

Dated:

5th August

2022

ABIGAIL CHRISTINE MOZLEY, SALLY PATRICIA MASTRODDI,
and HARRIET MARY ROWNTREE

And

MACRA LIMITED

to

ARUN DISTRICT COUNCIL

UNILATERAL UNDERTAKING

pursuant to Section 106 of the Town and Country
Planning Act 1990 and other powers relating to
development of land at West Walberton Lane,
Walberton

Planning Application Ref – WA/32/21/PL

Planning Appeal Ref - APP/C3810/W/22/3291254

THIS DEED is made on

5th August

2022

GIVEN BY:

- (1) **ABIGAIL CHRISTINE MOZLEY** of 8 Woodlane, Falmouth TR11 4RF and **SALLY PATRICIA MASTRODDI** of 87 Station Road, Fulbourn, Cambridge CB21 5ER and **HARRIET MARY ROWNTREE** of Hartley Cottage, Graffham, Petworth GU28 0NP ("the Owner")
- (2) **MACRA LIMITED** (Company number 10079616 of Unit 10 Monks Brook Industrial Estate, Chandlers Ford, Hampshire, SO53 4RA ("the Developer")

TO:

- (3) **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltrovers Road, Littlehampton, West Sussex, BN17 5LF ("the Council")

RECITALS

- A The Council is the local planning authority and the local housing authority for the purposes of the Act for the area in which the Land is situated.
- B The Owner is the registered proprietor with Title Absolute of the Land registered at HM Land Registry under Title Number WSX324230 known as Land on the south west side of West Walberton Lane, Walberton, Arundel.
- C The Developer has the benefit of an option to purchase the Land from the Owner.
- D The Developer submitted the Application to the Council which was refused on 26 July 2021 and the Developer has submitted the Appeal to the Secretary of State.
- E The Owner and the Developer enter into this Deed to give the following obligations in the manner hereinafter appearing in the event that Permission is granted pursuant to the Appeal.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

- 1.1 In addition to the definitions set out below, a series of specific definitions are included in each of the Schedules to this Deed giving further defined terms and expressions to facilitate interpretation and unless stated to the contrary the specific definitions in the Schedules shall apply throughout this Deed where the relevant terms and expressions are used.
- 1.2 In this Deed the following expressions shall have the meanings indicated:

"1980 Act"	The Highways Act 1980
"Act"	The Town and Country Planning Act 1990 (as amended)
"Appeal"	The appeal submitted to the Secretary of State for refusal of the Application by the Council registered under reference number APP/C3810/W/22/3291254
"Application"	The application for planning permission allocated reference number WA/32/21/PL;
"CIL Regulations"	means the Community Infrastructure Regulations 2010 (as amended)

"Council's Legal Costs"	The Council's legal costs in connection with the preparation and completion of this Deed
"Commence"	The carrying out of a "material operation" (as defined in section 56(4) of the Act) in connection with the Development save that for the purposes of this Deed and for no other purpose operations consisting of site clearance, the Construction Access Works, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements shall not be included (and "Commencement" and "Commenced" shall be construed accordingly)
"Commencement Notice"	means a notice in the form annexed to this Deed as Appendix A
"Completed"	Practically complete save for minor snagging items such that it is reasonably fit for Occupation (and "Complete" and "Completion" shall have the same meaning)
"Contributions"	Any one or number of the financial contributions required to be made pursuant to this Deed
"Deed"	This unilateral undertaking made by deed
"Development"	The development of the Land in accordance with the Permission being the construction of 30 dwellings together with associated access, parking, public open space and landscaping
"Index Linked"	means the increase by reference to the Inflationary Index as set out in clause 15
"Inflationary Index"	The Retail Prices Index all items excluding mortgage interest payments (RPIX) issued by the Office for National Statistics during any period when no such index exists the index which replaces the same or is the nearest equivalent thereto as the Council shall reasonably nominate taking into account any official reconciliation of changes in its basis of calculation
"Interest"	Interest at 4 per cent above the base lending rate of the Bank of England (calculated on a daily basis from the date on which it fell due until the actual date of payment). "Interest Rate" shall be construed accordingly.
"the Land"	The land known as land on the south west side of West Walberton Lane, Walberton, Arundel as shown edged in red on the Location Plan (ref A11709-100 Rev B) in Schedule Three
"Monitoring Fee"	means a sum of £900.00 (NINE HUNDRED POUNDS) payable to the Council set out in paragraph 3 of Schedule Two in accordance with Regulation 122(2A) of CIL in respect of the cost of monitoring (including reporting under CIL) in relation to the delivery of these planning obligations.
"Occupation"	Occupation for the purposes permitted by the 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 and "Occupy" and "Occupied" shall be construed accordingly
"Payment Notice"	means a notice in the form annexed to this Deed as Appendix B
"Permission"	The planning permission subject to conditions to be granted pursuant to the Appeal
"Residential Units"	Individual units within the Development to be used for residential purposes (and for the avoidance of doubt this definition shall include Affordable Housing Units (as defined in Schedule One), houses and flats as appropriate)
"Reserved Matters Application"	Means a further planning application to obtain consent for those matters not included in the Permission which are subject to approval by the Council
"Specified Date"	means the date specified in this Deed for payment by the Owner and the Developer of the sums referred to in Schedule One and Schedule Two
"Statutory Undertakers"	Organisations licensed by the government which include all utilities electricity, gas, water, telephone, cable telephone and television and other telecommunication companies
"Working Day(s)"	means a weekday (Saturdays, Sundays and public holiday days excepted) and "Working Days" shall be construed accordingly

2 INTERPRETATION

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.2 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all words shall be construed interchangeable in that manner.
- 2.3 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 severally unless there is an express provision otherwise.
- 2.4 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.
- 2.5 References to the Owner and the Developer in this Deed shall include the Owner and the Developer's successors in title and any person deriving title through or under the Owner or the Developer and in the case of the Council the successors to its statutory functions.
- 2.6 References to "the parties" shall mean the parties to this Deed and reference to a "party" shall mean any one of the parties.
- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

3 STATUTORY AUTHORITY

- 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 whether listed or not.
- 3.2 The undertakings, covenants, restrictions and requirements imposed upon the Owner and the Developer under this Deed create planning obligations pursuant to Section 106 of the Act and subject to clause 3.3 and/or as otherwise provided in this Deed are enforceable by the Council as a local planning authority against the Owner and the Developer any person deriving title in the Land or any part of it from the Owner and or the Developer (as may be the case).
- 3.3 The undertakings, covenants and obligations on the part of the Owner and the Developer in this Deed shall not apply and shall not be enforceable by the Council if the person appointed to determine the Appeal states clearly in the decision letter granting the Permission that such obligations, or any of them, are unnecessary or otherwise fail to meet the statutory tests set out in Regulation 122 of the CIL Regulations PROVIDED THAT if any obligations are determined by the decision maker to be unnecessary or otherwise fail to meet the statutory tests it shall not affect the lawfulness of the balance of the covenants and obligations in this Deed which continue to be enforceable.
- 3.4 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.

4 EFFECT OF THE DEED

This Deed shall take effect on the day and year first before written SAVE THAT the obligations contained in Schedules One to Two (inclusive) to this Deed shall take effect from the Commencement of Development.

5 THE OWNER AND THE DEVELOPER'S UNDERTAKINGS

The Owner and the Developer undertake to the Council that they will observe and perform the obligations contained in Schedules One and Two.

6 RELEASE AND LAPSE

- 6.1 The Owner and the Developer shall not be liable for a breach of any of their obligations under this Deed (save for antecedent breaches) after they shall have parted with all of their interests in the Land or the relevant part of it.
- 6.2 This Deed shall lapse and be of no further effect if:
- 6.2.1 the Permission shall lapse without having been Commenced; or
 - 6.2.2 the Permission shall be varied or revoked other than with the consent of the Owner or the Developer; or
 - 6.2.3 the Permission is quashed following a successful legal challenge; or
 - 6.2.4 the Appeal is dismissed.
- 6.3 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 Permission) granted (whether or not on appeal) after the date of this Deed.
- 6.4 This Deed shall not be enforceable against Statutory Undertakers who have an interest in or arising purely in connection with their apparatus or operational land situated within the Development.

- 6.5 This Deed shall not be enforceable against any owners or occupiers of an individual Residential Unit save in respect of any restriction on Occupation of such Residential Unit.

7 LOCAL LAND CHARGE

- 7.1 This Deed is a local land charge and is given on the basis that it may be registered as such by the Council.
- 7.2 Upon the full compliance with any terms of this Deed the Owner or the Developer may request that the Council procure that this is noted in the register of local land charges relating to it as soon as reasonably practicable

8 NO FETTER ON DISCRETION OR WAIVER

- 8.1 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 8.2 No waiver (whether expressed or implied) by the 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 from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

9 WARRANTY AS TO TITLE

The Owner and the Developer hereby warrant to the Council that no person other than the Owner and the Developer has any interest in the Land for the purposes of section 106 of the Act.

10 SEVERABILITY

If any part of this Deed shall be declared unlawful or invalid by a court of competent jurisdiction then (to the extent possible) the remainder of this Deed shall continue in full force and effect.

11 THE COUNCIL'S COSTS

The Owner undertakes to the Council that it will on or before the date of this Deed pay the Council's Legal Costs.

12 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Deed shall be enforceable by a third party who is not a party to the Deed and for the avoidance of doubt the terms of this Deed may be varied by Deed between the parties and the Council without the consent of any such third party.

13 NOTIFICATION OF COMMENCEMENT/OCCUPATION

- 13.1 The Owner and the Developer undertake to the Council that they will:

- 13.1.1 notify the Council in writing of the date of Commencement of the Development within five Working Days of it occurring in the form set out in the Commencement Notice at Appendix 1; and
- 13.1.2 notify the Council in writing of the date of Occupation for the first time of any part of the Development within five Working Days of it occurring;

14 NOTICES

- 14.1 Any notices required to be served by the Owner and the Developer under this Deed must be in writing and shall be served by First Class prepaid post by hand or by email (in the case of the Council) in the following manner:

14.1.1 on the Council at Civic Centre, Maitravers Road, Littlehampton BN17 5LF marked for the attention of the Planning Department and quoting the Application number or by email to planning@arun.gov.uk quoting the Application number;

14.1.2 on the Owner at c/o Barr Ellison LLP 39 Parkside Cambridge CB1 1PN ref: Kelly Peck or as notified by the Owner in writing to the Council;

14.1.3 on the Developer at Unit 10 Monks Brook Industrial Estate, Chandlers Ford, Hampshire, SO53 4RA or as notified by the Developer in writing to the Council.

14.1.4 Any notice or other communication given in accordance with clause 14.1.1 or 14.1.2 will be deemed to have been received:

14.1.4.1 If delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address provided that if delivery occurs before 9 am on a Working Day, the notice will be deemed to have been received at 9 am on that day, and if delivery occurs after 5 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9 am on the next Working Day;

14.1.4.2 If sent by recorded delivery or other next working day delivery service at 9 am on the second Working Day after posting

14.1.4.3 If sent by email to ADC at planning@arun.gov.uk provided that if delivery occurs before 9 am on a Working Day, the notice will be deemed to have been received at 9 am on that day, and if delivery occurs after 5 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9 am on the next Working Day.

14.1.4.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15 INDEX LINKING

15.1 Each and every one of the Contributions which are to be paid under the terms of this Deed shall be Index Linked (unless otherwise specified in this Deed).

15.2 Unless there is an express provision to the contrary the Owner and the Developer agree with the Council that any sum payable to the Council by the Owner and the Developer and referred to in Schedule One and Schedule Two shall be increased by the application of the following formula;

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

Where:

A is the sum actually payable on the Specified Date

B is the original sum mentioned in this Deed

C is the Inflationary Index for the month two months before the date that the Specified Date

D is the Inflationary Index for the month two months before the date that the Planning Permission is granted

C/D is equal to or greater than 1

Where reference is made to an index (including the Inflationary Index and the BCIS Index) and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed).

16 PAYMENT NOTICE

All payments due under this Deed shall be forwarded to the payee and shall have attached to them the Payment Notice duly completed.

17 INTEREST ON LATE PAYMENTS

Any amount due from the Owner and the Developer under this Deed which is not paid by the due date shall be payable with Interest from the due date until actual payment. The rate of interest shall be the Interest Rate.

18 MORTGAGEE CLAUSE

Notwithstanding clause 3.2, no obligation in this Deed shall be binding on or enforceable against any other chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part of parts of the Land or any receiver appointed by such chargee or mortgagee or any person deriving title through such chargee, mortgage or receiver unless and until such chargee, mortgagee, receiver or person has entered into possession of the Land or part thereof to which such obligation relates.

19 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

20 DISPUTE RESOLUTION

20.1 Where it is provided in this Deed that a matter is to be approved (or another cognate expression is used) by the Council such approval has been refused or given conditionally in accordance with the provisions of this Deed and the Owner or the Developer wish to dispute such refusal or conditions, then the Owner or the Developer may:

20.1.1 first attempt to resolve that dispute or difference amicably within twenty-eight (28) days of the dispute arising;

20.1.2 if the Owner and the Developer and the Council are unable to resolve the dispute amicably pursuant to clause 20.1.1, then the Owner and the Developer may invite the Council to agree that the dispute be referred for resolution in accordance with clause 20.2 to 20.5.

20.2 Any dispute or disagreement or difference arising out of the provisions relating to Affordable Housing shall be referred to an independent Chartered Surveyor of at least fifteen (15) years standing who shall be nominated in default of agreement between the Owner, the Developer and the Council, by the President for the time being of the Royal Institution of Chartered Surveyors or his deputy;

20.3 In the case of any legal requirement or interpretation or other matter regarding this Deed the same shall be referred to Counsel of at least fifteen (15) years' experience in such matters who shall be appointed in default of agreement between the Owner, the Developer and the Council by the Chair of the Bar Council or the Vice-Chair of the Bar Council; and

20.4 The determination of the expert (including any determination as to the responsibility for the payment of his own costs and those of the Owner, the Developer and the Council) shall be final and binding upon the Owner and the Developer and on any persons claiming through or under them and judgement upon the matter may be entered in any court having jurisdiction, or

application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be.

20.5 The terms of reference of any expert appointed to determine a dispute, disagreement or difference shall include the following:

20.5.1 The expert shall call for representations from the Owner, the Developer and the Council within twenty-one (21) days of a reference to them under this Deed and require them to exchange representations within this period;

20.5.2 The expert shall allow the Owner, the Developer and the Council fourteen (14) days from the expiry date of the period referred to in 20.5.2 above to make counter representations;

20.5.3 Any representations or counter representations received out of time may be disregarded by the expert;

20.5.4 The expert shall provide the Owner, the Developer and the Council with a written decision (including his reasons) within twenty-eight (28) days of the last date of receipt of counter representations and he shall be entitled to call for such independent expert as he shall think fit;

20.5.5 The expert's costs and the costs of any independent expert advice called for by the expert shall be included in the award.

21 DEVELOPER'S CONSENT

The Developer hereby consents to this Deed being entered into and to the obligations becoming binding on the Land notwithstanding any registration by or on behalf of the Developer to protect its interest in the Land pursuant to the option referred to in Recital D.

22 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the courts of England.

23 DELIVERY

This Deed is for the purposes of the Regulatory Reform (Execution of Deeds and Documents) Order 2005 a deed and for the avoidance of doubt the Deed shall be deemed not delivered despite being executed by the parties until such time as it is dated.

24 FUTURE SECTION 73 CLAUSE

In the event that an application is made pursuant to Section 73 of the Act to carry out the Development without complying with a condition or conditions attached to the Planning Permission and planning permission is granted in respect of the application (and the Council are satisfied that no revised planning obligations are required as a result of such amendment) references to Planning Permission in this Deed shall also be to the new planning permission granted pursuant to Section 73 of the Act and this Deed shall apply to and remain in full force in respect of that new planning permission without the need for a further Deed to be entered into pursuant to Section 106 of the Act.

SCHEDULE ONE

AFFORDABLE HOUSING OBLIGATIONS

DEFINITIONS

"Affordable Housing"	affordable housing as defined in the NPPF (Annex 2) or any subsequent amendment or modification or replacement of the NPPF or in any regulation statute or guidance issued and meeting the requirements of affordable housing planning obligation under section 106 of the Act (or any successor legislation) or the provision of which would make such a planning obligation unnecessary and may include but is not limited to: • social rented housing • affordable rented housing • shared ownership housing • intermediate housing (including intermediate rent, shared equity and low cost homes for sale)
"Affordable Housing Land"	those parts of the Development upon which the Owner and the Developer are to construct or procure the construction of the Affordable Housing Units and including all curtilage thereto
"Affordable Housing Plan"	Means the plan attached to this Deed at Appendix E marked "Affordable Housing Plan"
"Affordable Housing Provider"	means either one or a combination of: a) a registered provider of social housing as defined by section 80 of the Housing and Regeneration Act 2008 with Homes England who is either on the Council's list of Approved Affordable Providers (annexed as Appendix C) or other registered provider who is either specifically approved by the Council or who may be added to the list of Approved Housing Providers; or b) any other provider of Affordable Housing who is approved by the Council in writing; or c) such other body or organisation approved by the Council in writing whose main object is the provision of Affordable Housing
"Affordable Housing Units"	9 (nine) of the Residential Units to be constructed in accordance with the Permission (together with associated car parking spaces to comply with the Council's minimum parking standards for residential dwellings) as identified on the Affordable Housing Plan and used for the purposes of Affordable Housing as an Affordable Rent Unit, or an Intermediate Housing Unit (as the case may be) and "Affordable Housing Unit" shall be construed accordingly
"Affordable Rent"	the sum of the rent element and the Service Charge payable from the date of first occupation in respect of the relevant Affordable Rent Unit which shall not exceed the lower of eighty percent (80%) of the Market Rent or the Local Housing Allowance Levels
"Affordable Rent Unit"	those Affordable Housing Units let to applicants for Affordable Housing Units at Affordable Rent
"Chargee"	any mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise or any other person appointed under any security documentation to enable such mortgagee or chargee to

	realise its security or any administrator (however appointed) including any housing administrator
"Disposal"	means a disposal of the Affordable Housing Units and /or land upon which those units are to be constructed to an Affordable Housing Provider whether by transfer of the freehold or the grant of a long lease for a term of at least 125 years and "Dispose" and "Disposed" shall be construed accordingly
"HE"	Homes England (or its successor in function from time to time) within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act)
"Intermediate Housing Units"	Those Affordable Housing Units to be offered to applicants for Affordable Housing which meet the definition set out in paragraph (d) of the term Affordable Housing in Annex 2: Glossary of the NPPF (but not equity loans) or a subsequent or replacement tenure as may be agreed between the Council and the Owner and the Developer in writing and to be provided in accordance with the requirements of this Schedule One
"Local Housing Allowance"	the rental allowance rate for a property of the size and in the location of the relevant Affordable Rent Unit calculated by reference to the tables maintained by the Valuation Office Agency (or such equivalent means of calculation that may vary or replace it) as updated from time to time
"Market Rent"	an assessment of the best rent reasonably obtainable for a letting of an Affordable Rent Unit inclusive of service charge at the time of each letting which rent may be increased annually by no more than CPI + 1.0% or in the event of any change to legislation in relation to affordable rent such other rent level which may be applicable at the time of each letting
"NPPF"	the National Planning Policy Framework document published July 2021 and any subsequent revision or replacement of it together with any technical guidance and policy documents or circulars issued thereunder
"Nominations Agreement"	a nominations agreement between the Affordable Housing Provider and the Council affording the Council nomination rights in respect of the relevant Affordable Housing Unit in the form of the draft at Appendix D
"Nominations Policy"	the Council's allocations policy (or such other relevant policy as the Council shall from time to time reasonably adopt)
"Open Market Units"	the Residential Units which are general market housing for sale on the open market and which are not Affordable Housing Units
"Open Market Value"	means open market value assessed in accordance with the Appraisal and Valuation Manual of the RICS (the Red Book)
"Protected Tenant"	any tenant who: (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force

	(or any equivalent contractual right) in respect of a particular Affordable Housing Unit or (b) has exercised any statutory right to buy (or equivalent contractual right) in respect of a particular Affordable Housing Unit or (c) has been granted a shared ownership lease by a Affordable Housing Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the Affordable Housing provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Affordable Housing Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit that is subject to the shared ownership lease
"Service Charge"	the amount payable by the occupant of any Affordable Housing Unit for all communal services repairs maintenance improvements insurance of the building and curtilage plus estate management costs and ground rent to the extent that the costs have been reasonably incurred and remain at a reasonable level that will remain affordable for occupants
"Staircasing"	in connection with the Affordable Housing Units the acquisition after the date of the initial purchase by the occupier of additional tranches of equity within the said unit and references to "Staircase" or "Staircased" shall be construed accordingly
"Transfer Price"	A consideration that allows the Affordable Housing Provider: (a) to provide the Affordable Rent Units at an Affordable Rent in accordance with paragraph 4 of this Schedule One, (b) to provide any Intermediate Housing Units which are shared ownership or shared equity units at an initial tranche of equity share transferred to a tenant and place a limit on the rental element of shared ownership or shared equity units up to a maximum annual rent equivalent to 2.75% of the equity retained by the Affordable Housing Provider (excluding reasonable Service Charges) and that ensure that the Affordable Housing Units shall remain affordable to occupiers when taking into account all mortgage costs rent and Service Charges in respect of the Affordable Housing Units.
"Transfer Requirements"	The requirements of paragraph 2.2 of this Schedule One

OBLIGATIONS

The Owner and the Developer undertake to the Council as follows:-

1 Amount, tenure type, size and location of Affordable Housing

1.1 to construct or procure the construction of the Affordable Housing Units on the Land in accordance with paragraphs 1.2, 1.3, 1.4 and 1.5 of this Schedule.

1.2 The Affordable Housing Units shall consist of:

1.2.1 7 (seven) x Affordable Rent Units; and

1.2.2 2 (two) x Intermediate Housing Units.

1.3 The Affordable Housing Units shall comprise the following mix of sizes:

Type of Accommodation	Total Number of Affordable Housing Units
1 bedroom flats	4
2 bedroom houses	3
3 bedroom houses	2

1.4 The Affordable Housing Units shall be seamlessly integrated and distributed throughout the Development in at least two (2) clusters unless otherwise agreed in writing by the Council.

1.5 The tenure of the Affordable Housing Units shall be agreed in writing with the Council in accordance with the provisions of paragraph 1.2 prior to Commencement of the Development and the Owner and the Developer shall not Commence the Development until the tenure of each Affordable Housing Unit has been agreed in writing with the Council.

2. Delivery of Affordable Housing

2.1. Not to Occupy nor permit the Occupation of more than 75% (seventy five percent) of the Open Market Units until:

2.1.1 100% of the Affordable Housing Units have been constructed; and

2.1.2 the unencumbered freehold of the Affordable Housing Land has been transferred to an Affordable Housing Provider with full title guarantee for not more than the Transfer Price subject to the rights covenants and Staircasing provisions contained in this Schedule One and ready for immediate Occupation.

2.2. The Owner and the Developer shall offer the Affordable Housing Units to an Affordable Housing Provider ('the Offer') by provision of:

a) a Contract for the sale of land; and

b) a draft transfer which shall include the provisions set out in clauses 2.2.1 to 2.2.4 below::

2.2.1 a grant of full and free rights of access both pedestrian and vehicular from the public highway or roads intended to become public highway to the Affordable Housing Units;

2.2.2 a grant of full and free rights to the passage of Services through Service Media on the Development up to and abutting the boundary to the Affordable Housing Land all such services to be connected to the mains; and

2.2.3 as far as reasonably possible the benefit of the same rights covenants obligations and other provisions as shall apply to the Open Market Units.

- 2.2.4 A reservation of all rights and access and passage of services and other rights reasonably necessary for the benefit of the remainder of the Affordable Housing Units, estate infrastructure and public areas on the Development.
- 2.3. The Offer shall remain open for a period of two (2) months ('the Acceptance Period').
- 2.4. In the event that the Offer is not accepted within the Acceptance Period then the Owner and Developer may:
- 2.4.1 on or before the Occupation of ten (10) of the Open Market Units, pay to the Council the Affordable Housing Commuted Sum set out in clause 2.5 below, whereupon once such sum has been paid to the Council the Owner and Developer and any successors in title shall be released from the provisions of paragraph 2.1.2 insofar as it relates to the Affordable Housing Units and the Affordable Housing Units may be sold on the Open Market as Open Market Units; or
 - 2.4.2 Dispose of all or any of the Affordable Housing Units as Intermediate Housing Units to an Affordable Housing Provider; or
 - 2.4.3 Dispose of all or any of the Affordable Dwelling Units to purchasers nominated through Help to Buy South East at a discount of 20% of the Open Market Value (such discount to be secured in perpetuity).

PROVIDED THAT

- 2.4.4 The Owner or Developer shall have provided the Council with written evidence of their reasonable endeavours to Dispose of the Affordable Housing Units to an Affordable Housing Provider;
 - 2.4.5 The Council shall, acting reasonably, have confirmed in writing that such reasonable endeavours were reasonable or an expert shall have determined that such reasonable endeavours were reasonable; and
 - 2.4.6 The Owner and the Developer shall pay to the Council the Affordable Housing Commuted Sum for each of the Affordable Housing Units in relation to which the Offer has not been accepted within the Acceptance Period.
- 2.5. The Affordable Housing Commuted Sum shall be calculated in accordance with the following formula:
- X multiplied by Y = the Affordable Housing Commuted Sum
- Where:
- X = £80,000,000; and
- Y = the number of Affordable Housing Units which will not be Provided on the Land as part of the Development in accordance with the terms of this Deed.

3. Intermediate Housing Units

- 3.1. Not to use the Intermediate Housing Units for any purpose other than for the provision of Intermediate Housing Units.
- 3.2. The Intermediate Housing Units shall be sold or leased on initial sales or letting of between 25% and 75% of the Open Market Value.

- 3.3. The initial rent payable in respect of an Intermediate Housing Unit shall not exceed 2.75% of the capital value of the unacquired percentage at the point of initial sale.

4. Affordable Rent Units

- 4.1. Not to use the Affordable Rent Units for any other purpose other than for the provision of Affordable Rent Units.
- 4.2. Not to let or otherwise permit the letting of any Affordable Rent Unit to any person other than in accordance with the following:
- 4.2.1 at an Affordable Rent in respect of each Affordable Rent Unit
 - 4.2.2 that the rent at each re-letting is calculated prior to the grant of any new tenancy to ensure that it is an Affordable Rent.
- 4.3. Not to Dispose of or let the Affordable Rent Units otherwise than in accordance with the draft Nominations Agreement attached at Appendix D and the Council's Nominations Policy to persons or households on the Register unless otherwise agreed in writing by the Council.

5. Staircasing

The Affordable Housing Provider shall apply any net capital receipt received as a result of any Staircasing or other staged purchase by a tenant of an Affordable Housing Unit to provide Affordable Housing in the civil parish of Walberton or Fareham (less reasonable costs incurred by the Affordable Housing Provider as approved by the Council).

6. Release of Affordable Housing provisions

- 6.1. The restrictions set out in this Schedule One shall not apply to the following:

- 6.1.1 any individual occupier owner or tenant of an individual Open Market Unit or their successors in title or their mortgagee or charge and respective successors in title
- 6.1.2 any Protected Tenant or any successor in title to a Protected Tenant
- 6.1.3 any mortgagee or chargee of a Protected Tenant or other party who has provided loan facilities to the Protected Tenant or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise
- 6.1.4 any purchaser from any of the parties named in paragraphs 6.1.1 and 6.1.2 above of an individual Affordable Housing Unit;
- 6.1.5 a Chargee who seeks to Dispose of the whole or any part of the Affordable Housing Land where there has been a default by the Affordable Housing Provider of the terms of such mortgage or financial charge PROVIDED THAT the Chargee shall prior to seeking to Dispose of any of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than 1 (one) month's prior written notice to the Council of its intention to Dispose and:
 - 6.1.5.1. in the event that the Council responds within 1 (one) month from receipt of the notice referred to above indicating that arrangement for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as

Affordable Housing then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer

6.1.5.2. if the Council does not serve its response to the notice referred to above within 1 (one) month of receipt of the said notice then the Chargee shall be entitled to Dispose free of the restrictions set out in this Schedule One which shall from time of completion of the Disposal permanently cease to apply

6.1.5.3. if the Council cannot within 2 (two) months of the date of service of its response under paragraph (a) above complete such a transfer then provided that the Chargee shall have complied with its obligations under this paragraph 6.1.5 the Chargee shall be entitled to Dispose free of the restrictions set out in this Schedule One which shall from the time of completion of the Disposal permanently cease to apply

PROVIDED THAT at all times the rights and obligations in this paragraph 6.1.5 shall not require the Chargee to act contrary to its duties under the mortgage or charge **AND PROVIDED ALSO THAT** notwithstanding the other provisions of this paragraph 6.1.5 the Chargee shall not be required to Dispose of the Affordable Housing Units (or any of them) for a consideration that is less than the amount due and outstanding to the Chargee under the terms of the relevant mortgage or charge including all accrued principal monies and interest and all costs and expenses incurred by the Chargee.

7. Additional covenants by the Owner and the Developer with the Council

The Owner and the Developer covenant with the Council:

- 7.1. to take all reasonable and prudent steps within its power to avert the repossession of the Affordable Housing Units by any Chargee of the Affordable Housing Provider or the exercise by any such Chargee of a power of sale and for these purposes in the event of a default under the security or likely default to cooperate fully with the Council to assist in arranging the transfer of the Affordable Housing Units with sitting tenants to another Affordable Housing Provider or, at the Council's option, to the Council;
- 7.2. in the event that the Owner or the Developer become aware that the Affordable Housing Provider has received notification from any Chargee of any breach or alleged breach by the Affordable Housing Provider of any of its obligations under its security, to notify the Council of this as soon as reasonably practicable; and
- 7.3. in the event that the Owner or the Developer become aware of any notice, order or direction having been served, made or given under the Housing Act 1996 Schedule 1 Part IV that relates to the Affordable Housing Units, to notify the Council of this as soon as reasonably practicable.

SCHEDULE TWO

A27 Works Contribution

DEFINITIONS

"A27 Works"	a scheme of improvement works to form part of works to the A27 to be identified by Highways England;
"A27 Works Contribution"	a contribution of £84,878.10 (eighty four thousand eight hundred and seventy eight pounds and ten pence) index Linked to be paid by Arun District Council to Highways England towards the cost of carrying out the A27 Works

OBLIGATIONS

The Owner and the Developer undertake to the Council as follows:-

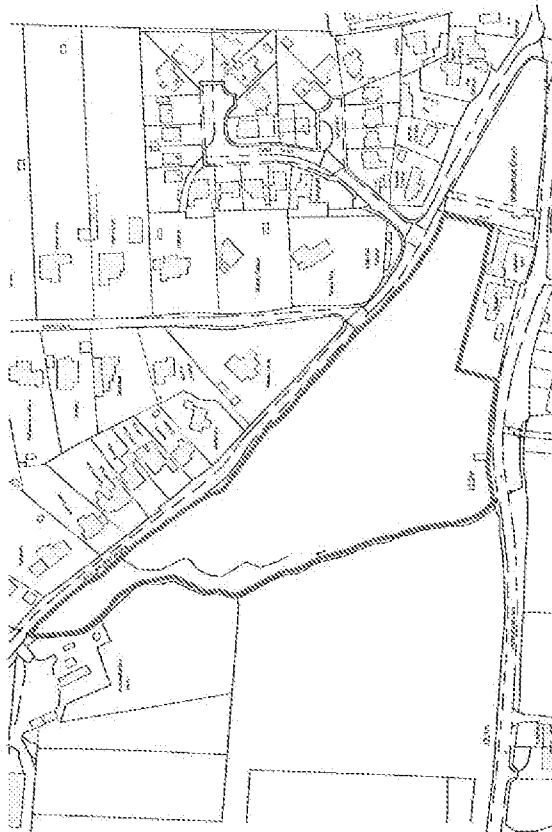
1. To pay the A27 Works Contribution in full to the Council prior to the Occupation of fifty percent (50%) of the Residential Units.
2. Not to Occupy or cause or permit the Occupation of more than fifty percent (50%) of the Residential Units unless and until the A27 Works Contribution has been paid in full to the Council.
3. To pay the Monitoring Fee to the Council prior to the Commencement of the Development.
4. Not to cause or permit the Development to be Commenced until the Monitoring Fee has been paid to the Council.

SCHEDULE 3
LOCATION PLAN
Ref A11709-100 Rev B

LOCATION PLAN



BLOCK PLAN 1:1000



LOCATION 1:2000 Ordnance Survey (C) Crown Copyright 2020. All Rights Reserved. Licence no. 100020432



DESIGN

ARCHITECTURE (URBAN DESIGN) LANDSCAPE

PROJECT
Proposed Development of Land at West
Walberton Lane, Walberton

CLIENT
Riverside

ARCHITECT
Riverside

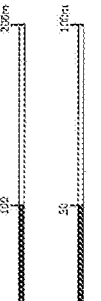
For Planning

Location & Block Plan

DATE
Jan 2021

SCALE
1:2000

BY
SL



00

8

APPENDIX A
COMMENCEMENT NOTICE

APPENDIX A
Commencement Notice

Pursuant to clause 13.1 in the Deed described below

I advise you that the Development described below was commenced on the Start Date stated in this Notice.

Dated: this _____ day of _____ 20

Signed: _____

On Behalf of: _____

To: Group Head of Planning, Arun District Council, The Civic Centre, Maltravers Road, Littlehampton BN17 5LF (DX:57406 Littlehampton);

From:

Development At:

Nature of Development:

Planning Permission Date & Reference:

Planning Obligation Date & Parties:

Start Date:

APPENDIX B
PAYMENT NOTICE

APPENDIX B

PAYMENT NOTICE

Payment of Monies due under a Section 106 Planning Obligation / Agreement

Dated: this _____ day of _____ 20

Please answer all the questions:

1. Payment to be made by / on behalf of
2. Land at
3. Agreement dated
4. Planning application reference number (where applicable)
5. Obligation in Agreement/Deed

(a)	clause no.	
(b)	contribution towards	
(c)	amount of contribution due	
(d)	Date upon which contribution is due	
(e)	amount of contribution enclosed	
(f)	amount of monitoring sum	

APPENDIX C
APPROVED AFFORDABLE PROVIDERS

APPENDIX A
APPROVED AFFORDABLE PROVIDERS

Provider	Contact and email	Address	Tel. No
Clarion Housing Group		Upton House, 7 Perrymount Rd, Haywards Heath, RH16 3TN	
The Guinness Partnership		33 East Street Havant PO9 1AA	
The Hyde Group		Telecom House 125 - 135 Preston Road Brighton BN1 6AF	
Worthing Homes		Davison House North Street Worthing BN11 1ER	
Stonewater		Waverley House 115-118 Holdenhurst Road Bournemouth BH8 8DY	
Saxon Weald		Saxon Weald House 38-42 Worthing Road Horsham RH12 1DT	
Hastoe Housing Association		Marina House 17 Marina Place Hampton Wick Kingston-Upon-Thames KT1 4BH	
Aster Group			
Arun District Council		Civic Centre, Maltravers Rd, Littlehampton, BN17 5LF	
National Community Land Trust Network		National CLT Network 7-14 Great Dover Street, London, SE1 4YR	

APPENDIX D
DRAFT NOMINATIONS AGREEMENT

APPENDIX D
DRAFT NOMINATIONS AGREEMENT

DATED

20{ }

(1) { }{ }

AND

(2) ARUN DISTRICT COUNCIL

AGREEMENT OF NOMINATION

relating to
rented units at

CONTENTS

	Page No.
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8 COSTS	6
9 AGREEMENTS AND DECLARATIONS	6

THIS AGREEMENT OF NOMINATION RIGHTS is made on

20{ }

BETWEEN

- (1) { } of { }; and
- (2) ARUN DISTRICT COUNCIL of The Civic Centre, Maltravers Road, Littlehampton BN15 7LF.

1 DEFINITIONS

In this Agreement :

"Initial Let" means the first tenancy of such newly constructed and previously unoccupied Rented Unit;

"Nominee" means a person named in the Nomination List who is specified by the Council as being suitable for taking a Tenancy Agreement of a Rented Unit;

"Nomination List" means the list to be supplied by the Council pursuant to clauses 3.3 and 3.10 (as may be updated from time to time in accordance with clause 3.16).

"Property" means the land at shown edged red on the attached plan.

"Rented Units" residential units in the form of houses.

"Subsequent Nominee" means a Nominee to be offered a Tenancy Agreement pursuant to clause 3.10.

"Tenancy Agreement" means an assured Tenancy Agreement in a form prepared by the RSL and containing terms which accord with the form of Tenancy Agreement being used by the RSL from time to time for its general lettings.

"Vacancy Notice" means a written notice given by the RSL to the Council (in a form to be agreed between the RSL and the Council within five weeks from the date of this Agreement) the function of such notice being the notification to the Council by the RSL that the construction and fitting out of the Rented Unit is completed.

"Void" means a Rented Unit which is vacant otherwise than as a result of the tenant having:

- (a) moved to other accommodation either by transfer or decant provided by the RSL;
- (b) moved to other accommodation under a reciprocal arrangement provided by another registered social landlord registered with the Housing Corporation under the Housing Act 1996.

"Void Notice" means a written notice given by the RSL to the Council (in a form to be agreed between the RSL and the Council within five weeks from the

date of this Agreement) the function of such a notice being the notification to the Council of a Void.

2 ENABLING PROVISIONS

This Agreement is made pursuant to s111 of the Local Government Act 1972 s33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other enabling powers.

3 PROCEDURE

The parties agree that the following nomination procedure shall apply to the nomination of persons in respect of the Rented Units.

Initial Lets

- 3.1 The RSL shall give the Council not less than eight weeks written notice of the date when the Initial Let units will be ready for occupation.
- 3.2 The RSL shall serve on the Council a Vacancy Notice in respect of each Rented Unit not less than four weeks prior to such newly constructed and previously unoccupied Rented Unit becoming available for occupation.
- 3.3 The Council shall within 10 working days of receipt of a Vacancy Notice serve upon the RSL the Nomination List setting out a list of Nominees.
- 3.4 The Nomination List to be served by the Council under clause 3.3 shall:
 - 3.4.1 specify the appropriate category of Rented Unit to which it relates; and
 - 3.4.2 indicate the priority for the housing of the Nominees.
- 3.5 The RSL shall have the right to let the Initial Let in respect of the Rented Units to persons of its own choosing in the event of the Council's failure to serve the Nomination List referred to in clause 3.3 within the period of 10 working days of receipt of the Vacancy Notice.
- 3.6 The RSL shall within five working days of the date of receipt of the Nomination List referred to in clause 3.3 select a Nominee from the Nomination List in priority order and shall use its reasonable endeavours to arrange viewing of the relevant Rented Unit and offer a Tenancy Agreement to such selected Nominee.
- 3.7 If the selected Nominee fails to enter into a Tenancy Agreement within three working days of receipt of the RSL's offer of a Tenancy Agreement such selected Nominee shall be deemed to have rejected the RSL's offer and the RSL shall select another Nominee whereupon the procedure set out in clause 3.6 and this clause shall be repeated.

- 3.8 In the event of the second selected Nominee failing to accept the RSL's offer of a Tenancy Agreement within the time prescribed by clause 3.7 then the RSL shall make an offer to a third Nominee and the procedure set out in clauses 3.6 and 3.7 shall apply but in the event of such third selected Nominee failing to accept the RSL's offer of a Tenancy Agreement within the prescribed time limits the RSL shall not be bound to make any further offers of accommodation to Nominees in respect of such vacancy of the Rented Unit but shall be entitled to let the Rented Unit to a tenant of its own choosing.
- 3.9 The RSL's obligations under clauses 3.1 to 3.8 shall cease when all of the Rented Units have been offered to Nominees in accordance with clauses 3.6 to 3.8.

Voids

- 3.10 Should a Rented Unit become a Void after the Initial Let or the RSL has reasonable cause to believe it will become a Void then and in each case:
- 3.10.1 the RSL shall serve a Void Notice in respect of the relevant vacant Rented Unit; and
- 3.10.2 within 10 working days of receipt of the said notice the Council shall serve upon the RSL the Nomination List setting out a list of Subsequent Nominees which shall contain the information referred to in clause 3.4.
- 3.11 The RSL shall have the right to let the relevant vacant Rented Unit to a person of its own choosing in the event of the Council's failure to serve the Nomination List referred to in clause 3.10 within 10 working days of receipt of the Void Notice.
- 3.12 Upon receipt of the Nomination List referred to in clause 3.10 the RSL shall follow the procedure mutatis mutandis set out in clauses 3.6 to 3.8.
- 3.13 The RSL shall not be obliged to follow the procedure set out in clauses 3.10 to 3.12 if it would result in the Subsequent Nominees being nominated for more than 75 per cent of the Rented Units available after the Initial Let and shall have the right to let the relevant vacant Rented Unit to a person of its own choosing.

Provision of information and alteration of lists

- 3.14 The RSL shall give notification to the Council of the occurrence of the following events within five working days of their occurrence:
- 3.14.1 a Nominee or Subsequent Nominee failing to view a Rented Unit within 5 working days of an offer being made;
- 3.14.2 a Nominee or Subsequent Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Agreement;

- 3.14.3 a Nominee or Subsequent Nominee accepting an offer of a Tenancy Agreement;
- 3.14.4 a person accepting an offer of a tenancy from the RSL;
- 3.14.5 the RSL rejecting a Nominee or Subsequent Nominee in accordance with clause 3.20.
- 3.15 In the event of a notice being served pursuant to clause 3.14 then the name of such Nominee or Subsequent Nominee shall be removed from the Nomination List.
- 3.16 Within 10 working days of the Council receiving notice served in accordance with clause 3.14 above save for notice under 3.14.4 the Council shall serve upon the RSL the name and address of a Nominee or Subsequent Nominee to add to the Nomination List such notice to include the information set out in clause 3.4.
- 3.17 If the Council shall within the period mentioned in clause 3.16 notify the RSL that the Council then has no suitable Nominee or Subsequent Nominee the Council shall advise the RSL of a suitable replacement Nominee or Subsequent Nominee as soon as reasonably practicable.
- 3.18 The RSL shall have the right to let a Rented Unit to a person of its choosing if the Council's failure to provide a Nominee or Subsequent Nominee creates a Void in respect of that Rented Unit.
- 3.19 On 1 April, 1 July, 1 October and 1 January in each year the RSL shall serve the Council with details of the letting activities of the Rented Units in a format to be agreed between the RSL and the Council.
- 3.20 The RSL shall have the right to interview and make enquiries of each Nominee or Subsequent Nominee and by serving written notice upon the Council to that effect to reject any Nominee or Subsequent Nominee if in the reasonable opinion of the RSL the grant of an Assured Tenancy to such Nominee would be in contravention of the RSL's registered rules or its letting criteria.
- 3.21 The Council shall immediately notify the RSL in writing if any Nominee or Subsequent Nominee is withdrawn from the Nomination List.
- 3.22 When calculating percentage for the purposes of this Agreement percentage equal to or in excess of 0.5 shall be rounded up and percentages less than 0.5 shall also be rounded up.
- 3.23 The Council and the RSL agree that the nomination rights contained in this Agreement may be varied from time to time but only by agreement in writing by the parties.

4 NOTICES

Any notice required to be served hereunder shall be sufficiently served on the parties at the address indicated above or such other address notified by one party to the other and any notice shall have been deemed to have been served two working days after posting.

5 TRANSFERS TO OTHER REGISTERED SOCIAL LANDLORDS

The RSL shall ensure that any registered social landlord to which the Property and Rented Units erected thereon are transferred otherwise than by direction of the Housing corporation under its statutory powers shall enter into a similar agreement mutatis mutandis with the Council.

6 MORTGAGEES IN POSSESSION

The provisions of this Agreement shall not apply to any mortgagee in possession or anyone deriving title therefrom or any individual dwelling in respect of which the right to acquire under the Housing Act 1996 Part 1 Chapter 11 or under any other statutory provisions has been validly exercised.

7 DISPUTES

Where any matters fail to be agreed between the parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the parties or in default of agreement to be nominated by the President for the time being of the chartered Institute of Housing.

8 COSTS

The RSL agrees with the Council to pay the reasonable legal costs which the Council incurs in preparing and entering into this Agreement.

9 AGREEMENTS AND DECLARATIONS

The parties agree:

- 9.1 nothing in this Agreement fetters or restricts the exercise by the Council of any of its powers; and
- 9.2 the obligations contained in this Agreement are covenants for the purpose of s33 of the Local Government (Miscellaneous Provisions) Act 1982.

THIS DOCUMENT HAS BEEN EXECUTED AS A AGREEMENT AND IS DELIVERED and takes effect on the date stated at the beginning of it.

APPENDIX E
AFFORDABLE HOUSING PLAN

Affordable Housing Plan

Location Plan 001



Not to scale

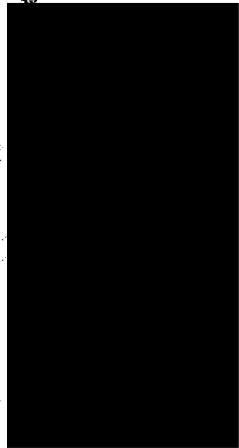
Key:

Number Tenure

AH1	Intermediate Housing
AH2	Intermediate Housing
AH3	Affordable Rent
AH4	Affordable Rent
AH5	Affordable Rent
AH6	Affordable Rent
AH7	Affordable Rent
AH8	Affordable Rent
AH9	Affordable Rent

KEY

Location of Affordable
Housing



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

EXECUTED AS A DEED by
MACRA LIMITED acting by a director,
In the presence of:

Witness Signature:
Witness Name:
Witness Address:
Witness Occupation:

EXECUTED AS A DEED by:
ABIGAIL CHRISTINE MOZLEY
In the presence of:

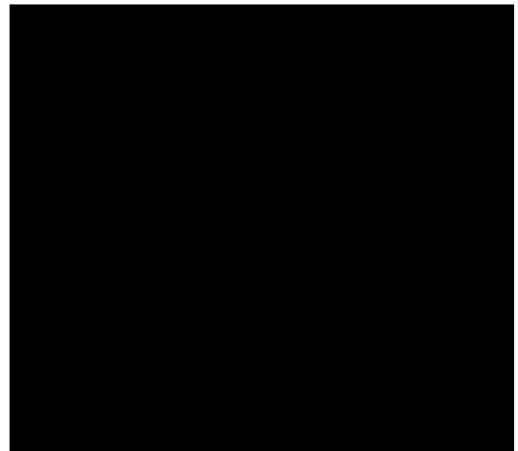
Witness Signature:
Witness Name:
Witness Address:
Witness Occupation:

EXECUTED AS A DEED by:
SALLY PATRICIA MASTRODDI
In the presence of:

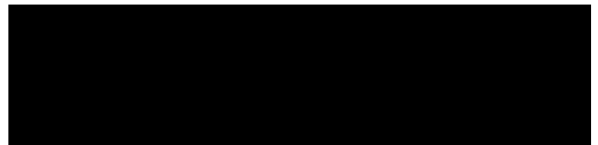
Witness Signature:
Witness Name:
Witness Address:
Witness Occupation:

EXECUTED AS A DEED by:
HARRIET MARY ROWNTREE
In the presence of:

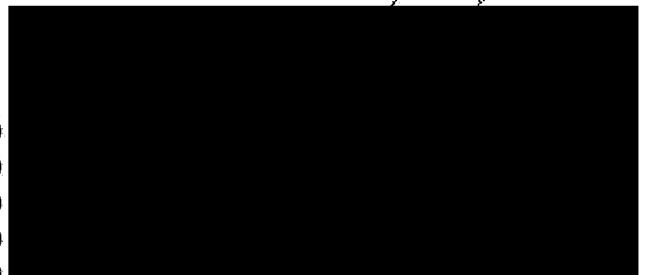
Witness Signature:
Witness Name:
Witness Address:
Witness Occupation:



BLIVE COURT
8 REGENT SQUARE PENZANCE TR18 4BL
RETIRED



89 STATION ROAD, FULBROOK
CAMBRIDGE CB21 5ER.
Retired Chartered Surveyor



FAIRLAWN,
PARK CORNER,
FRESHFORD,
BATH.
BA2 7UP

CHARITY CEO

