

DATED.....29 August.....2018

**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING
ACT 1990 RELATING TO LAND AT CINDERS NURSERY & LAND R/O CINDERS LANE,
YAPTON, WEST SUSSEX, BN18 0JJ PLANNING REF Y/5/17/OUT**

ARUN DISTRICT COUNCIL (1)

AND

WEST SUSSEX COUNTY COUNCIL (2)

AND

SHIRLEY ANN THOMPSON (3)

AND

AUDREY JANE HAWKINS (4)

AND

MICHAEL STEPHEN FILDES AND LUCILLE MARGARET FILDES (5)

AND

NATIONAL WESTMINSTER BANK PLC (6)

AND

(SUNDIAL PLANNING LIMITED) (7)

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THIS DEED is dated the 29 day of August 2018

- (1) ARUN DISTRICT COUNCIL of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("the **Council**"); and
 - (2) WEST SUSSEX COUNTY COUNCIL of County Hall West Street Chichester PO19 1RW ("the **County Council**")
 - (3) SHIRLEY ANN THOMPSON of Primrose Lodge, Cinders Lane, Yapton, Arundel, West Sussex, BN18 0JJ ("the **First Owner**")
 - (4) AUDREY JANE HAWKINS of Cedar Lodge, Cinders Lane, Yapton, Arundel, West Sussex, BN18 0JJ ("the **Second Owner**")
 - (5) MICHAEL STEPHEN FILDES AND LUCILLE MARGARET FILDES of 7 Cedar Close, Bognor Regis, West Sussex, PO21 3BE ("the **Third Owner**")
- NATIONAL WESTMINSTER BANK PLC (Co. Regn. No. 929027) of Credit Documentation Department, 8th Floor, 1 Hardman Boulevard, Manchester M3 3AQ ("the **Mortgagee**")
135 Bishopsgate, London EC2M 3UR and whose address for service is Credit Documentation, PO Box 339, Haverstock Hill, London NW6 2AH
(SUNDIAL PLANNING LIMITED) of 12-14 Carlton Place, Southampton, Hampshire, SO15 2EA ("the **Developer**")

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated and is the authority responsible for provision of housing, leisure and recreation services and acts as agent for the NHS
- (B) The County Council is the authority responsible for the provision of education, library fire and rescue services and is the Local Highway Authority for the area in which the Property is situated .
- (C) The Council shall be responsible for enforcing this Deed so far as housing, leisure and recreation services and NHS matters and the County Council shall be responsible for enforcing this Deed so far as education, library, fire and rescue and highways matters are concerned.
- (D) The First Owner is the registered proprietor with Title Absolute of the land registered at HM Land Registry under Title Numbers WSX356228 known as land on the north side of Primrose Lodge, Cinders Lane, Yapton, WSX280553 known as Land at Cinders Lane Nursery, Cinders Lane, Yapton and WSX271482 known as Primrose Lodge, Cinders Lane, Yapton all of which form part of the Property.
- (E) The Second Owner is the registered proprietor with Title Absolute of the land registered at HM Land Registry under Title Numbers WSX230908 known as Cedar Lodge, Cinders Lane, Yapton and WSX230905 known as Cinders Lane Nursery, Cinders Lane, Yapton which form part of the Property.

- (F) The Third Owner is the registered proprietor with Title Absolute of the land registered at HM Land Registry under Title number WSX99079 known as land lying to the south west of Cinders Lane Nursery, Cinders Lane, Yapton which forms part of the Property and the Mortgagee has the benefit of a Legal Charge upon that Title and joins herein to consent to the land being bound by this Agreement
- (G) The First Owner, the Second Owner and the Third Owner are collectively referred to in this Deed as the Owner.
- (H) The Developer has submitted the Planning Application to the Council and is proposing to carry out the Development. The Planning Application is a Departure from the Development Plan.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed:

1.1 Definitions:

Affordable Housing: means any form of housing identified within legislation national planning policy framework or a ministerial statement as 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) (“**Intermediate Units**”)

Affordable Housing Dwellings: means fourteen (14) of the Dwelling Units to be provided as Affordable Housing as to :-

Affordable Rented Units –No dwellings/flats - 70%

Shared Ownership Units -No . dwellings/flats – 30%

in accordance with the terms of this Agreement. In the context of Affordable Housing “Rent” means no more than 80% of the local market rent (including service charges, where applicable).

Affordable Housing Land: means the land to be provided for Affordable Housing in accordance with Schedule 1

Affordable Housing Provider means either one or a combination of:

- a) a Registered Provider
- b) any other provider of Affordable Housing who is approved by the Council or such other body or organisation approved by the Council whose main object is the provision of Affordable Housing;
- c) any provider on the Council's List of Approved Registered Providers attached as Annex 1

Affordable Rented Units means a form of Affordable Housing, involving homes being available at a rent level of up to 80% of local market rent (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 if each letting. "Affordable Rent Unit" and "Affordable Rent" shall be construed accordingly

Approved Body means an Affordable Housing Provider being one of the Council's preferred partners or such Affordable Housing Provider acceptable to the Council in accordance with the Council's Supplementary Planning Guidance and which has been first approved in writing by the Council

Base Rate: the higher of 4% and the base rate from time to time of the Bank of England.

BCIS Index: means the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institution of Chartered Surveyors

Chargee: a chargee of Affordable Housing Dwellings

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations:

- demolition works;
- site clearance;
- ground investigations;
- site survey works;
- temporary access construction works;
- archaeological investigation; and

- erection of any fences and hoardings around the Property.

Commence and Commences shall be construed accordingly.

Commencement Date: the date of Commencement of Development;

Council Contributions: means the NHS Contribution and the Public Open Space Contribution;

County Council Contributions: means the Education Contribution, the Fire and Rescue Service Infrastructure Contribution, the Library Contribution, the Footpath Contribution and the Traffic Regulation Order Contribution;

Default Interest Rate: 4% per annum above the Base Rate.

Development: the development of the Property for outline planning permission for 51 No. dwellings with all matters reserved except for access and authorised by the Planning Permission issued pursuant to the Planning Application.

Disposal means a disposal of the Affordable Housing Dwellings and/or Affordable Housing Land to an Approved Body 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.

Dwellings: means those dwellings to be constructed on the Property by the carrying out of the Development including houses, flats, bungalows, maisonettes and the expression “Dwelling” shall be construed accordingly.

Education Contribution means the Primary Education Contribution, the Secondary Education Contribution and the Sixth-Form Education Contribution added together and payable in accordance with paragraph 1 of Schedule 2 of this Deed;

Fire and Rescue Service Infrastructure Contribution: means the contribution calculated in accordance with the following formula:

$Y \times (Z / M) = \text{Fire and Rescue Service Infrastructure Contribution}$ where:

Note: / = divided by, x = multiplied by.

Y = The estimated adjusted increase in population generated by the development using the following figures as a guideline:

Dwelling Size		Occupancy	
		House	Flat
1 bed	=	1.5	1.3
2 bed	=	1.9	1.9
3 bed	=	2.5	2.4
4+ bed	=	3.0	2.8

Z = the estimated costs of providing additional Fire and Rescue Infrastructure in the

Southern Service Division of West Sussex at the time of payment (which, for information, for 2007/2008 was £5,530,000)

M = the projected population of the Fire and Rescue Service Southern Service Division for West Sussex in 2018 at the time of payment (which, for information, for the 2007/2008 financial year was 429,647)

And such contribution shall be used towards the supply and installation of additional fire and safety equipment to vulnerable person's homes in West Sussex Fire and Rescue Services Southern Division serving Yapton and is payable in accordance with Paragraph 3 of Schedule 2

First Occupation: means beneficial occupation for any use for which the Proposed Development (or any relevant part of it) was designed other than occupation for the purposes of construction, fitting out or marketing

Footpath Contribution: means the financial contribution of Ninety Eight Thousand Nine Hundred and Eighty Pounds (£98,880) Index Linked to be used towards the installation of a footpath on the east side of Bilsham Road from Taylors Close to Grevatts Lane west to link up with a pathway up to Comet Corner and payable in accordance with paragraph 5 of Schedule 2 of this Deed;

Index Linked: means in the case of the Council Contributions increased in accordance with the following formula:

Amount payable = the payment specified in this deed x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date the payment is due.

B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this deed.

means in the case of the County Council Contributions the County Council Contributions payable by the Owner or Developer under this Deed shall be increased by the application of the following formula:

$$A = B \times \frac{C}{D}$$

where A is the sum actually payable on the Specified Date

B is the original sum mentioned in this Agreement

C is the BCIS Index for the quarter preceding the Specified Date

D is the BCIS Index for the quarter preceding the date of this Agreement

C is equal to or greater than 1

D

and **Indexation** shall be construed accordingly

Library Infrastructure Contribution: means the contribution calculated in accordance with the following formula:

means the financial contribution calculated in accordance with the following formula:

$$L \times AP = \text{Library Contribution}$$

Where

x = multiplied by

AP (Additional Persons) = The estimated number of additional persons generated by the Development calculated by reference to the total number of Dwellings, less a 33% discount for the product from any Affordable Housing Dwellings, approved pursuant to the Reserved Matters Approval. The following figures are used to calculate the estimated additional persons:

Dwelling Size		Occupancy	
		House	Flat
1 bed	=	1.5	1.3
2 bed	=	1.9	1.9
3 bed	=	2.5	2.4
4+ bed	=	3.0	2.8

L = Extra library space in sqm. per 1,000 population x the library cost multiplier (which current for the financial year 2017/2018 are 30 sqm. and £4,591 per sqm respectively) which contribution is to be used towards a proposed tier 7 library facility within a community space within Six Villages and is payable in accordance with Paragraph 2 of Schedule 2 of this Deed

Local Plan: The Arun District Local Plan 2003 adopted on the 17th April 2003.

Nominations Agreement means a nomination agreement entered into by an Approved Body with the Council in respect of the Affordable Housing Dwellings containing provisions substantially in the form set out at Annex 2 to this Agreement subject to such changes as the Approved Body (acting reasonably) requires

NHS Contribution: means the NHS Healthcare Contribution referred to in Paragraph 2 of Schedule 1 below to make good a deficiency in NHS Healthcare provision arising from the Development and specifically for spending at local GP Surgery for medical equipment and services

Occupation Date: means the date of First Occupation of the first Dwelling in the Development;

Occupation Notice: means written notice confirming the Occupation Date;

Open Market Dwellings: means any Dwellings which are not Affordable Housing Dwellings

Plan: the plan attached as Annex A.

Open Market Value means open market value assessed in accordance with the Appraisal and Valuation manual of the RICS (the Red Book)

Planning Application: the application for outline planning permission registered by the Council on 2 February 2017 under reference number Y/5/17/OUT.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application.

Primary Education Contribution: means the contribution calculated in accordance with the following formula:

$\text{DfE Figure} \times \text{ACP} = \text{Primary Education Contribution}$

Where

x = multiplied by

ACP (Additional Child Product) = The estimated additional number of school age children likely to be generated by the Development calculated by reference to the total number of Dwellings, less a 33% discount applied to the figure generated in respect of any Affordable Housing Dwellings, pursuant to the Reserved Matters Approval. The following criteria are used to generate a child product:

Dwelling Size		Occupancy	
		House	Flat
1 bed	=	1.5	1.3
2 bed	=	1.9	1.9
3 bed	=	2.5	2.4
4+ bed	=	3.0	2.8

Using the above occupancy rates to determine an overall population increase the following factors are applied. According to 2001 census data, there are 14 persons per 1000 population in each school year group for houses and 5 persons per 1000 population in each school year group for flats. There are 7 year groups for primary (years R to 6) and 5 for secondary (years 7 to 11). For Sixth Form, a factor of 0.54 is applied to the Child Product figure as this is the average percentage of year 11 school leavers who continue into Sixth Form colleges in West Sussex.

DfE Figure = Department for Education (DfE) Primary school building costs per pupil place (for pupils aged 4 to 11) as adjusted for the West Sussex area applicable at the date when the Primary Education Contribution is paid (which currently for the financial year 2017/2018 is £15,666 for Primary), updated as necessary by reference to changes in the Royal Institute of Chartered Surveyors Building Cost Information Service All-In Tender Price Index between the date hereof and the date of payment and to be used towards additional facilities at Yapton Church of England Primary School and payable in accordance with paragraph 1 of Schedule 2;

Property: the land at Cinders Nursery & Land R/O Cinders Lane, Yapton, West Sussex, BN18 0JJ shown edged red on the Plan and registered at HM Land Registry with absolute title under title numbers WSX356228, WSX280553, WSX271482, WSX230908, WSX230905 and WSX99079.

Provide means in the case of Affordable Dwelling Units to design and construct such units for habitation in accordance with the Design and Quality Standards of the Homes and Communities Agency or any replacement standards (or equivalent standards published by any replacement or successor body) to the reasonable satisfaction of the Approved Body

and “**Provided**” shall be construed accordingly

Public Open Space means the land referred to in Clause 1 of Schedule 1 below

Public Open Space Contribution means the Public Open Space contribution referred to in Clause 1 Schedule 1 to make good a deficiency in Public Open Space provision arising from the Development and to help provide and maintain the Public Open Space

Qualifying Occupiers means persons who qualify for Affordable Housing within Schedule 1 clause 4 to this Deed and including residents of the Arun District who are unable to resolve their housing needs in the local private sector market because of the relationship between housing costs and income

Registered Provider means a provider of Affordable Housing pursuant to the Housing and Regeneration Act 2008

Residents means the owners and occupiers of individual Dwellings to be constructed on the Land

Secondary Education Contribution: means the contribution calculated in accordance with the following formula:

$$\text{DfE Figure} \times \text{ACP} = \text{Secondary Education Contribution}$$

Where

x = multiplied by

ACP (Additional Child Product) = The estimated additional number of school age

children likely to be generated by the Development calculated by reference to the total number of Dwellings, less a 33% discount applied to the figure generated in respect of any Affordable Housing Dwellings, pursuant to the Reserved Matters Approval. The following criteria are used to generate a child product:

Dwelling Size		Occupancy	
		House	Flat
1 bed	=	1.5	1.3
2 bed	=	1.9	1.9
3 bed	=	2.5	2.4
4+ bed	=	3.0	2.8

Using the above occupancy rates to determine an overall population increase the following factors are applied. According to 2001 census data, there are 14 persons per 1000 population in each school year group for houses and 5 persons per 1000 population in each school year group for flats. There are 7 year groups for primary (years R to 6) and 5 for secondary (years 7 to 11). For Sixth Form, a factor of 0.54 is applied to the Child Product figure as this is the average percentage of year 11 school leavers who continue into Sixth Form colleges in West Sussex.

DfE Figure = Department for Education (DfE) secondary school building costs per pupil place (for pupils aged 4 to 11) as adjusted for the West Sussex area applicable at the date when the Secondary Education Contribution is paid (which currently for the financial year 2017/2018 is £23,604 for Secondary), updated as necessary by reference to changes in the Royal Institute of Chartered Surveyors Building Cost Information Service All-In Tender Price Index between the date hereof and the date of payment and to be used towards additional facilities at Ormiston Six Villages Academy and which is payable in accordance with paragraph 1 of Schedule 2;

Shared Ownership Lease means a shared ownership lease for a term of years of at least 125 years in the form regulated by the Homes and Communities Agency from time to time and which shall accord with the requirements and be consistent with any model shared ownership lease from time to time established by the Homes and Communities Agency

Shared Ownership Units means any Affordable Dwelling Units to be Provided as shared ownership units for sale under a Shared Ownership Lease for sale in accordance with this Agreement

Sixth-Form Education Contribution: means the contribution calculated in accordance with the following formula:

$\text{DfE Figure} \times \text{ACP} = \text{Sixth-Form Education Contribution}$

Where

x = multiplied by

ACP (Additional Child Product) = The estimated additional number of school age children likely to be generated by the Development calculated by reference to the total number of Dwellings, less a 33% discount applied to the figure generated in respect of any Affordable Housing Dwellings, pursuant to the Reserved Matters Approval. The following criteria are used to generate a child product:

Dwelling Size		Occupancy	
		House	Flat
1 bed	=	1.5	1.3
2 bed	=	1.9	1.9
3 bed	=	2.5	2.4
4+ bed	=	3.0	2.8

Using the above occupancy rates to determine an overall population increase the following factors are applied. According to 2001 census data, there are 14 persons per 1000 population in each school year group for houses and 5 persons per 1000 population in each school year group for flats. There are 7 year groups for primary (years R to 6) and 5 for secondary (years 7 to 11). For Sixth Form, a factor of 0.54 is applied to the Child Product figure as this is the average percentage of year 11 school leavers who continue into Sixth Form colleges in West Sussex.

DfE Figure = Department for Education Sixth Form school building costs per pupil place (for pupils aged 4 to 11) as adjusted for the West Sussex area applicable at the date when the Sixth-Form Education Contribution is paid (which currently for the financial year 2017/2018 is £25,600 for Sixth-Form), updated as necessary by reference to changes in the Royal Institute of Chartered Surveyors Building Cost Information Service All-In Tender Price Index between the date hereof and the date of payment and to be used towards additional facilities at St Philip Howard Catholic High School Sixth Form and which is payable in accordance with paragraph 1 of Schedule 2;

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

TCPA 1990: Town and Country Planning Act 1990.

Traffic Regulation Order Contribution: means the contribution of Seven Thousand Three Hundred pounds (£7,300.00) to be used towards the advertisement and promotion of a Traffic Regulation Order under the Road Traffic Regulation Act 1984 for the provision of no waiting restrictions adjacent to the access to the site on Bilsham Road and payable in accordance with Paragraph 4 of Schedule 2 of this Deed;

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council and the County Council the successors to their respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes fax but not e-mail.
- 1.11 A reference to **this Deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this Deed.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar

expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISIONS

- 2.1 This Deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 and 135 of the Local Government Act 1972, and section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner and Developer with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 The covenants, restrictions and obligations contained in this deed are enforceable by the Council and the County Council in accordance with section 106 of the TCPA 1990 and their respective statutory responsibilities
- 2.4 Except for the planning obligations contained in this Deed specifically regulating the use of land or buildings after construction, if any, no planning obligations contained in this Deed shall be binding on any freehold or leasehold owners or occupiers of individual dwellings constructed pursuant to the Planning Permission (or their respective mortgagees) or land held by any of the statutory utilities or statutory undertaking as defined in s262 of the TCPA 1990 for their operational purposes.

3. CONDITIONALITY

With the exception of clause 2, clause 3, clause 10, clause 11, clause 15, clause 16, clause 17, clause 20, clause 21 and clause 22 (which take effect immediately), this deed is conditional on:-

- (a) the grant and issue of the Planning Permission; and
- (b) Commencement of Development.

4. COVENANTS TO THE COUNCIL

The Owner and the Developer covenant with the Council to:

- (a) observe and perform the covenants, restrictions and

obligations contained in Schedule 1.

- (b) give at least 10 Working Days written notice to the Council at the address given herein of the intended Commencement Date .

5. COVENANTS TO THE COUNTY COUNCIL

The Owner and the Developer covenant with the County Council to:

- (a) observe and perform the covenants, restrictions and obligations contained in Schedule 2
- (b) give at least 10 Working Days written notice to the County Council at the address given herein of the intended Commencement Date
- (c) give the Occupation Notice to the Council and the County Council not less than 10 Working Days before the Occupation Date; and

6. COVENANTS BY THE COUNCIL AND COUNTY COUNCIL TO THE OWNER AND DEVELOPER

The Council and The County Council covenant with the Owner and the Developer to observe and perform the covenants, restrictions and obligations contained in Schedule 3 respectively as to their respective functions under this Deed

7. INDEXATION

- 7.1 All financial contributions payable to the Council and the County Council shall be Index Linked.
- 7.2 Where reference is made to an 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) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Developer in writing.

8. RELEASE

No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

9. DETERMINATION OF DEED

The obligations in this Deed (with the exception of clause 11) shall cease to have effect 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 Developer; or
- (c) is quashed following a successful legal challenge.

10. LOCAL LAND CHARGE

This Deed is a local land charge and shall be registered as such by the Council.

11. COUNCIL'S AND COUNTY COUNCIL'S COSTS

- (a) The Developer shall pay to the Council and the County Council on or before the date of this deed the Council's and the County Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed as follows:-

Payee	Amount of Legal Costs exclusive of VAT which isn't chargeable
Council	£1750.00
County Council	£2000.00

12. INTEREST ON LATE PAYMENT

If any sum or amount has not been paid to the Council or the County Council by the date it is due, the Developer shall pay to the Council and the County Council interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

13. REASONABLENESS

Any approval, consent, direction, authority, agreement or action to be given by the Council, the County Council, the Owner or the Developer under this Deed shall not be unreasonably withheld or delayed.

14. CANCELLATION OF ENTRIES

14.1 On the written request of the Owner and/or Developer 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 as Local land Charges Registrar will issue a written confirmation of such performance or discharge.

14.2 Following the performance and full satisfaction of all the terms of this Deed or if this Deed is determined pursuant to clause 9 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council as Local Land Charges Registrar will on the written request of the Owner or the Developer cancel all entries made in the local land charges register in respect of this Deed.

15. DISPUTES

Any dispute, controversy or claim arising out of or relating to this Deed, including any question regarding its breach, existence, validity or termination or the legal relationships established by this Deed, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

- (a) the tribunal shall consist of one arbitrator appointed jointly by the parties;
- (b) in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;
- (c) the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and
- (d) the seat of the arbitration shall be London.

16. NO FETTER OF DISCRETION

Nothing (contained or implied) in this deed shall fetter or restrict the Council's or the County Council's statutory rights, powers, discretions and responsibilities.

17. WAIVER

No failure or delay by the Council or the County Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18. MORTGAGEES CONSENT

The mortgagee joins herein to consent to the land in title no WSX99079 being bound by this

agreement

19. FUTURE PERMISSIONS

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 modification, variation or amendment thereof) granted after the date of the Planning Permission.

20. AGREEMENTS AND DECLARATIONS

The parties agree that:

- (a) nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this Deed grants planning permission or any other approval, consent or permission required from the Council or the County Council in the exercise of any other statutory function.

21. NOTICES

21.1 Any notice or other communication to be given under this Deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

21.2 Any notice or other communication to be given under this Deed must be sent to the relevant party as follows:

- (a) to the Council at Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF;
- (b) to the County Council at County Hall, West Street, Chichester, West Sussex, PO19 1RQ
- (c) the First Owner at Primrose Lodge, Cinders Lane, Yapton, Arundel, BN18 0JJ
- (d) the Second Owner at Cedar Lodge, Cinders Lane, Yapton, Arundel, BN18 0JJ
- (e) the Third Owner at 7 Cedar Close, Bognor Regis, West Sussex, PO21 3BE
- (f) to the Developer at 12 – 14 Carlton Place, Southampton, Hampshire, SO15 2EA marked for the attention of Mr J Pavey;

unless otherwise notified of a new replacement addressor as otherwise specified by the relevant party by notice in writing to each other party.

- 21.3 Any notice or other communication given in accordance with clause 21.1 and clause 21.2 will be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 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 9.00 am on the next Working Day; or
 - (b) if sent by pre-paid first class post or other next working day delivery service, at 9 a.m. on the second Working Day after posting.
- 21.4 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.

22. THIRD PARTY RIGHTS

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

23. VALUE ADDED TAX

- 23.1 Each amount stated to be payable by the Council or the Developer to the other under or pursuant to this deed is exclusive of VAT (if any).
- 23.2 If any VAT is at any time chargeable on any supply made by the Council or the Developer under or pursuant to this deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

24. GOVERNING LAW

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

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

The Common Seal of ARUN
DISTRICT COUNCIL

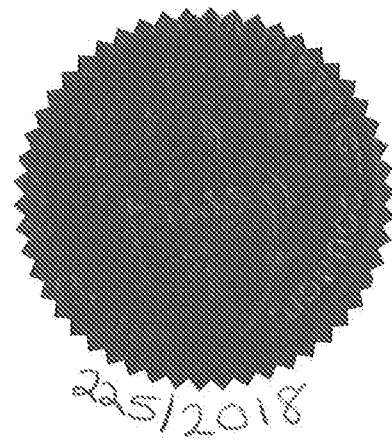
Was hereunto affixed

in the presence of:

APRIL HERBELLAN, LAWYER.

Authorised Signatory

Seal Book Number



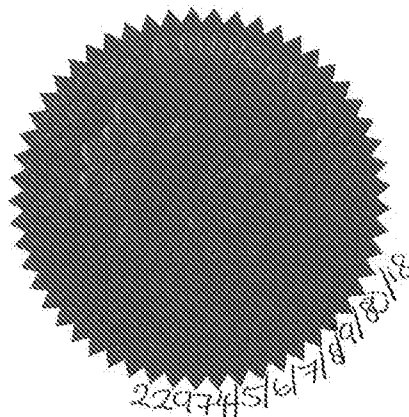
The Common Seal of
West Sussex County Council

Was hereunto affixed

in the presence of:

At

Seal Book Number



Signed as a Deed by

SHIRLEY ANN THOMPSON

Signature:

In the presence of

K. HAWTHORN

Signature of witness

Name (in BLOCK CAPITALS)

Address

THE GATE ADJACENT MANOR COVE
FEDHAM POZZ 7AT

Occupation

Company Director

Signed as a Deed by

LUCILLE MARGARET FILDES

Signature:

In the presence of

Signature of witness

Name (in BLOCK CAPITALS)

Address

Occupation

[Redacted Signature]

[Redacted Signature]

L. CROSSLEY

2 Chequers Place

Oving Road PO19 7GA

Land Manager

THE CORPORATE SEAL OF
NATIONAL WESTMINSTER BANK PLC WAS hereunto affixed
Signed and Delivered as a Deed
For and on behalf of

In the presence of:-

Authorised signatory

National Westminster Bank Plc
By a duly authorised Attorney

In the presence of TINA BARDLEY

[Redacted Signature]

DOCUMENTOR
CREDIT DOCUMENTATION

REF S144407 / MS6

Witness' Signature Bank employee

[Signed as a deed by Sundial
Planning Limited acting by
two Directors:

[Redacted Signature]

[Redacted Signature]

Director

Director

[Redacted Signature]

12 WATSON
THE GATE HOUSE JANAR COAST 22
FELDMY WEST SUSSEX PO22 7AT

Signed as a Deed by

AUDREY JANE HAWKINS

Signature:

In the presence of

Signature of witness

Name (in BLOCK CAPITALS) *K WAWJAY*

Address *THE GATEHOUSE MARVEL COVE FELDMAN.
PO22 7AT*

Occupation *CONRADY J. PARK*

Signed as a Deed by

MICHAEL STEPHEN FILDES

Signature:

In the presence of

Signature of witness

Name (in BLOCK CAPITALS) *L. CROSSLEY*

Address *2 Chequers Place, Oving Road, Chichester, PO19 7EA*

Occupation *Lead Manager.*

Schedule 1 Covenants to the Council

1. Provision of Public Open Space

The Owner and the Developer agree with the Council:

- 1.1 to provide and lay out an area of open space within the Development of dimensions and with landscaping in accordance with a specification approved by the Council and to the Council's satisfaction.
- 1.2 to ensure that there is free public access to the Public Open Space
- 1.3 to complete the works of provision and laying out in accordance with Clause 1.1 and to make the Public Open Space available for use by the public no later than the completion of the Development
- 1.4 within two months of the completion of the works referred to in Clause 1.3 to transfer the Public Open Space to the Council or to such body as it may direct although the Public Open Space may by agreement with the Council be handed over to the Council or its nominee for public use and for maintenance purposes in advance of the transfer
- 1.5 If the Council or its nominated transferee body refuse to accept such transfer within 2 months of first offer by the Owner or the Developer, the Owner or the Developer may instead transfer the Public Open Space to a Management Company
- 1.5 upon the handover or transfer referred to in Clause 1.4 whichever is the earlier to pay to the Council or its nominee the Public Open Space Contribution in the sum of £13.51 per m²

2. NHS Contribution

The Owner and the Developer agree with the Council :-

- 2.1 on Commencement of the Development to pay to the Council the NHS Contribution of £50734
- 2.2 not to occupy or cause or allow to be occupied any dwelling forming part of the Development before the NHS Contribution shall have been made

3. On Site Affordable Housing

- 3.1 The Affordable Housing Dwellings shall be provided as part of the Development

- 3.4 Subject to the provisions of this paragraph 3 the Affordable Housing Dwellings shall only be first disposed of by an Owner to an Affordable Housing Provider save by way of mortgage or charge.
- 3.5 Subject to the following provisions of this paragraph 3 the Owner shall not allow Occupation of more than seventy five percent (75%) of the Open Market Dwellings at the Development prior to entering into a contract or contracts for the transfer of the Affordable Housing in the Development to an Affordable Housing Provider or Providers unless the provisions of paragraph 3.8 of this schedule are to be operative (in which case the requirement for a contract or transfer with or to an Affordable Housing Provider or Providers shall not exist).
- 3.6 Subject to the following provisions of this Paragraph 3 the Owners shall not cause or permit the First Occupation of more than seventy five percent (75%) of the Open Market Dwellings until the Affordable Housing Dwellings have been completed and are ready for Occupation.

3.7 Mechanics of Transfer

- 3.7.1 The Owner shall offer the Affordable Housing Dwellings to an Affordable Housing Provider (“First Offer”) by provision of:

3.7.1.1 A contract for the sale of land; and

3.7.1.2 A draft transfer which shall include the provisions set out in paragraph 3.10 below.

The First Offer shall remain open for acceptance for no less than two (2) months (“First Offer Period”) from the date of the First Offer being made

3.7.2 Second Offer

3.7.2.1 In the event that the First Offer made in accordance with paragraph 3.7.1 above is not accepted within the First Offer Period then the Owners shall make a second offer to transfer the Affordable Dwellings to an Affordable Housing Provider (“Second Offer”) not later than one (1) month after the expiry of the First Offer Period.

3.7.2.2 The Second Offer shall consist of the same terms as the First Offer subject to revisions necessitated by the lapse of time and shall remain open for acceptance for no less than two (2) months (“Second Offer Period”) from the date of the Second Offer being made

Commuted Sum Payable If First And Second Offer Not Implemented

3.8 In the event that the Second Offer is not accepted within the Second Offer Period than the Owners may

3.8.1 pay on or before the occupation of the final Open Market Dwelling the Affordable Housing Commuted Sum to the Council whereupon once such sum has been paid to the Council the Owners and any successors in title shall be released from the provisions of this paragraph 3 insofar as it relates to the Affordable Housing Dwellings and the Affordable Housing Dwellings may be sold on the open market as Open Market Dwellings; or

3.8.2 Dispose of all or any of the Affordable Housing Dwellings as Intermediate Units to an Affordable Housing Provider; or

3.8.3 Dispose of all or any of the Affordable Housing Dwellings 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)

3.9 The Affordable Housing Commuted Sum shall be calculated in accordance with the following formula:

$X \text{ multiplied by } Y = \text{the Affordable Housing Commuted Sum}$

Where:

X = £80,000; and

Y = the number of Affordable Dwellings which will not be provided on the Site as part of the Development in accordance with the terms of this Agreement

Form of Transfer

3.10 The Owners covenant with the Council that any transfer of Affordable Housing Dwellings to an Affordable Housing Provider will contain the following provisions:

3.10.1 The grant by the Owners of all rights and access and passage of services and other rights reasonably necessary to the beneficial enjoyment of those Affordable Housing Dwellings;

3.10.2 A reservation of all rights and access and passage of services and other rights reasonably necessary for the benefit of the remainder of the Dwellings, estate infrastructure, and public areas on the Site; and

3.10.3 The imposition of such covenants as the Owners shall reasonably require and are consistent with the sale of any Open Market Dwellings.

3.11 the Owners covenant with the District Council:

- 3.11.1 to take all reasonable and prudent steps within its power to avert the repossession of the Affordable Housing Dwellings 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 Dwellings with sitting tenants to another Affordable Housing Provider or, at the Council's option, to the Council;
- 3.11.2 in the event that the Owners 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
- 3.11.3 in the event that the Owners 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 Dwellings, to notify the Council of this as soon as reasonably practicable

3.12 the Owners and the Council hereby agree that:

3.12.1

- 3.12.2 subject to and without prejudice to the powers and requirements of the Homes England under the Housing Act 1996 in the event of a default under any security referred to in paragraph 3.11 the disposal of any interest in the Affordable Housing Dwellings by the Chargee in the exercise of its power of sale will not be prevented.

5. Further Provisions

- 5.1 nothing in this Deed shall be construed as imposing or otherwise implying any obligation on the Council to grant or make available any public subsidy or other financial support (or to assist the Owner or Developer in obtaining such public subsidy or other financial support) in respect of the Affordable Housing Dwellings;
- 5.2 the provisions of this Schedule above shall cease to bind any of the Affordable Housing Dwellings if in relation to that Affordable Housing Dwelling :
 - 5.2.1 a statutory right to buy or right to acquire pursuant to the Housing Act 1985 or Housing Act

1996 (or any statutory re-enactment amendment or replacement thereof) has been exercised;
or

- 5.2.2 it shall have been sold under a shared ownership lease and the leaseholder (or its mortgagee) has staircased his ownership under the lease to 100 percent; and
- 5.3 in the event of any dispute as to whether any proposed occupier of any Affordable Housing Dwelling is a Qualifying Occupier the matter shall be determined by the Council (acting reasonably)

6. Mortgagee in Possession Clauses

6.1 In the event that any Affordable Housing Dwelling(s) is or are the subject of a legal charge or mortgage and there is a default under any legal charge or mortgage of the Affordable Housing Dwelling(s) then any chargee or mortgagee shall be entitled to exercise its power of sale free from the restrictions set out in this Schedule provided that the Chargee shall first have followed the procedure set out below:

- 6.1.1 The Chargee shall give written notice (“the Sale Notice”) to the Council of its intention to exercise its power of sale.
- 6.1.2 At the same time as giving the Sale Notice the Chargee shall make an offer (“**the Offer**”) to sell the Affordable Housing Dwelling(s) to the Council for an amount to be agreed or determined (“**the Purchase Price**”)
- 6.1.3 the Council may notify the Chargee in writing within one month of the date of the Offer whether or not it wishes to accept the Offer (in the case of an acceptance such acceptance to be conditional upon the Purchase Price being acceptable to the Council)
- 6.1.4 If the Council shall notify the Chargee within the time specified in sub-paragraph 6.1.3 that it does not wish to accept the Offer the Council shall then have one month from the date upon which it notifies in writing its refusal of the Offer within which to arrange for the transfer of the Affordable Housing Dwelling(s) in consideration of the Purchase Price to a Affordable Housing Provider .
- 6.1.5 If the Council shall notify the Chargee within one month of the time specified within sub paragraph 6.1.3 that it wishes to accept the offer or if within the time specified in sub-paragraph 6.1.4. The Council gives written notice to the Chargee that arrangements can be made in accordance with sub-paragraph 6.1.4. then:

- 6.1.5.1 the Chargee shall co-operate with the Council to secure the transfer; and

- 6.1.5.2 the Council and the Chargee shall endeavour to agree the Purchase Price which shall represent the Open Market Value of the Affordable Housing Dwelling(s) but subject to all or any tenancies of the Affordable Housing Dwelling(s) as may be subsisting at the date of the Sale Notice and disregarding the provisions of paragraph 6.1.4 of this Schedule AND in default of such agreement the Purchase Price shall be determined on the same basis of valuation by an independent surveyor (“the Surveyor”) experienced in valuing residential land and property who shall act as an expert and whose costs shall be borne by the Council and the Chargee in equal shares and the Surveyor shall be appointed in default of agreement between the parties on the application of either party by or on behalf of the President for the time being of the Royal Institute of Chartered Surveyors (or successor organisation) and the Surveyor’s determination shall be binding on both parties.
- 6.1.6 Subject to the provisions of sub-paragraph 6.1.7 the transfer to the Council or to an Affordable Housing Provider shall be completed within two months of the date the Purchase Price is agreed (or such longer period as may be agreed between the Chargee and the Council) or determined in accordance with sub-paragraph 6.1.5.2 (“the Completion Period”).
- 6.1.7 If the Chargee does not wish to exercise its power of sale at any time after giving the Sale Notice or the Council does not wish to continue with the exercise of its power under the provisions of paragraph 6 that party shall give to the other not less than seven days’ written notice of its intention to discontinue.
- 6.1.8 If either:
- 6.1.8.1 the Council fails to give notification to the Chargee within the time specified in sub-paragraph 6.1.3 or
- 6.1.8.2 having given notification of refusal of the Offer in accordance with sub-paragraph 6.1.8.3 the Council fails to give notification to the Chargee within the time specified in sub-paragraph 6.1.4 ; or
- 6.1.8.3 the transfer to either the Council or to a Registered Provider shall not be completed within the Completion Period; or
- 6.1.8.4 the Council shall serve notice of its intention to discontinue under sub-paragraph 6.1.7.

then the Chargee shall be under no obligation to sell the Affordable Housing Dwelling(s) either to the Council or to a Registered Provider and shall be entitled to exercise its powers of sale without any of the provisions of this Schedule being binding on the Affordable Housing Dwellings or any part thereof

nor on the purchaser or purchasers of them, their mortgagees, or any successor in title thereto.

- 6.1. 9 the Council shall in formulating or promoting any arrangements referred to in sub-paragraph 6.1.4. give consideration to protecting the interests of the Chargee in respect of monies outstanding under the charge or mortgage.

Schedule 2

COVENANTS TO THE COUNTY COUNCIL

1. Education Contribution

- 1.1. To pay to the County Council on or before the Occupation Date the Education Contribution and such sum shall be Index Linked
- 1.2. Not to allow Occupation of the first Dwelling to occur unless and until the Education Contribution and any Indexation and Interest payable under this Deed has been paid to the County Council

2. Library Contribution

- 2.1. To pay to the County Council on or before the Occupation Date the Library Contribution and such sum shall be Index Linked
- 2.2. Not to allow Occupation of the first Dwelling to occur unless and until the Library Contribution and any Indexation and Interest payable under this Deed has been paid to the County Council

3. Fire and Rescue Service Infrastructure Contribution

- 3.1 To pay to the County Council on or before the Occupation Date the Fire and Rescue Service Infrastructure Contribution and such sum shall be Index Linked
- 3.2 Not to allow Occupation of the first Dwelling to occur unless and until the Fire and Rescue Service Infrastructure Contribution and any Indexation and Interest payable under this Deed has been paid to the County Council

4. Traffic Regulation Order Contribution

- 4.1 To pay to the County Council on or before the Commencement Date the Traffic Regulation Order Contribution and such sum shall be Index Linked
- 4.2 Not to allow Commencement of the Development to occur unless and until the Traffic Regulation Order Contribution and any Indexation and Interest payable under this Deed has been paid to the County Council

5. Footpath Contribution

- 5.1 To pay to the County Council on or before the Occupation Date the Footpath Contribution and such sum shall be Index Linked
- 5.2 Not to allow Occupation of the first Dwelling to occur unless and until the Footpath Contribution and any Indexation and Interest payable under this Deed has been paid to the County Council

Schedule 3

COVENANTS BY THE COUNCIL AND THE COUNTY COUNCIL

1. Education Contribution

1.1. To expend the Education Contribution together with any interest accruing thereon only on the following:

- 1.1.1. Primary Education Contribution towards additional facilities at Yapton Church of England Primary School;
- 1.1.2. Secondary Education Contribution towards additional facilities at Ormiston Six Villages Academy;
- 1.1.3. Sixth-Form Education Contribution towards additional equipment at St Philip Howard Catholic High School Sixth Form.

2. Library Contribution

To expend the Library Contribution together with any interest accruing thereon only on the provision of a tier 7 library facility within a community space within Six Villages.

3. Fire and Rescue Service Infrastructure Contribution

To expend the Fire and Rescue Service Infrastructure Contribution together with any interest accruing thereon only on the supply and installation of additional fire safety equipment to vulnerable person's homes in West Sussex Fire and Rescue Services Southern Area serving Yapton.

4. Traffic Regulation Order Contribution

To expend the Traffic Regulation Order Contribution together with any interest accruing thereon only on the advertisement and promotion of the Traffic Regulation Order for the provision of no waiting restrictions adjacent to the access to the site on Bilsham Road.

5. Footpath Contribution

To expend the Footpath Contribution together with any interest accruing thereon only on the installation of a footpath on the east side of Bilsham Road from Tudor Close, past Taylors Close to Grevatts Lane west to link up with a pathway up to Comet Corner.

6. Expenditure

6.1. If or to the extent the Education Contribution and/or Library Contribution and/or Fire and Rescue Service Infrastructure Contribution and/or Footpath Contribution and/or Traffic



22974/5/6/7/8/9/2012

Land at Cinders Lane, Yapton LOCATION PLAN DWG N° HP16098 001 Location Plan 001a	Drawn: MA Checked: JH Scale: 1:1250 @ A3 Date: 27/01/2017	Notes: The following is a summary of the information contained in this plan. It is not intended to be a substitute for the full set of plans and specifications. The information is provided for your information only and is not intended to be used for any other purpose. The information is provided for your information only and is not intended to be used for any other purpose.	The following is a summary of the information contained in this plan. It is not intended to be a substitute for the full set of plans and specifications. The information is provided for your information only and is not intended to be used for any other purpose. The information is provided for your information only and is not intended to be used for any other purpose.	The following is a summary of the information contained in this plan. It is not intended to be a substitute for the full set of plans and specifications. The information is provided for your information only and is not intended to be used for any other purpose. The information is provided for your information only and is not intended to be used for any other purpose.
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Annex 1 - ADC List of Preferred Affordable Housing Providers

Affinity Sutton

(Steven Connolly)

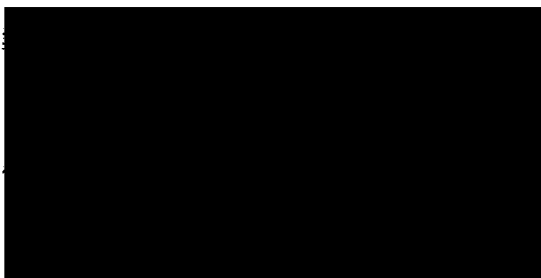
Cams Hall

Cams Hill

Fareham

Hampshire

PO16 8AB



The Guinness Partnership

(Claudette Rawlinson)

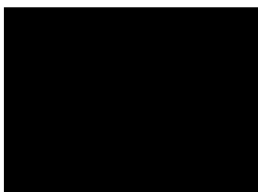
Claudette.rawlinson@guinness.org.uk

33 East Street

Havant

Hampshire

PO9 1AA



The Hyde Group

(Joshua Boots)

Telecom House

125 – 135 Preston Road

Brighton

West Sussex

BN1 6AF



Worthing Homes

(Damian Haley)



Worthing

West Sussex



Stonewater

(Jackie Burton)



Southern Housing Group

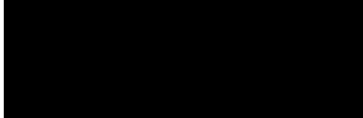
(Liz Hills)

Spire Court

Albion way

Horsham

West Sussex



Saxon Weald

(Stephen Humphreys)

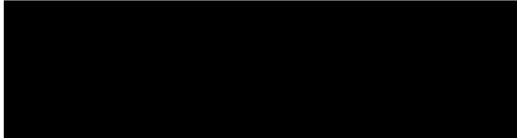
Saxon Weald House

38-42 Worthing Road

Horsham

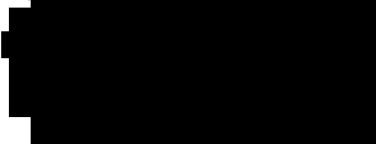
West Sussex

RH12 1DT



Hastoe

Karen Hillhouse



Annex 2 Sample Standard Housing Nomination Agreement

DATED

20

and

ARUN DISTRICT COUNCIL

DEED OF NOMINATION

for
() rented units
at
West Sussex
Ref:

THIS DEED OF NOMINATION RIGHTS is made the day of 20

BETWEEN

(1) (“the Registered Provider ” “RP”)

(2) **ARUN DISTRICT COUNCIL** of Arun Civic Centre Maltravers Road
Littlehampton West Sussex BN15 7LF (“the Council”)

1. **DEFINITIONS**

In this Deed :

- 1.1 **“Initial Let”** means the first tenancy of such newly constructed and previously unoccupied Rented Unit.
- 1.2 **“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.
- 1.3 **“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).
- 1.4 **“Property”** means the land at West Sussex shown edged red on the attached plan.
- 1.5 **“Rented Units”** means residential units in the form of flats/houses.
- 1.6 **“Subsequent Nominee”** means a Nominee to be offered a Tenancy Agreement pursuant to clause 3.10.
- 1.7 **“Tenancy Agreement”** means an assured Tenancy Agreement in a form prepared by the RP and containing terms which accord with the form of Tenancy Agreement being used by the RP from time to time for its general lettings.
- 1.8 **“Vacancy Notice”** means a written notice given by the RP to the Council (in a form to be agreed between the RP and the Council within five weeks from the date of this Deed) the function of such notice being the notification to the Council by the RP that the construction and fitting out of the Rented Unit is completed.

1.9 **“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 RP;
- (b) moved to other accommodation under a reciprocal arrangement provided by another registered provider registered with Homes England under the Housing Act 1996.

1.10 **“Void Notice”** means a written notice given by the RP to the Council (in a form to be agreed between the RP and the Council within five weeks from the date of this Deed) 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, Section 106 of the Town and Country Planning Act, 1990 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 RP 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 RP 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 ten working days of receipt of a Vacancy Notice serve upon the RP 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:

- (a) specify the appropriate category of Rented Unit to which it relates; and
- (b) indicate the priority for the housing of the Nominees.

- 3.5 The RP 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 ten working days of receipt of the Vacancy Notice.
- 3.6 The RP 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 five working days of receipt of the RP's offer of a Tenancy Agreement such selected Nominee shall be deemed to have rejected the RP's offer and the RP 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 RP's offer of a Tenancy Agreement within the time prescribed by clause 3.7 then the RP 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 RP's offer of a Tenancy Agreement within the prescribed time limits the RP 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 RP'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 RP has reasonable cause to believe it will become a Void then and in each case:
- (a) the RP shall serve a Void Notice in respect of the relevant vacant Rented Unit; and
 - (b) within ten working days of receipt of the said notice the Council shall serve upon the RP the Nomination List setting out a list of Subsequent Nominees which shall contain the information referred to in clause 3.4.

- 3.11 The RP 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 ten working days of receipt of the Void Notice.
- 3.12 Upon receipt of the Nomination List referred to in clause 3.10 the RP shall follow the procedure mutatis mutandis set out in clauses 3.6 to 3.8.
- 3.13 The RP 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 RP shall give notification to the Council of the occurrence of the following events within five working days of their occurrence:
- (a) a Nominee or Subsequent Nominee failing to view a Rented Unit within 10 working days of an offer being made;
 - (b) a Nominee or Subsequent Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Agreement;
 - (c) a Nominee or Subsequent Nominee accepting an offer of a Tenancy Agreement;
 - (d) a person accepting an offer of a tenancy from the RP;
 - (e) the RP 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 ten 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 RP 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 RP that the Council then has no suitable Nominee or Subsequent Nominee the Council

Regulation Order Contribution (collectively “the Contributions”) or any part thereof shall not have been spent within 5 (five) years of receipt of the respective contributions the County Council shall on such date refund to the party that paid the contributions any unexpended sum together with interest thereon from the date of receipt of the relevant contribution to the date of repayment at the base rate of the Bank of England applicable from time to time calculated on a day to day basis;

- 6.2. If at the date referred to in paragraph 6.1 the County Council shall have entered into a contract or other legally binding obligation to expend the Contributions or part(s) thereof for the purposes specified in paragraphs 1, 2 and 3 of Schedule 3 then the County Council shall not be required to refund to the party who paid such contributions (or to their nominee) any part of the Education Contribution and/or the Library Contribution and/or the Fire and Rescue Service Infrastructure Contribution required for that purpose but shall as soon as possible following the completion of the said contract or other legally binding commitment refund any unexpended part of the said contribution in the manner set out in paragraph 6.1 hereof

Annex A. - Plan

shall advise the RP of a suitable replacement Nominee or Subsequent Nominee as soon as reasonably practicable.

- 3.18 The RP 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 RP shall serve the Council with details of the letting activities of the Rented Units in a format to be agreed between the RP and the Council.
- 3.20 The RP 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 opinion of the RP the grant of an Assured Tenancy to such Nominee would be in contravention of the RP's registered rules or its letting criteria.
- 3.21 The Council shall immediately notify the RP in writing if any Nominee or Subsequent Nominee is withdrawn from the Nomination List.
- 3.22 When calculating percentage for the purposes of this Deed 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 RP agree that the nomination ;rights contained in this Deed 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 RP shall ensure that any registered provider to which the Property and Rented Units erected thereon are transferred otherwise than by direction of Homes England under its statutory powers shall enter into a similar agreement mutatis mutandis with the Council.

6. MOTGAGEES 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 RP agrees with the Council to pay the reasonable legal costs which the Council incurs in preparing and entering into this deed.

9. AGREEMENTS AND DECLARATIONS

The parties agree:

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

EXECUTED as a **DEED** by

acting by:

Director

Director/Secretary

SEALED with the **COMMON SEAL** of
ARUN DISTRICT COUNCIL in the
presence of:

.....