, Westerham
Kent TN16 1JP



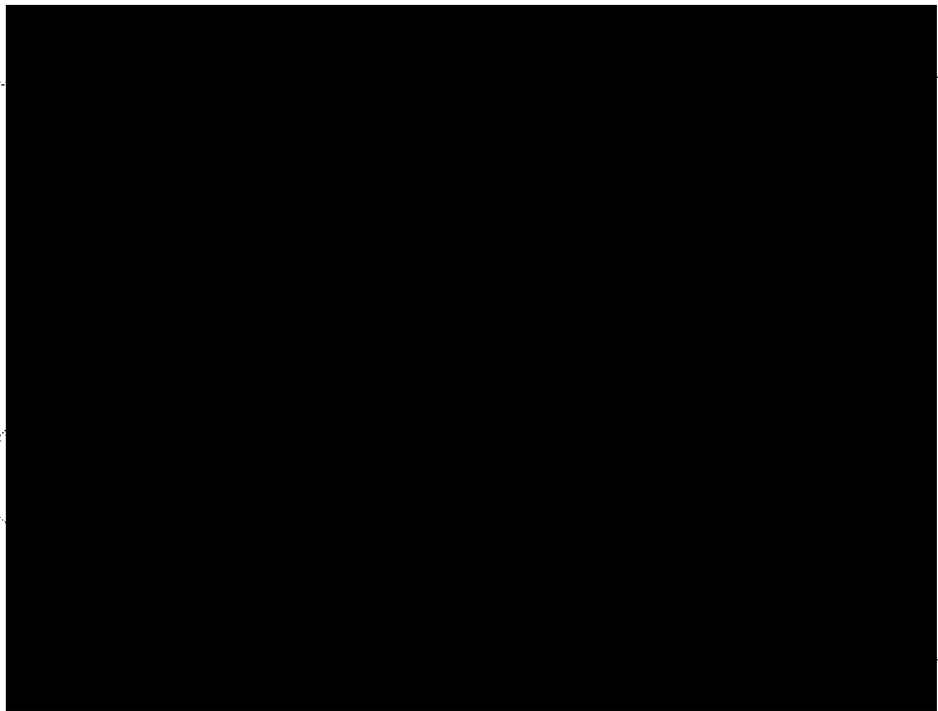
KEY

Title Boundary

Shared Accessway

1

Phase 1



entrail
pen Space
3.5m2

A. Redline boundary amended to remove
soft landscaping strip. 30/9/22. AL

Signal Homes
ANGMERING & ANGMERING

SHRUBLANDS NURSERIES
ANGMERING

AFFORDABLE HOUSING
PHASING PLAN

SCALE : 1/500 @ A2

DATE : SEPTEMBER 2022

DRAWN : AL

CHECKED :

ERG.No : 002/315

A