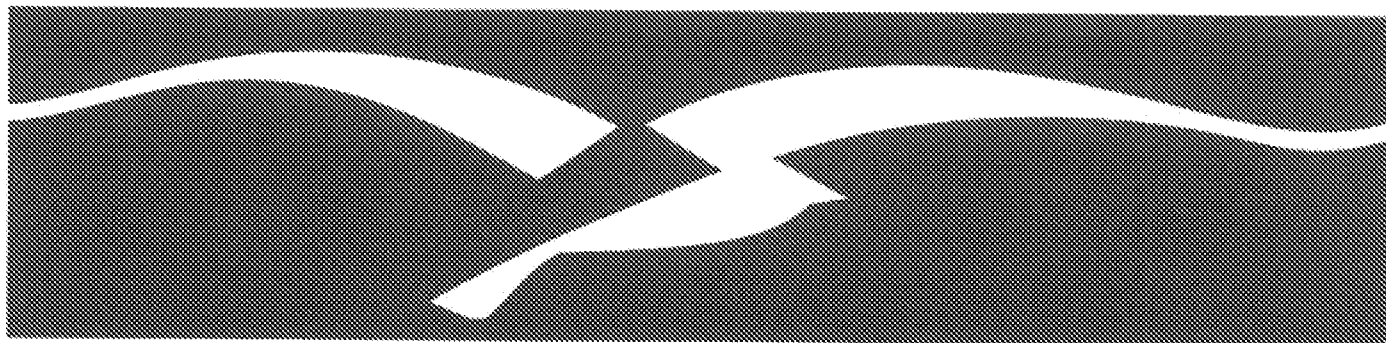




DATED

21st March

2025

ARUN DISTRICT COUNCIL

-and-

WEST SUSSEX COUNTY COUNCIL

-and-

ASTER COMMUNITIES

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

relating to land East of Tye Lane, Walberton West Sussex

PLANNING REFERENCE WA/44/17/OUT and WA/43/24/DOV

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DATED

21st March

2025

PARTIES

- 1) **ASTER COMMUNITIES** a charitable registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014 (Registered Society No 31530R) and whose registered office address is at Sarsen Court, Horton Avenue, Devizes SN10 2AZ (the "Owner") and
- 2) **ARUN DISTRICT COUNCIL** of The Civic Centre, Maltravers Road, Littlehampton BN17 5LF (the "Council")
- 3) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester PO19 1RQ ("the County Council")

RECITALS

- A The Owner is the freehold owner of the Aster Land.
- B The Council is the local planning authority for the purposes of this Deed under the Act and for the area in which the Land is situated and by whom the obligations within this Deed are enforceable.
- C The County Council is a planning authority and is also the highway authority for the area in which the Land is situated.
- D The Council entered into a Section 106 Agreement dated 1st November 2017 and made between (1) David Henry Tupper, Hilary Jennifer Tupper, Andrew William Brooke and David Mark Spofforth (2) Wates Developments Limited (3) the Council and (4) the County Council ("the Original Agreement") which secured the provision of planning obligations in respect of the Land.
- F The parties hereto agree to vary the terms of the Original Agreement as varied as set out in clause 3 to this Deed.
- G 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.

1. INTERPRETATION

- 1.1. In this Deed unless the context otherwise requires the following terms shall have the

following meanings:

Aster Land means the parts of the Land registered at HM Land Registry with title numbers WSX425466 (plots 6-10), WSX418845 (plots 24-29), WSX418846 (plots 30-33), WSX432890 (plots 59-61), WSX432044 (plots 62-67 and 70-73), WSX432042 (plots 74-81), WSX432043 (plots 82-93), WSX432041 (plots 116-119) as shown edged red on the Aster Land Plan;

Aster Land Plan means the plan attached to this Agreement at Annex 1.

2. CONSTRUCTION OF THIS DEED

2.1 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.

2.2 The Original Agreement shall be varied in the manner set out in clause 3 of this Deed.

2.3 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 Land as defined in the Original Agreement and remain to be performed to the extent that they have not already been performed.

2.4 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.

2.5 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.

2.6 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.

3. LEGAL BASIS

3.1. 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 all other enabling powers.

3.2. The covenants obligations restrictions and requirements imposed upon the Parties by this Deed:

- 3.2.1. are entered into pursuant to the provisions of section 106 of the 1990 Act;
- 3.2.2. are planning obligations for the purposes of section 106 of the 1990 Act;
- 3.2.3. relate to the Aster Land;
- 3.2.4. are entered into with intent to bind the Owner's interest in the Aster Land and each and every part thereof into whosoever hands the same may come;
- 3.2.5. are enforceable by the Council as local planning authority; and
- 3.2.6. are executed by the respective Parties as a deed.

3.3 This Deed shall take effect upon the date hereof.

4. VARIATIONS TO THE ORIGINAL AGREEMENT

4.1. The parties agree that the Original Agreement shall be varied as set out within this clause 4.

4.2. A new definition of 'RP Mortgagee' shall be inserted in clause 2 of the Original Agreement as follows:

means any mortgagee or charge of the Affordable Housing Provider and any receiver (including an administrative receiver) and manager 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

4.3. Clauses 5.12 and 5.13 of the Original Agreement shall be deleted and shall be replaced by the following clause as follows:

"5.12 RP Mortgagee Exclusion Clause

5.12.1 The Affordable Housing provisions in this Deed shall not be binding on a RP Mortgagee of the whole or any part of the Affordable Housing Units 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 (3) months from the date of the written notice to complete a disposal of the Affordable Housing Units to

another Affordable Housing 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."

5. AGREEMENT

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

6. COVENANTS OF THE OWNER

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

7. MISCELLANEOUS

- 7.1. 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.
- 7.2. This Deed shall be registered as a local land charge by the Council.

8. JURISDICTION

- 8.1 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.
- 8.2 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).

9. 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.

This Agreement is executed as a deed by the parties and is delivered and takes effect on the date at the beginning hereof.

EXECUTED AS A DEED by)

the affixing of the Common Seal of)

ARUN DISTRICT COUNCIL)

in the presence of:)



Authorised Signatory

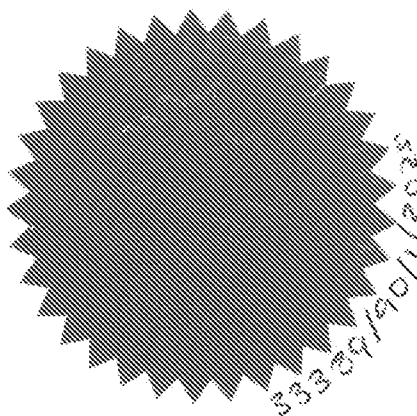
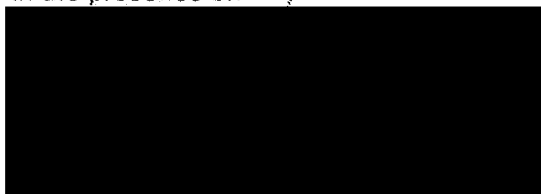


EXECUTED AS A DEED by)

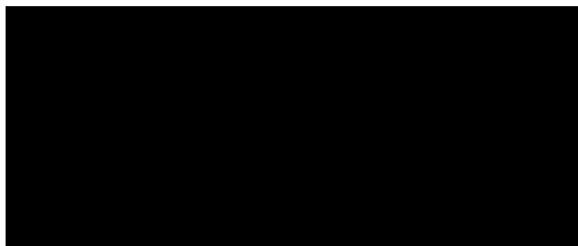
the affixing of the Common Seal of)

WEST SUSSEX COUNTY COUNCIL)

in the presence of:)



Executed as a deed by ASHFORDS LLP
acting by [David Lichenkova]
member, as attorney under a power of
attorney dated 4 April 2024 for ASTER
COMMUNITIES



in the presence of:

.....
[SIGNATURE OF WITNESS]

Name of Witness

Ratie Pretty

Address of Witness

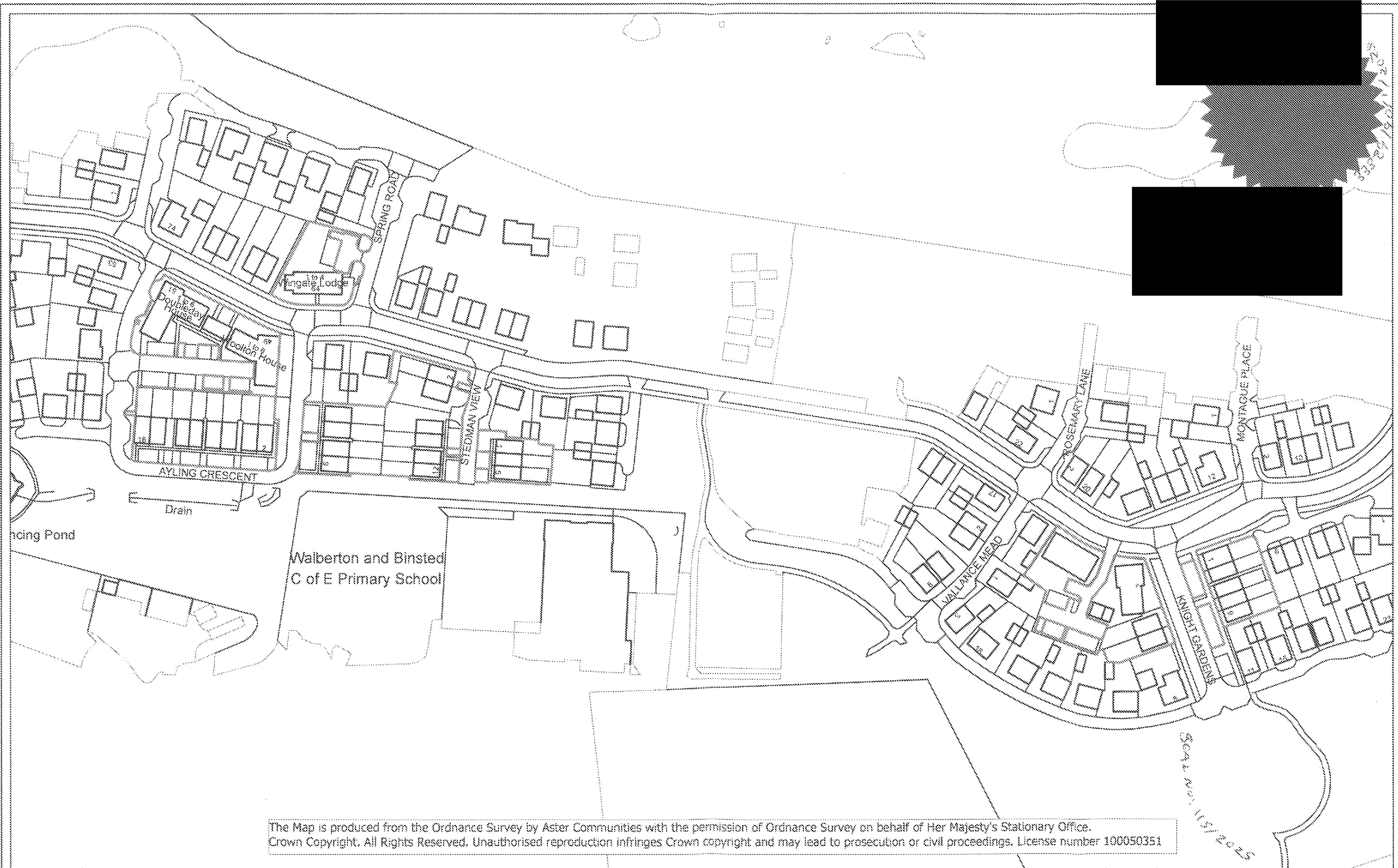
Ashfords LLP, Ashford House
Granadine Road, Exeter, EX1 3LT

Occupation of Witness

Legal Support Assistant

ANNEX 1

Aster Land Plan



The Map is produced from the Ordnance Survey by Aster Communities with the permission of Ordnance Survey on behalf of Her Majesty's Stationary Office.
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ASTER
GROUP

Produced: 22/01/2025
Luke Angwin
Scale: 1:1,250 @ A3

Tye Lane, Walberton

