

Dated

2022

ROTHER DISTRICT COUNCIL
and
EAST SUSSEX COUNTY COUNCIL
and
MAYO LAND COMPANY LIMITED
and
GLADMAN DEVELOPMENTS LIMITED

Agreement under the Town and Country Planning Act 1990 section 106

relating to

Land off Fryatts Way Bexhill



Gladman House
Alexandria Way
Congleton Business Park
Congleton, Cheshire
CW12 1LB
Tel: 01260 288800

THIS AGREEMENT is made on the day of 2022

BETWEEN:

- 1) **ROTHER DISTRICT COUNCIL** of Town Hall London Road Bexhill on Sea East Sussex TN39 3JX ('the Council')
- 2) **EAST SUSSEX COUNTY COUNCIL** of County Hall St Anne's Crescent Lewes East Sussex BN7 1UE ('the County Council')
- 3) **MAYO LAND COMPANY LIMITED** (company registration number 1088751) whose registered office is at Moleynes Mead Ellerslie Lane Bexhill on Sea East Sussex TN39 4LJ ('the Owner')
- 4) **GLADMAN DEVELOPMENTS LIMITED** (company registration number 3341567) whose registered office is at Gladman House Alexandria Way Congleton Business Park Congleton CW12 1LB ("the Promoter")

RECITALS

- 1) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- 2) The County Council is the local highway authority for the area in which the Site is situated.
- 3) The Owner is the freehold owner of the Site as set out in Schedule 1.
- 4) The Owner and the Promoter have entered into the Promotion Agreement.
- 5) The Promoter submitted the Application to the Council on 1 July 2021.
- 6) The Council failed to determine the Application within the statutory time period and the Promoter has submitted the Appeal for determination by the Secretary of State.
- 7) The Owner is prepared to enter into this deed in order to secure the planning obligations it creates in the event that Planning Permission is granted pursuant to the Appeal.

NOW THIS DEED WITNESSES as follows:

1. Definitions and interpretation

1.1 Definitions

For the purposes of this deed the following expressions shall have the following meanings:

1.1.1 **'the 1990 Act'** means the Town and Country Planning Act 1990 (as amended)

1.1.2 **'Accessible and Adaptable'** means a category 2 accessible and adaptable dwelling M4(2) as described in Approved Document M of the Building Regulations 2010 – 'Access to and use of buildings' to meet the needs of occupants with differing needs including some older or disabled people or to allow for the future adaptation of an Accessible and Adaptable Dwelling to meet the changing needs of occupants over time

1.1.3 **'Additional First Homes Contribution'** means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 6.8 or 6.9 of Schedule 2 or clause 12.3 the lower of the following two amounts:

(a) 30% of the proceeds of sale; and

(b) the proceeds of sale less than the amount due and outstanding to any First Homes Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies interest and reasonable costs and expenses that are payable by the First Home Owner to the First Homes Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Home Owner in connection with the sale of the First Home

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Home Owner as a result of the disposal of the First Home other than as a First Home

1.1.4 **'Affordable Housing'** means Affordable Rented Housing Intermediate Housing and First Homes provided to eligible households whose needs are not met by the market, where eligibility is determined with regard to local incomes and local house prices and which remains at an affordable price for future eligible households

1.1.5 **'the Affordable Housing Land'** means the land within the Site upon which the Affordable Housing Units are to be constructed

- 1.1.6 **'the Affordable Housing Scheme'** means the scheme submitted in accordance with the Planning Permission which shall include details of: (i) the numbers, type, tenure and location on the Site of the Affordable Housing, and (ii) the timing of the construction of the Affordable Housing and its phasing in relation to the occupancy of the Market Housing Units, and (iii) in relation to the Affordable Rented Housing and any Intermediate Housing Units that are to be managed by a Registered Provider the arrangements for the transfer of the Affordable Housing to a Registered Provider, and (iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the Affordable Housing, and (v) the occupancy criteria to be used for determining the identity of the occupiers of the Affordable Housing which in relation to the Affordable Rented Housing and Intermediate Housing that is to be transferred to a Registered Provider shall be in accordance with the Nomination Agreement and the means by which such occupancy criteria shall be enforced
- 1.1.7 **'the Affordable Housing Units'** means that part of the Development comprising 30% of the Dwellings which shall be constructed for Affordable Housing in accordance with the approved Affordable Housing Scheme, 65% of which shall be Affordable Rented Housing 25% of which shall be First Homes and 10% of which shall be Intermediate Housing unless otherwise agreed with the Council all of which shall be provided as Accessible and Adaptable and in accordance with the Department for Communities and Local Government Technical Housing Standards – Nationally Described Space Standard March 2015 and 'an Affordable Housing Unit' shall be construed accordingly
- 1.1.8 **'Affordable Rented Housing'** means Affordable Housing for rent where the rent is set in accordance with the Government's rent policy for social rent or affordable rent, or is at least 20% below local market rents (including service charges where applicable) whichever is the lower
- 1.1.9 **'Annual Infrastructure Funding Statement'** means an annual infrastructure funding statement as required by Regulation 121A of the CIL Regulations
- 1.1.10 **'the Appeal'** means the appeal to the Secretary of State following the non-determination of the Application by the Council given appeal reference APP/U1430/W/22/3304805
- 1.1.11 **'the Application'** means the application for outline planning permission for the Development dated 1 July 2021 submitted to the Council and allocated reference number RR/2021/1656/P

- 1.1.12 **‘the Assistant Chief Executive, Governance Services’** means the Assistant Chief Executive, Governance Services at County Hall, St Anne’s Crescent, Lewes, East Sussex, BN7 1UE for the time being of the County Council and shall include any successor of his and his duly authorised agents and representatives
- 1.1.13 **‘Approved Car Club Scheme’** means a Car Club Scheme approved by the County Council
- 1.1.14 **‘Armed Services Member’** means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service
- 1.1.15 **‘Car Club’** means a club operated by the Car Club Operator for Car Club Members to be able to hire a vehicle or vehicles on a pay as you go basis
- 1.1.16 **‘Car Club Members’** means residents of the Development and members of the public who join the Car Club
- 1.1.17 **‘Car Club Operator’** means a business or other organisation registered as a member of CoMoUK independent from the Owner that will establish and thereafter operate the Car Club
- 1.1.18 **‘Car Club Scheme’** means a scheme for Sustainable Transport Purposes to contain the following details:
- (a) the proposed location of the Car Club Spaces
 - (b) details for the maintenance by the Management Company of the Car Club Spaces
 - (c) proposed signage within the Development to identify the location of the Car Club Spaces
 - (d) the identity of the proposed Car Club Operator
 - (e) the proposed Marketing Literature and a scheme for its distribution to local residents
 - (f) the proposed membership criteria
 - (g) information to be provided to the County Council on the use of the Car Club
 - (h) details of the Car Club Vehicle(s)
 - (i) contractual information to confirm that the Car Club shall operate for a period of at least three years from the date of First Operation (or such lesser period as the County Council shall agree in writing)
 - (j) details to confirm the responsibility for removing Car Club signage and infrastructure in the event that the Car Club ceases to operate

- (k) details to confirm that the first Occupiers of all Dwellings who meet the Car Club membership criteria shall be provided with free membership of the Approved Car Club without payment of an annual membership fee for a period of three years from the date of first Occupation of the Dwelling (or such lesser period in the event that the Approved Car Club has ceased to operate during that three year period)
- 1.1.19 **'Car Club Space(s)'** means up to 7 parking spaces with an electronic vehicle charging point within the Development for the Car Club Vehicles to be located and which is for the exclusive use of Car Club Members to be approved as part of the reserved matter approval in relation to the Development
- 1.1.20 **'Car Club Vehicles'** means electric vehicle(s) to be used as part of the Car Club
- 1.1.21 **'CIL'** means Community Infrastructure Levy as defined in Regulation 3 of the CIL Regulations
- 1.1.22 **'CIL Regulations'** means the Community Infrastructure Levy Regulations 2010 (as amended)
- 1.1.23 **'Cluster'** means a group of Affordable Dwellings which does not have contiguous boundaries with another group of Affordable Dwellings
- 1.1.24 **'the Commencement of Development'** means the commencement of any material operation (as defined in the 1990 Act section 56(4)) forming part of the Development other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, 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 and 'Commence Development' and 'Commence' shall be construed accordingly
- 1.1.25 **'Compliance Certificate'** means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National)
- 1.1.26 **'Construction Index'** means the All-in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or such other index as the County Council may reasonably nominate in the event that the All-in Tender Price Index shall no longer be published or its name or methodology be materially altered

- 1.1.27 **'Contribution'** means any financial contribution payable or paid by the Owner to the Council pursuant to this deed (excluding legal costs paid or payable pursuant to Clause 7.1) and 'Contributions' shall be construed accordingly
- 1.1.28 **'County Contribution'** means any financial contribution payable or paid by the Owner to the County Council pursuant to this deed (excluding legal costs paid or payable pursuant to Clause 7.1) and 'County Contributions' shall be construed accordingly
- 1.1.29 **'the Date of Practical Completion'** means the date of issue of a certificate of practical completion by the Owner's architect or such other competent person or, if the Development is constructed by a party other than the Owner, by that other party's architect or such other competent person
- 1.1.30 **'Decision Letter'** means the decision letter issued by the Planning Inspector or the Secretary of State confirming whether or not the Appeal is allowed
- 1.1.31 **'the Development'** means the development of the Site with the erection of 210 residential dwellings (including 30% affordable housing) introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation, vehicular access point and associated ancillary works pursuant to the Planning Permission
- 1.1.32 **'Discounted Market Price'** means a sum which is the Market Value discounted by at least 30%
- 1.1.33 **'Disposal'** means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:
- (a) A letting or sub-letting in accordance with paragraph 7 of Schedule 2
 - (b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Home Owner
 - (c) an Exempt Disposal
- and 'Disposed' and 'Disposing' shall be construed accordingly
- 1.1.34 **'a Dwelling'** means a dwelling (including a house, flat, maisonette or bungalow) to be constructed pursuant to the Planning Permission and 'Dwellings' shall be construed accordingly

- 1.1.35 **'Eligibility Criteria (National)'** means criteria which are met in respect of a purchase of a First Home if:
- (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and
 - (b) the purchaser's annual gross income (or in the case of a joint purchase the joint purchasers' joint annual gross income) does not exceed the Income Cap (National)
- 1.1.36 **'Employment and Skills Plan'** a plan to be submitted for approval to the Council in accordance with the provisions of Schedule 5
- 1.1.37 **'Employment and Skills Plan Contribution'** the sum of up to twenty five thousand pounds (£25,000) save as to the extent that this is altered by the provisions of clause 11 payable in accordance with the provisions of Schedule 5
- 1.1.38 **'Exempt Disposal'** means the Disposal of a First Home in one of the following circumstances:
- (a) a Disposal to a spouse or civil partner upon the death of the First Home Owner
 - (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Home Owner
 - (c) Disposal to a former spouse or civil partner of a First Home Owner in accordance with the terms of a court order divorce settlement or other legal agreement or order upon divorce or dissolution of the marriage or civil partnership or the making of a nullity separation or presumption of death order
 - (d) Disposal to a trustee in bankruptcy prior to the sale of the relevant Dwelling (and for the avoidance of doubt clause 12.3 shall apply to such sale)
PROVIDED THAT in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 7 of Schedule 2
- 1.1.39 **'First Home'** means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discounted Market Price and which is on its first Disposal does not exceed the Price Cap and 'First Homes' shall be construed accordingly
- 1.1.40 **'First Home Owner'** means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:
- (a) the Owner; or

- (b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or
- (c) the freehold a tenant or sub-tenant of a permitted letting under paragraph 7 of Schedule 2

- 1.1.41 **'First Homes Mortgagee'** means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home
- 1.1.42 **'First Operation'** means the date on which the Car Club starts to operate at the Development
- 1.1.43 **'First Time Buyer'** means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003
- 1.1.44 **'Highway Works'** means the works set out in Section B of paragraph 4 of Schedule 3
- 1.1.45 **'Homes England'** means the successor body to the Homes and Communities Agency created pursuant to the Housing and Regeneration Act 2008 exercising functions in relation to the funding of affordable housing and being the regulator of social housing providers in England and includes any successor body exercising similar functions
- 1.1.46 **'Income Cap (National)'** means in the case of any other First Home eighty thousand pounds (£80,000) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home
- 1.1.47 **'the Index'** means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors (or as required) or any successor organisation
- 1.1.48 **'Inflation Index'** means the "all items" index figure of the Retail Prices Index published by the Office for National Statistics and if the name or basis of computation of such index should change any official replacement of the said index by the Office of National Statistics and in the absence of such official replacement such other index as may be agreed between the Owner and County Council
- 1.1.49 **'Infrastructure'** has the meaning ascribed in Section 216(2) of the Planning Act 2008

- 1.1.50 **'Interest'** means interest at 5% above the base lending rate of National Westminster Bank plc from time to time
- 1.1.51 **'Intermediate Housing'** means Affordable Housing for sale as described in paragraph d) to the definition of 'Affordable Housing' in Annex 2: Glossary to the NPPF
- 1.1.52 **'Intermediate Housing Unit'** means an Affordable Housing Unit to be provided as Intermediate Housing in accordance with the Affordable Housing Scheme approved pursuant to paragraph 2.1 of Schedule 2 of this deed and 'Intermediate Housing Units' shall be construed accordingly
- 1.1.53 **'Key Worker'** means such categories of employment as may be designated and published by the Council from time to time as the "First Homes Key Worker criteria" and is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Key Worker" criteria which shall apply to that disposal it being acknowledged that at the date of this deed the Council has not designated any categories of employment as Key Worker
- 1.1.54 **'Local Connection Criteria'** means such local connection criteria as may be designated and published by the Council from time to time as its "First Homes Local Connection Criteria" and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such criteria or replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Local Connection Criteria" which shall apply to that disposal it being acknowledged that at the date of this deed the Council has not designated any criteria as Local Connection Criteria
- 1.1.55 **'Management Company'** means a private limited company which is incorporated in and which has its registered office in the United Kingdom of Great Britain and Northern Ireland and whose primary objects require it to maintain and renew the Open Space and the SUDS and maintain the Car Club Spaces
- 1.1.56 **'Management Plan'** means a scheme to be submitted to and approved in writing by the Council in consultation with the County Council in relation to the Car Club Spaces, which identifies:
- (i) the future management and maintenance requirements of the Open Space SUDS and Car Club Spaces

- (ii) the proposed ongoing maintenance operations for the Open Space SUDS and Car Club Spaces, specifically identifying the management objective, task and the timing and frequency of the operation for all the features of the Open Space SUDS and Car Club Spaces
- (iii) the proposed means of funding the ongoing maintenance and management of the Open Space SUDS and Car Club Spaces in accordance with the Management Plan by the Owner and where one is formed pursuant to the provisions of this deed the Management Company
- (iv) a mechanism for the periodic review with the Council and where necessary amendment of the Management Plan

1.1.57 **'the Market Housing Units'** means that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing

1.1.58 **'Market Value'** means the open market value as assessed by a Valuer of the Dwelling as confirmed to the Council by the First Home Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation

1.1.59 **'Marketing Literature'** means information relating to the operation of the Car Club

1.1.60 **'Marketing Period'** means the period of 12 months from the Commencement of the relevant part of the Development intended to be Self-Build and Custom-Build Plots

1.1.61 **'Marketing Strategy'** means the strategy to be followed during the Marketing Period for the purposes of marketing the Self-Build and Custom-Build Plots for disposal to prospective purchasers and which may include but is not limited to:

- (a) Preparing detailed sales particulars of the Self-Build and Custom-Build Plots to be advertised locally and nationally;
- (b) Placing adverts online and in local/regional newspapers;
- (c) Terms and conditions for the disposal of the Self-Build and Custom-Build Plots which shall be no more restrictive or onerous than the terms and conditions for the Market Housing Units;

- (d) Details of the pricing mechanism in relation to the Self-Build and Custom-Build Plots and such information reasonably required to satisfy the Council that the proposed disposal price is reasonable and achievable
 - (e) Appoint appropriate local estate agents; and
 - (f) Including the Self-Build and Custom-Build Plots in the marketing and advertising for the Market Housing Units
- 1.1.62 **'Nomination Agreement'** means the draft which is attached at Appendix 1
- 1.1.63 **'Notice of First Operation'** means notice in writing provided by the Owner to the Council giving 20 Working Days notice of First Operation
- 1.1.64 **'the NPPF'** means the National Planning Policy Framework issued by the Department for Housing, Communities and Local Government and dated July 2021
- 1.1.65 **'to Occupy'** means to occupy or permit or suffer to be occupied for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and 'Occupation' and 'Occupied' shall be construed accordingly
- 1.1.66 **'the Open Space'** means the informal open space and landscaping including the Play Area for use by the general public to be provided on the Site in accordance with the Planning Permission and the Open Space Works Specification
- 1.1.67 **'the Open Space Works Specification'** means a specification for the laying out of the Open Space to be agreed in writing between the Owner and the Council before the Commencement of Development
- 1.1.68 **'Party'** means any of the parties to this deed and 'Parties' shall be construed accordingly
- 1.1.69 **'Planning Inspector'** means the inspector appointed by the Secretary of State to preside over the public inquiry in relation to the Appeal
- 1.1.70 **'the Play Area'** means a local equipped area for play for use by the general public to be provided on the Site in accordance with the Planning Permission
- 1.1.71 **'the Plan'** means the plan attached to this deed
- 1.1.72 **'the Planning Permission'** means any planning permission issued by the Secretary of State or the Planning Inspector in determining the Appeal

- 1.1.73 **'Practical Completion'** means the stage reached when the construction of a First Home is sufficiently complete that where necessary a certificate of practical completion can be issued and it can be Occupied
- 1.1.74 **'Price Cap'** means the amount for which the First Home is sold after the application of the Discounted Market Price which on its first Disposal shall not exceed two hundred and fifty thousand pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State
- 1.1.75 **'the Promotion Agreement'** means a promotion agreement dated 17 November 2021 in respect of the Site made between the Owner and the Promoter
- 1.1.76 **'a Protected Tenant'** means any tenant who:
- 1.1.76.1 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 an Affordable Housing Unit, or
 - 1.1.76.2 has exercised any statutory right to buy (or any equivalent contractual right) in respect of an Affordable Housing Unit, or
 - 1.1.76.3 was granted a shared ownership lease (or similar arrangement where a share of an Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) by the Registered Provider in respect of an Affordable Housing Unit and has subsequently purchased all the remaining shares from the Registered Provider so that the tenant owns the entire Affordable Housing Unit
- 1.1.77 **'the Registered Provider'** means a registered provider of social housing within the meaning of Section 80(2) of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment) as registered with Homes England or any other body who may lawfully provide or fund affordable housing from time to time
- 1.1.78 **'SDLT'** means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
- 1.1.79 **'Secretary of State'** means the Secretary of State for Levelling Up, Housing and Communities or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the 1990 Act and includes any successor in function

- 1.1.80 **'Section 278 Agreement'** means the agreement substantially in the form of the draft set out in Appendix 2 with such amendments as may be agreed with the County Council and made under section 278 of the Highways Act 1980 to secure the carrying out of Highway Works
- 1.1.81 **'Self-Build and Custom-Build Plots'** means the Serviced plots comprised within the Development upon which the Self-Build and Custom-Build Units are to be constructed and disposed of in accordance with paragraph 8 Schedule 2 and the Self-Build and Custom-Build Plots Scheme and 'Self-Build and Custom-Build Plot' shall be construed accordingly
- 1.1.82 **'Self-Build and Custom-Build Plots Scheme'** means the scheme to be submitted in accordance with paragraph 8.1 of Schedule 2 and which shall include the following in relation to the Development:
- (a) the location of the Self-Build and Custom-Build Plots;
 - (b) confirmation of the number of Self-Build and Custom-Build Plots (which shall equal 5% of the total number of Dwellings (rounded down to the nearest whole number);
 - (c) the Marketing Strategy for the disposal of the Self-Build and Custom-Build Plots.
- 1.1.83 **'Self-Build and Custom-Build Units'** means a dwelling which meets the definition at section 1(A1) and section 1(A2) of the Self-Build and Custom Housebuilding Act 2015 and 'Self-Build and Custom-Build Unit' shall be construed accordingly
- 1.1.84 **'Serviced'** means access from the relevant Self-Build and Custom-Build Plot to public or private highways to an adoptable standard is provided along with utilities/services connection (including electricity water and waste water) to the relevant Self-Build and Custom-Build Plot boundary
- 1.1.85 **'the Site'** means the land against which this deed may be enforced shown edged red on the Plan and described in Schedule 1
- 1.1.86 **'the SUDS'** means the sustainable urban drainage system for the Development as detailed in the approved SUDS Scheme
- 1.1.87 **'the SUDS Scheme'** means a sustainable urban drainage system scheme for the Development which is to be submitted to and approved in writing by the Council prior to the Commencement of the Development, and which includes details of all the works features and measures for the SUDS that are proposed to be carried out constructed and implemented on the Site during the Development, and the timescales for when the said works features and measures are to be carried out

- 1.1.88 **‘Sustainable Transport Contribution’** means the sum of £300,000 (three hundred thousand pounds) payable to the County Council towards the cost of a Demand Responsive Transport service in the area of the Site in accordance with the County Council’s Bus Improvement Plan and which directly serves the needs of the occupiers of the Development to enable travel to and from the Development
- 1.1.89 **‘Sustainable Transport Purposes’** means a car club available to new and existing residents of the Development to be able to hire a vehicle on a pay as you go basis to be funded by the Owner for the period of three (3) years
- 1.1.90 **‘Traffic Regulation Order Contribution’** means the sum of £5,000 (five thousand pounds) being a financial contribution payable to the County Council towards the costs of progressing a traffic regulation order to implement possible parking restrictions on Fryatts Way
- 1.1.91 **‘Travel Plan’** means the Travel Plan referred to in Schedule 3
- 1.1.92 **‘Travel Plan Auditing Fee’** means the sum of £6,000 (six thousand pounds) as specified in Schedule 3 being paid to the County Council as a contribution to the costs of the County Council for auditing the Travel Plan
- 1.1.93 **‘Valuer’** means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Home Owner and acting in an independent capacity
- 1.1.94 **‘Working Day’** means any date from Monday to Friday (inclusive) which is not Christmas Day, Good Friday, a statutory bank holiday or a public holiday in England and ‘Working Day’ shall be construed accordingly

1.2 Interpretation

- 1.2.1 Reference in this deed to any recital, clause, paragraph or schedule is, unless the context otherwise requires, a reference to the recital, clause, paragraph or schedule in this deed so numbered.
- 1.2.2 Words importing the singular meaning include the plural meaning and vice versa where the context so admits.
- 1.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

- 1.2.4 Wherever 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 unless there is an express provision otherwise.
- 1.2.5 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.
- 1.2.6 References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 1.2.7 Headings where they are included are for convenience only and are not intended to influence the interpretation of the agreement.

2. Legal basis

- 2.1 This deed is made pursuant to the 1990 Act section 106.
- 2.2 The terms of this deed create planning obligations binding on the Owner pursuant to Section 106 of the 1990 Act and are enforceable as such by the Council and the County Council as local planning authorities.
- 2.3 To the extent that any of the obligations contained in this deed are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.

3. Conditions, duration and enforcement

3.1 Conditions precedent

This deed is conditional upon:

- 3.1.1 the grant of the Planning Permission, and
- 3.1.2 the Commencement of Development

save for the provisions of clause 7, Provisions of Immediate Effect, and save in respect of any obligations in this deed expressly requiring compliance prior to the Commencement of Development, which shall come into effect immediately upon completion of this deed.

3.2 CIL Regulations

3.2.1 If in determining the Appeal the Secretary of State or the Planning Inspector expressly states in the Decision Letter that any planning obligation contained in this deed:

3.2.1.1 is not a material planning consideration; or

3.2.1.2 can be given no or little weight in determining the Appeal; or

3.2.1.3 does not constitute a reason for granting Planning Permission in accordance with Regulation 122 of the CIL Regulations,

then subject to clause 10.2 of this deed such planning obligation shall not be enforceable pursuant to this deed and shall cease to have effect within this deed save as set out in the Decision Letter.

3.2.2 In the event that the Secretary of State or the Planning Inspector grants the Planning Permission for the Development then if at the date of the grant of the Planning Permission an Annual Infrastructure Funding Statement has been published by the Council any contribution payable under the terms of this deed which is for an Infrastructure project or a type of Infrastructure which is identified in the Annual Infrastructure Funding Statement as an Infrastructure project or Infrastructure to be funded wholly or partly by CIL shall cease to be payable.

3.3 Duration

3.3.1 This deed shall cease to have effect, in so far only as it has not already been complied with, if the Planning Permission is quashed, revoked or otherwise withdrawn or, without the consent of the Owner, it is modified by any statutory procedure or expires before the Commencement of Development.

3.3.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his entire interest in the Site, but without prejudice to liability for any subsisting breach arising before parting with that interest.

3.4 Other development

Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed.

3.5 Non-enforcement

3.5.1 This deed shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission, nor against those deriving title from such owner-occupiers or tenants or their mortgagees, except in respect of:

3.5.1.1 Schedule 2 paragraph 2.5 which shall remain enforceable against owner-occupiers and/or tenants of Affordable Housing Units and those deriving title from them to the extent permitted by the terms of this deed; and

3.5.1.2 Schedule 2 paragraphs 1.10(ii) and 9.7(ii) which shall remain enforceable against the owner of a Dwelling in so far as there is a breach of that provision in relation to the Dwelling in which such person has an interest; and

3.5.1.3 Schedule 2 paragraphs 3 -7 subject to paragraph 3.1 of Schedule 2.

3.5.2 The obligations contained in this deed shall not be binding upon or enforceable against any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunications services or public transport services.

4. Owner's covenants

4.1 The Owner covenants with the Council as set out in Schedule 2 and Schedule 5.

4.2 The Owner covenants with the County Council as set out in Schedule 3.

5. Council's and County Council's covenants

5.1 The Council covenants with the Owner to comply with its obligations set out in Schedule 6 to this deed and any obligations on its part set out in Schedule 2.

- 5.2 The County Council covenants with the Owner to comply with its obligations set out in Schedule 7 to this deed and any obligations on its part set out in Schedule 3.
- 5.3 The Council and the County Council covenant with the Owner to act reasonably, properly and diligently in exercising their discretion and discharging their functions under this deed. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of this deed, the Council and where appropriate the County Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or similar affirmation and covenant to use reasonable endeavours to acknowledge receipt and/or provide a response within 28 Working Days.
- 5.4 Where the Council or the County Council fail to give such notice, consent, approval, authorisation, agreement or similar affirmation, notice of approval or rejection with reasons within 28 Working Days of being requested so to do (and provided any relevant submissions to the Council or the County Council have been served on the Council or the County Council in accordance with Clause (8 Notices) the same shall be deemed to be approved (as appropriate) PROVIDED THAT a new 28 Working Day approval period shall commence after each resubmission of a request for consent, approval, authorisation, agreement or similar affirmation submitted by the Owner to the Council or the County Council subject however to the Council or the County Council giving reasons for such rejection and dealing with any alterations that the Owner makes consequent upon such rejection as soon as reasonably practicable notwithstanding the 28 Working Day period specified and the right of any Party to invoke the provisions of Clause 13 (Determination of Disputes).
- 5.5 Subject to Clause 5.6 no variation to this deed shall be effective unless made by deed and for the avoidance of doubt the consent, seal, signature, execution or approval of the purchaser, tenant or residential occupier of any Dwelling or their mortgagees shall not be required to vary any part of this deed nor shall any other party who has no liability under this deed or any interest in the Site.
- 5.6 If the Council agrees following an application under section 73 of the 1990 Act to vary or release any condition contained in the Planning Permission or if a condition is varied or released following an appeal under section 78 of the 1990 Act the covenants or provisions of this deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission unless the Council in determining the application for the new planning permission or the Secretary of State or Inspector in their determination of such appeal indicate that consequential amendments are required to this deed to reflect the impact of the section 73 application, and in such circumstances a separate

deed under section 106 of the 1990 Act will be required to secure relevant planning obligations relating to the new planning permission.

- 5.7 This Deed is without prejudice to any other planning obligations subsisting in relation to the Site which for the avoidance of doubt shall include a deed dated 22nd July 1976 between Larkin Holding Limited and East Sussex County Council and any authorisation provided pursuant to this Deed shall be without prejudice to any consents required in relation to any planning obligations subsisting in relation to the Site not contained in this Deed.

6. the Promoter's Consent

- 6.1 The Promoter acknowledges and declares that:

6.1.1 this deed has been entered into by the Owner with its consent, and

6.1.2 the Site shall be bound by the obligations contained in this deed.

- 6.2 Any mortgagee shall be liable only for any breach of the provisions of this deed during such period as he is a mortgagee in possession of the Site.

7. Provisions of immediate effect

- 7.1 On completion of this deed the Promoter shall pay to the Council and the County Council the reasonable legal costs incurred in the negotiation, preparation and execution of this deed of no more than £2610.00 and £2506.00 respectively.

- 7.2 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

- 7.3 The Owner agrees with the Council and the County Council to give the Council and the County Council prompt written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this deed have been discharged such notice to contain details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not be applicable to the disposal of individual Dwellings to individual purchasers.

8. Notices

- 8.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the Party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing.
- 8.2 The address for any notice or other written communication shall be within the United Kingdom.
- 8.3 A notice or communication shall be served or given:
- 8.3.1 on the Owner at the address set out above, or such other address as shall be notified in writing to the Council and the County Council from time to time, and
- 8.3.2 on the Promoter at its registered office from time to time, or such other address as shall be notified in writing to the Council and the County Council from time to time, marked for the attention of the Legal Department, and
- 8.3.3 on the Council at the address set out above or such other address as shall be notified in writing to the parties from time to time marked for the attention of Legal Services Manager and
- 8.3.4 on the County Council addressed to the Assistant Chief Executive, Governance Services.

9. Local land charge

- 9.1 This deed shall be registered as a local land charge by the Council and the Council covenants with the Owner that it will note on the local land charges register when compliance with all of the planning obligations in this deed has occurred.
- 9.2 Where this deed comes to an end under Clause 3.3.1 the Council covenants on the written request of the Owner to vacate or cancel the entry made in the local land charges register in relation to this deed or otherwise to record the fact that it has come to an end and no longer affects the Site.

10. Jurisdiction and legal effect

- 10.1 This deed shall be governed by and interpreted in accordance with the law of England.
- 10.2 In so far as any clause or clauses of this deed are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed.

- 10.3 No waiver (whether expressed or implied) by the Council or the County 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 or the County Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.
- 10.4 The provisions of this deed (other than this Clause 10.4 which shall be effective in any event) shall be of no effect until this deed has been dated.

11. Indexation, interest and VAT

- 11.1 Any sum to be paid to the Council under Schedule 2 shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is paid.
- 11.2 If any payment due under this deed is paid late, Interest shall be payable from the date payment is due to the date of payment.
- 11.3 All consideration given in accordance with the terms of this deed shall be exclusive of any value added tax properly payable.
- 11.4 In the event that the Travel Plan Auditing Fee shall become due after the date of this deed the Travel Plan Auditing Fee shall be the amount arrived at by the following:

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

where

A is the sum actually payable on the date payment is due

B is the original sum specified in Clause 1 hereof

C is the Inflation Index for the month preceding the date payment is due

D is the Inflation Index for the month preceding the date of this Deed.

C divided by D is equal to or greater than 1

- 11.5 In the event that the Traffic Regulation Order Contribution, and the Sustainable Transport Contribution shall become due after the date of this Deed the Owner agrees with the County Council that the Traffic Regulation Order Contribution and the Sustainable Transport Contribution shall be increased by the application of the following formula:

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

where: A is the sum actually payable on the date payment is due

B is the original sum specified in Clause 1 in this Deed

C is the Construction Index for the month immediately preceding the date payment is due

D is the Construction Index for the month immediately preceding the date of this Deed

C divided by D is equal to or greater than 1

12. Mortgage Protection

12.1 For the avoidance of doubt, Clause 12.2 applies only to the mortgagee or chargee or Receiver of a Registered Provider.

12.2 The provisions of paragraph 2 of Schedule 2 of this deed shall not be binding on a mortgagee or chargee (or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each 'a Receiver')) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

12.2.1 such mortgagee, chargee or Receiver shall first give written notice to the Legal Services Manager at the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units(s) to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

12.2.2 if such disposal has not completed within the three month period, the mortgagee, chargee and Receiver shall be entitled to dispose of the Affordable Housing Unit(s) free from the provisions of paragraph 2 of Schedule 2 of this deed which provisions shall determine absolutely.

12.3 The obligations in paragraphs 3-7 of Schedule 2 of this deed in relation to First Homes shall not apply to any First Homes Mortgagee or receiver (including an administrative receiver appointed by such First

Homes Mortgagee or any other person appointed under any security documentation to enable such First Homes Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such First Homes Mortgagee or Receiver PROVIDED THAT:

- 12.3.1 such First Homes Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and
- 12.3.2 once notice of intention to Dispose of the relevant First Home have been given by the First Homes Mortgagee or Receiver to the Council the First Homes Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to Clause 12.3.3
- 12.3.3 following the Disposal of the relevant First Home the First Homes Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution
- 12.3.4 following receipt of notification of the Disposal of the relevant First Home the Council shall:
 - 12.3.4.1 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 6.4 of Schedule 2; and
 - 12.3.4.2 apply all such monies received towards the provision of Affordable Housing

13. Determination of Disputes

- 13.1 If there is any dispute (except in respect of the quantum of contributions) between the Parties in respect of any of the matters to be agreed pursuant to this deed (other than a dispute or difference concerning the meaning or construction of this deed) such dispute shall be determined in accordance with Clauses 13.2 – 13.8 and either party to the dispute may at any time require by notice in writing to the other an independent expert to be appointed to resolve the dispute.
- 13.2 The expert shall have no less than ten (10) years' experience of resolving disputes similar in nature to the one that is proposed to be referred pursuant to this Deed.
- 13.3 The expert shall be appointed jointly by the parties and, in the absence of such agreement within one (1) month of service of the notice pursuant to Clause 13.1 be appointed by the President for the time being of the Royal Institution of Chartered Surveyors within one (1) month of an application being made by one of the parties.

- 13.4 The expert shall invite written representations from each of the parties and shall make his final determination within one (1) month of his appointment PROVIDED THAT if the expert fails to do so either party to the dispute may apply to the President for the time being of the Royal Institution of Chartered Surveyors for a substitute to be appointed in which case the same procedure shall be repeated.
- 13.5 The findings of the expert shall be final and binding on the parties except in the case of manifest, material error.
- 13.6 The expert shall act as an expert and not as an arbitrator.
- 13.7 The costs of the dispute shall be payable by the parties in such proportion as may be determined by the expert and failing such determination to be borne in equal shares by the parties.
- 13.8 Nothing in Clauses 13.1 – 13.7 shall be construed as removing the jurisdiction of the courts to enforce the provisions of this deed.

IN WITNESS of which the Parties have executed this deed as a deed and delivered it the day and year first before written.

SCHEDULE 1

The Owner's Title and Site Description

Title Number	Description of Site	Owner
ESX145361	Land on the west side of Fryatts Way Bexhill	Mayo Land Company Limited
SX151421	Land on the north side of Broadoak Lane Bexhill on Sea	Mayo Land Company Limited

SCHEDULE 2

The Owner's Covenants with the Council

1. Progress of development

The Owner shall notify the Council:

- 1.1 upon the Commencement of Development, and
- 1.2 upon Occupation of any part of the Development.

Open Space transfer and works

- 1.3 Prior to Commencement of Development to submit to the Council for approval the Open Space Works Specification and the Management Plan.
- 1.4 Prior to Commencement of Development to submit to the Council evidence of the formation of a Management Company for the purpose of managing and maintaining the Open Space SUDS and Car Club Spaces.
- 1.5 Not to permit or allow the Occupation of more than 75% of the Dwellings until the Open Space to has been provided and/or constructed (as appropriate) in complete accordance with the approved Open Space Works Specification.
- 1.6 Upon completion of the laying out of the Open Space in accordance with the approved Open Space Works Specification to notify the Council of completion and to request that the Council inspects the Open Space within thirty (30) Working Days of such notification.
- 1.7 If upon inspection of the Open Space the Council identifies any works which are necessary to bring the Open Space up to the standard required by the approved Open Space Works Specification to complete such works as soon as reasonably practicable.

- 1.8 To maintain the Open Space and Car Club Spaces in accordance with the approved Management Plan until the date upon which the transfer described in paragraph 1.9 below has been completed.
- 1.9 Not to permit the Occupation of more than 95% of the Dwellings that form part of the Development until the Open Space and Car Club Spaces has been transferred to the Management Company in accordance with the details approved by the Council under the approved Management Plan and on the terms set out in Schedule 4.
- 1.10 To procure that the buyer of each Dwelling comprised in the Development enters into the following covenants direct with the Management Company:
- (i) to pay to the Management Company a fair and reasonable proportion of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining repairing and as necessary renewing the Open Space and maintaining the Car Club Spaces in accordance with the approved Management Plan; and
 - (ii) that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 1.10 (i) and 1.10 (ii) of Schedule 2.
- 1.11 Not to amend the approved Management Plan without the Council's written consent.
- 1.12 Not to wind up the Management Company or alter its constitution without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless the Council have otherwise first agreed in writing.

2. Affordable housing

- 2.1 Not to permit or allow the Commencement of Development until the Affordable Housing Scheme has been agreed in writing by the Council.
- 2.2 No more than 30% of the Market Housing Units shall be Occupied until written notice has been given to the Council that 30% of the Affordable Housing Units have:
- (1) been constructed in accordance with the Planning Permission;
 - (2) been made ready for residential occupation;
 - (3) in the case of Affordable Rented Housing been transferred to the Registered Provider or in the case of Intermediate Housing Units that are not to be managed by a Registered Provider the Council has been provided with evidence that those Intermediate Housing Units have been transferred to an Occupier in accordance with the Affordable Housing Scheme approved pursuant to paragraph 2.1 above.
- 2.3 No more than 80% of the Market Housing Units shall be Occupied until written notice has been given to the Council that all of the Affordable Housing Units have:
- (1) been constructed in accordance with the Planning Permission;
 - (2) been made ready for residential occupation;
 - (3) in the case of Affordable Rented Housing been transferred to the Registered Provider (or in the case of Intermediate Housing Units that are not to be managed by a Registered Provider the Council has been provided with evidence that those Affordable Housing Units have been transferred to an Occupier in accordance with the Affordable Housing Scheme approved pursuant to paragraph 2.1 above).
- 2.4 The transfer of the Affordable Housing Units referred to at paragraphs 2.2.3 and 2.3.3 above shall include the following:
- (1) full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Land;
 - (2) full and free rights to the passage of water, soil, electricity, gas and other services through the pipes, drains, channels, wires, cables and conduits in the adjoining land up to and abutting

the boundary to the Affordable Housing Land, all such services to be connected to the mains;
and

- (3) a reservation of all rights of access and passage of services and rights of entry necessary for the purposes of the Development.

2.5 From the Date of Practical Completion of the Affordable Housing Units (excluding the First Homes) they shall not be used other than for Affordable Housing (excluding the First Homes) in accordance with the approved Affordable Housing Scheme, save that this obligation shall not be binding on:

- (1) any Protected Tenant, any mortgagee or chargee of a Protected Tenant or any person deriving title from a Protected Tenant, or any successor in title to a Protected Tenant and their respective mortgagees and chargees, or
- (2) a mortgagee chargee or Receiver of a Registered Provider where clause 12.2.2 of this deed applies, or
- (3) any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.

3. First Homes

3.1 The Owner for and on behalf of itself and its successors in title to the Site with the intention that the following provisions shall bind the Site and every part of it into whosoever's hands it may come covenants with the Council as follows save that:

- (1) paragraphs 3.2, 4, 5 and 6 of Schedule 2 shall not apply to a First Home Owner;
- (2) paragraphs 6 and 7 of Schedule 2 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Home Owner they shall apply to that First Home Owner only in respect of the First Home owned by that First Home Owner; and
- (3) clause 12.3 applies as set out therein.

3.2 25% of the Affordable Housing on the Site (rounded up to the nearest whole Dwelling) shall be identified reserved and set aside as First Homes in accordance with the approved Affordable Housing Scheme (unless otherwise agreed with the Council) and shall be provided and retained as First Homes in perpetuity subject to the terms of paragraphs 3-7 of Schedule 2

4. First Homes - Clustering

- 4.1 The First Homes shall not be visually distinguishable from the Market Housing Units based upon their external appearance.
- 4.2 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Market Housing Units but subject to that requirement variations to the internal specification of the First Homes shall be permitted.
- 4.3 Clusters of Dwellings shall not exceed 6 Affordable Housing Units
- 4.4 Clusters of flats in blocks with 2 or less storeys shall:
- (1) not exceed 10 Affordable Housing Units;
 - (2) not have more than 6 flats with shared access; and
 - (3) be of a single tenure when sharing a communal entrance;
- 4.5 The size of Clusters and shared access arrangements for Affordable Housing Units which are flats in blocks with 3 or more storeys shall be agreed in writing with the Council as part of the Affordable Housing Scheme.

5. First Homes – type and distribution

- 5.1 The mix and distribution of the First Homes provided within the Site shall be in accordance with the approved Affordable Housing Scheme.

6. First Homes - delivery

- 6.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:
- (1) the Eligibility Criteria (National)
- 6.2 Subject to paragraphs 6.5 to 6.9 no First Home shall be Disposed of (whether on a first or subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a First Homes Mortgagee.
- 6.3 No First Home shall be Disposed of (whether on a first or subsequent sale) unless and until:
- (1) The Council has been provided with evidence that:
 - 6.3.1.1 the intended purchaser meets the Eligibility Criteria (National)

6.3.1.2 the Dwelling is Disposed of as a First Home at the Discounted Market Price; and

6.3.1.3 the transfer of the First Home includes;

- a) a definition of the Council which shall be Rother District Council
- b) a definition of "First Home Provisions" in the following terms:
"means the provision set out in paragraphs 3 to 7 of Schedule 2 of the Section 106 a copy of which is attached hereto as the Annexure"
- c) a definition of "Section 106" means the deed made pursuant to section 106 of the Town and Country Planning Act 1990 dated [] made between (1) Rother District Council (2) East Sussex County Council (3) Mayo Land Company Limited and (4) Gladman Developments Ltd and any subsequent variation or amendment
- d) a provision that the Dwelling is sold subject to and with the benefit of the First Homes Provisions and the transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the First Homes Provisions
- e) a copy of the First Homes Provisions in an annexure

(2) The Council has issued the f Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 6.2 and 6.3.1 have been met.

6.4 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge not being a charge registered before the entry of this restriction is to be registered without a certificate signed by Rother District Council of [address] or their conveyancer that the provisions of clause [] of the Transfer dated [] referred to in the Charges Register have been complied with or that they do not apply to the disposition".

6.5 The Owner of a First Home (which for the purposes of this clause shall include the Owner and any First Home Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

- (1) the Dwelling has been actively marketed as a First Home for six (6) months in accordance with clauses 6.1 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 6.2 and 6.3.1; or
- (2) requiring the First Home Owner to undertake active marketing for the period specified in paragraph 6.5.(1) before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Home Owner undue hardship.

6.6 Upon receipt of an application served in accordance with paragraph 6.5 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to the Council at the Discounted Market Price.

6.7 If the Council is satisfied that either of the grounds in paragraph 6.5 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.5 that the relevant Dwelling may be disposed of:

- (1) to the Council at the Discounted Market Price; or
- (2) (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of such written confirmation by the Council the obligations in the Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 6.9 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home.

6.8 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 6.5 above have been made out then it may within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.5 serve notice on the Owner

setting out the further steps it requires the Owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the Owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 6.5 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.

6.9 Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discounted Market Price in accordance with paragraph 6.7 or 6.8 above the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.

6.10 Upon receipt of the Additional First Homes Contribution the Council shall:

- (1) within 7 Working Days of such receipt provide a completed application to enable the removal of the restriction on the title set out in paragraph 6.4 where such restriction has previously been registered against the relevant title
- (2) apply all monies received towards the provision of Affordable Housing.

6.11 Any person who purchases a First Home free from the First Homes restrictions in Schedule 2 of this Deed pursuant to the provisions in paragraphs 6.8 and 6.9 shall not be liable to pay the Additional First Homes Contribution to the Council.

7. First Homes - Use

7.1 Each First Home shall be used only as the main residence of the First Home Owner and shall not be let sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 7.2 to 7.5 below.

7.2 A First Home Owner may let or sub-let their First Home for a fixed term of no more than two (2) years provided that the First Home Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Home Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Home Owner's period of

ownership but the aggregate of such lettings or sub-lettings during a First Home Owner's period of ownership may not exceed two (2) years.

7.3 A First Home Owner may let or sub-let their First Home for any period provided that the First Home Owner notifies the Council and obtains confirmation in writing from the Council to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of the circumstances (a) – (f) below apply:

- (a) the First Home Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
- (b) the First Home Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting;
- (c) the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
- (d) the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
- (e) the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
- (f) the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.

7.4 A letting or sub-letting permitted pursuant to paragraph 7.2 or 7.3 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.

7.5 Nothing in this paragraph 7 prevents a First Home Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

8. Self- Build and Custom -Build Plots

- 8.1 Prior to the Commencement of Development to submit to the Council for approval the Self -Build and Custom -Build Plots Scheme.
- 8.2 Not to Commence Development unless and until the Self- Build and Custom- Build Plots Scheme has been approved in writing by the Council.
- 8.3 Subject to paragraph 8.6 not to permit Occupation of more than 50% of the Market Housing Units unless and until all of the Self -Build and Custom- Build Plots have been:
- (a) laid out;
 - (b) in a Serviced state.
- 8.4 Not to cause or permit the disposal use or Occupation of the Self- Build and Custom- Build Plots other than as Self- Build and Custom- Build Units unless otherwise approved in writing by the Council.
- 8.5 To market and advertise the availability for disposal of the Self -Build and Custom -Build Plots during the Marketing Period in accordance with the Marketing Strategy set out in the approved Self- Build and Custom -Build Plots Scheme.
- 8.6 If at the expiration of the Marketing Period any Self- Build and Custom- Build Plots have not been disposed of, the Owner shall notify the Council in writing accordingly and if the Council is satisfied with the evidence provided by the Owner the restrictions and obligations in this paragraph 8 shall no longer apply to the remaining Self -Build and Custom -Build Plots and the Owner shall be free to develop the remaining Self -Build and Custom- Build Plots as Market Housing Units.

The SUDS

- 9.1 Prior to the Commencement of Development to submit to the Council for approval the SUDS Scheme.
- 9.2 To implement the approved SUDS Scheme in accordance with the timescales set out therein.
- 9.3 Upon the completion of the laying out of the SUDS in accordance with the approved SUDS Scheme to notify the Council of completion and to request that the Council inspects the SUDS within thirty (30) Working Days of such request.
- 9.4 If upon inspection of the SUDS the Council identifies any works which are necessary to bring the SUDS up to the standard required by the approved SUDS Scheme to complete such works as soon as reasonably practicable.
- 9.5 To maintain the SUDS in accordance with the approved Management Plan until the date upon which the transfer described in paragraph 9.6 below has been completed.
- 9.6 Not to permit the Occupation of more than 95% of the Dwellings that form part of the Development until the SUDS have been transferred to the Management Company in accordance with the details approved by the Council under the approved Management Plan and on the terms set out in Schedule 4.
- 9.7 To procure that the buyer of each Dwelling comprised in the Development enters into the following covenants direct with the Management Company:
- (i) to pay to the Management Company a fair and reasonable proportion of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining repairing and as necessary renewing the SUDS in accordance with the approved Management Plan; and
 - (ii) that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 9.7 (i) and 9.7 (ii) of Schedule 2.

SCHEDULE 3

The Owner's Covenants with the County Council

1. Progress of development

The Owner shall notify the County Council:

- 1.1 upon the Commencement of Development, and
- 1.2 upon Occupation of any part of the Development.

2. Car Club

2.1 Not to Commence Development prior to either:

- 2.1.1 submitting the Car Club Scheme to the County Council for approval; or
- 2.1.2 submitting evidence to the County Council to show that despite reasonable endeavours having been made by the Owner to secure a Car Club Operator for the Development it has not been possible to secure a Car Club Operator for the Development and the County Council accepts such evidence.

2.2 Not to cause or permit Commencement of Development unless and until:

- 2.2.1 The Car Club Scheme has been approved by the County Council in writing in which case the provisions of paragraph 2.3 below shall apply; or
- 2.2.2 The County Council has accepted in writing the evidence submitted by the Owner pursuant to clause 2.1.2 that despite reasonable endeavours it has not been possible to secure a Car Club Operator for the Development.

2.3 In the event that the County Council approves a Car Club Scheme the Owner hereby covenants with the County Council not to Occupy more than 50% of the Dwellings unless and until;

- 2.3.1.1 the Owner has served the Notice of First Operation on the County Council; and
- 2.3.1.2 the Car Club Spaces have been provided within the Development; and

- 2.3.1.3 the Owner confirms to the County Council that the approved Marketing Literature has been provided to all residents currently in Occupation of the Development; and
 - 2.3.1.4 the Car Club Operator has provided one of the Car Club Vehicles for use by the Car Club Members; and
 - 2.3.1.5 the Car Club Operator is operating the Car Club Scheme.
-
- 2.4 To use reasonable endeavours to maintain the Car Club Spaces administer and operate the Car Club Scheme for a minimum period of three years from the date of First Operation.
 - 2.5 To provide the approved Marketing Literature to all first Occupiers of the Development upon first Occupation of a Dwelling.
 - 2.6 On a 6 monthly basis for a period of 3 years from the date of First Operation (unless the Car Club has ceased to operate) to provide to the County Council information as to the actual use and membership of the Car Club Scheme and based on that information to provide to the County Council the Car Club Operators opinion as to whether an additional Car Club Vehicle should be provided at the Site and cooperate with and implement any reasonable initiatives the County Council may have to promote the Car Club Scheme.
 - 2.7 To ensure that all the first Occupiers of the Dwellings who meet the Car Club's membership criteria and ask the Car Club Operator to join the Car Club are provided with free membership of the Car Club Scheme without payment of an annual membership fee for a period of three years from the date of first Occupation of the Dwelling (or such lesser period in the event that the Approved Car Club has ceased to operate during that three year period) unless such Occupier notifies the Car Club Operator that they do not require or no longer require membership of the Approved Car Club.

Sustainable Transport Contribution

- 3.1 To pay the Sustainable Transport Contribution to the County Council prior to the Commencement of the Development and not to Commence Development until the Sustainable Transport Contribution has been paid to the County Council.

Traffic Regulation Order Contribution

- 3.2 To pay the Traffic Regulation Order Contribution to the County Council prior to Commencement of the Development and not to Commence Development until the Traffic Regulation Order Contribution has been paid to the County Council.

Travel Plan Auditing Fee and Travel Plan Covenants

Section A - Travel Plan Auditing Fee

- 3.3 To pay the Travel Plan Auditing Fee to the County Council prior to first Occupation of the Development and not to Occupy nor permit the Occupation of the Development until the Travel Plan Auditing Fee has been paid to the County Council.

Section B – Travel Plan Covenants

- 1 Prior to the first Occupation of any part of the Development to prepare and submit to the County Council a draft Travel Plan (“the Draft Travel Plan”) such plan to be based on and consistent with the analysis contained in the Transport Assessment submitted in support of the planning Application and dated June 2021
2. Not to Occupy or cause or allow to be Occupied any part of the Development until the Draft Travel Plan has been approved in writing by the County Council as the travel plan (“the Travel Plan”). The County Council shall not unreasonably withhold or delay their approval of the Draft Travel Plan.
3. To use all reasonable endeavours to achieve the objectives set out in the Travel Plan (“the Travel Plan Objectives”) and on the Occupation of 25% of the Dwellings to submit to the County Council base line data and thereafter monitoring information (data and report) in accordance with the methodology(ies) and timescales detailed in the Travel Plan.

4. If the monitoring information submitted shows that the Travel Plan Objectives are not being achieved then after each monitoring of the Travel Plan to implement further suitable measures and initiatives in agreement with the County Council to achieve the Travel Plan Objectives before the next monitoring surveys

Highway Works

Section A - Section 278 Agreement

- 4.1 Prior to Commencement of Development the Owner will enter into the Section 278 Agreement with the County Council to secure the carrying out of the Highway Works.
- 4.2 The Owner shall not Commence Development until it has entered into the Section 278 Agreement.
- 4.3 Prior to Occupation of the Development the Owner will complete the Highway Works in accordance with the provisions of the Section 278 Agreement.
- 4.4 The Owner shall not Occupy or cause or allow the Occupation of the Development until it has completed the Highway Works in accordance with the provisions of the Section 278 Agreement

Section B – Highway Works

The Highway Works are to include: -

- The provision of a new access into the Site off Fryatts Way.
- The provision of dropped kerbs and tactile paving either side of the new access.
- The provision of dropped kerbs and tactile paving either side of Concorde Close at its junction with Fryatts Way.
- The provision of dropped kerbs and tactile paving on Ellerslie Lane in a suitable location north of the Summer Hill Road junction.
- Possible provision of a pair of new bus stops, placed either on the new section of route in Summer Hill Road, or on the existing section of route near the top of Knebworth Road. Both stops will require raised kerbs, hard standing, bus stop poles and bus stop clearway markings

together with any other ancillary works reasonably required by the County Council in connection with the Highway Works

SCHEDULE 4

Provisions relating to the transfer of the Open Space SUDS and the Car Club Spaces

The transfer of the Open Space SUDS and Car Club Spaces to the Management Company shall:

- i. be a transfer of the entire freehold interest of the Open Space SUDS and Car Club Spaces
- ii. be free from any pre-emption or option agreement
- iii. be free from any mortgage, charge, lien or other such incumbrance
- iv. be free from any lease, licence or any other third party interests
- v. be subject to a covenant which prohibits the use of the Open Space for any purpose other than for public recreation and amenity and prohibits the use of the Car Club Spaces other than for parking in connection with the Car Club subject to the right of the Management Company to construct any buildings or other structures ancillary to such use
- vi. include all usual and necessary rights of way with or without vehicles for the benefit of the Open Space SUDS and Car Club Spaces
- vii. reserve in favour of the Owner any usual and necessary rights and easements to enable the proper construction, maintenance and use of the Development and to use existing services in so far as they are necessary based upon the final approved layout of the Development and location of the Open Space SUDS and Car Club Spaces
- viii. reserve in favour of the Owner the right to lay and use new services subject to the prior written agreement of the Management Company together with any rights of entry to inspect, repair, renew, cleanse and maintain the same
- ix. declare that boundary structures shall belong to and be maintained by the owners of the Dwellings which adjoin the Open Space
- x. not require consideration in excess of one pound (£1)
- xi. in the case of a transfer to the Management Company contain a covenant for the benefit of the Council to manage and maintain the Open Space SUDS and Car Club Spaces in accordance with the approved Management Plan

SCHEDULE 5

LOCAL EMPLOYMENT AND SKILLS

The Owner covenants with the Council as follows:

1. Prior to Commencement of Development to submit to the Council for its approval the Employment and Skills Plan substantially in the form of the draft template annexed hereto and incorporating the matters set out below in this Schedule or such other form of employment scheme as may suitably deliver the matters set out below in this Schedule and not to Commence Development or permit Commencement of Development until such Employment and Skills Plan has been approved by the Council.

2. The Employment and Skills Plan shall include arrangements setting out how the Owner and to the extent they are not the same person any developer of the Site and their contractors will work directly with local employment/training agencies as part of an employment and training consortium through the Hastings and Rother Employability Forum which may include but not be limited to:-
 - 2.1 Jobcentre Plus and the Skills Funding Agency; and
 - 2.2 Voluntary and private sectors providers; and
 - 2.3 Schools and Sixth form colleges (including Bexhill High School and Bexhill College); colleges of further education (including Sussex College) and universities.

3. The Employment and Skills Plan shall specify the provision for training opportunities and other initiatives in respect of the vocational and employability skills required by the Owner, and their contractors for any new jobs arising from the Development during its construction.

4. During the entire construction of the Development from Commencement of Development to the completion of the Development the Owner will implement the approved Employment and Skills Plan and where necessary procure implementation and promote the objectives of the approved Employment and Skills Plan and ensure that so far as is reasonably practicable the objectives are met.
5. Prior to Commencement of Development the Owner will pay the Employment and Skills Plan Contribution to the Council to cover specific costs incurred by the Council in the management support and monitoring of the Employment and Skills Plan.
6. Not to Commencement Development or permit the Commencement of Development until the Owner has paid the Employment and Skills Plan Contribution to the Council.

PART1

MATTERS FOR INCLUSION IN THE PLAN

3. The Employment and Skills Plan shall take the form of the template set out in Part 2 below or such other template as may be agreed between the Owner and the Council and should include the following:-

AIMS AND TARGETS

- 3.1 Provide a policy rationale referring to local unemployment, labour market needs, social exclusion, health, transport and environmental benefits.
- 3.2 It should, if appropriate, reference Council strategies, policies, priorities and any Local Area Agreement targets.

DEFINE LOCAL

- 3.3 The document should define local and target primary areas or communities as appropriate. This will depend on the nature of the proposal, its location and scale, and if appropriate identify secondary areas that may benefit.

IDENTIFY WHAT THE DEVELOPERS WILL BE EXPECTED TO PROVIDE

- 3.4 Indicate what developers will be asked to provide:-

- A commitment to early and on-going cooperation and proactively to scope out construction and labour force requirements and put joint plans in place to meet these needs, as far as is practicable, locally.
- Agreeing an appropriate % target for local labour during construction.
- The early provision of information, contacts and partners.
- The provision of site services when requested.
- The agreement to a training and recruitment plan including the skills pledge, local employment partnerships, the identification of pre-access training for construction staff and appropriate transport through a linked travel plan.
- Provision of monitoring information.

WHAT THE PARTNERS WILL PROVIDE

3.5 Set out the management, support and monitoring arrangements that will be provided by the public sector

- the early provision of information, contacts and partners.
- on-going support, advice and information.
- directory of training and recruitment services available.
- local supplier networks and business support infrastructure.
- marketing and promotion of best practice.
- inclusion of monitoring in Annual Monitoring Reports.

MONITORING, EVALUATING AND REPORTING ARRANGEMENTS

3.6 Agreement will be needed on the methods of measurement to be used, the forms to be completed and feedback that will be provided.

PART2

TEMPLATE FOR LOCAL SKILLS AND EMPLOYMENT PLAN

Site:

Developer:

Reference

This document forms the developer's response to the obligations contained in [XXX] of the Section 106 Agreement between [XXX]

CONTENTS

INTRODUCTION

1. The agreement referenced above made under section 106 of the Town and Country Planning Act 1990 (as amended) requires the agreement of an Employment and Skills Plan ('Plan') with the local planning authority (Rother District Council).

2. This plan meets that obligation, showing how skill levels within the local labour market will be developed during the construction phase.

DEVELOPMENT

3. This development will consist of (briefly describe the development here - location, what is being constructed, length of construction and start date, what the building(s) will be used for once completed).

OBJECTIVES

4. The objectives of this plan are to:-

- demonstrate the use of local labour from within the developer's project team and within the company;
- where economically and practically feasible, procure goods and services from local contractors, sub-contractors and suppliers to support the employment of the local community;
- demonstrate the recruitment and training opportunities within the contractor's, sub-contractor's and supplier's companies;
- provide opportunities for local residents to access jobs created during the construction phases of the development;
- reduce economic inactivity in the local area, and

- **support the development of skills within the local community.**

DELIVERY - CONSTRUCTION PHASE

5. [insert here how the objectives in 4 above will be delivered during the construction of the building(s) using the sub-headings below]

Labour

- **Procurement of goods and services**
- **Recruitment and training of staff**
- **Supporting the development of skills within subcontractors**
- **Providing opportunities for local residents**

Mechanisms and routes

(e.g. how relationships with local schools and FE colleges will be developed to support delivery; links with programmes targeted at NEET (not in education, employment or training) young people, how unemployed adults can access training and work experience).

Please complete the training template at the end of this document with details of the opportunities that will be created.

APPENDIX - AGENCIES USED

6. Please list the employment agencies used to recruit people to work on this development. You may wish to distinguish between local and national agencies, and specify the skills recruiting for.

TRAINING TEMPLATE

Please include here details of planned training opportunities that will support this development. This could include courses for existing staff and planned programmes that will support recruitment of local people. You may want to use the template below.

Training to be offered:	Target trainees:	Trainer/Provider:	
Employment and Skills Matrix:	Development:	Updated:	
Build Value:	Start Date:	End Date:	
Cateqorv	NSAfc- CBA Benchmark	No of Supervision People	Date
1a. School site visits/i4-i6yr Groups mci. Pre-NEET			
1b. College site visits inc university site visits			
2a. School workshops			
2b. College workshops			
3. University research project			
4. Work experience 14-16 yrs			
5. Work experience Unemployed Adults 18-19 yr old NEETS			
6. Apprentices Existing Apprentice Portfolio			

Support in partnership with other companies			
7. Apprentices - project initiated			
8. Health & safety tests			
9. National Vocational Qualifications			
10. Construction Skills Certification Scheme (CSCS) cards			
11. Short courses			
12. Progression into employment			

Indicative program of work experience for unemployed adults and/or NEETS

Day 1	Day 2	Day 3	Day4
Arrive on site	Practical/site layout activity day	Practical day	Vocational Skills Certification

- **Site safety induction and tour of the site**
- **Register with a labour agency**
- **Questions and Answers**
- **Vocational Skill**

- **Closedown**
- **Certification**

Notes:

SCHEDULE 6

The Council's covenants with the Owner

1. The Council covenants with the Owner:
 - 1.1 Not to use any Contribution received pursuant to this deed otherwise than for the purpose for which it has been paid as specified in this deed
 - 1.2 To provide a written form of receipt to the payer of all Contributions
 - 1.3 Immediately on receipt, to deposit all Contributions received pursuant to this deed into an interest bearing account with a clearing bank
 - 1.4 Within 28 Working Days of receipt of a request in writing to provide the Owner with an audit account as to how Contributions received pursuant to this deed have been spent
 - 1.5 To repay (together with all accrued interest) to the payer any Contributions not expended committed or allocated for payment within 5 years of receipt

SCHEDULE 7

The County Council's covenants with the Owner

1. The County Council covenants with the Owner:

- 1.1 Not to use any County Contribution received pursuant to this deed otherwise than for the purpose for which it has been paid as specified in this deed
- 1.2 To provide a written form of receipt to the payer of all County Contributions
- 1.3 Immediately on receipt, to deposit all County Contributions received pursuant to this deed into an interest bearing account with a clearing bank
- 1.4 Within 28 Working Days of receipt of a request in writing to provide the Owner with an audit account as to how County Contributions received pursuant to this deed have been spent
- 1.5 To repay (together with all accrued interest) to the payer any County Contributions not expended committed or allocated for payment within 5 years of receipt

APPENDIX 1
DRAFT NOMINATION AGREEMENT

APPENDIX 2

DRAFT FORM OF SECTION 278 AGREEMENT

DATED _____ 20

EAST SUSSEX COUNTY COUNCIL

and

[_____]

and

[_____]

A G R E E M E N T

under Section 278 of the
Highways Act 1980

relating to Land at [_____] East Sussex

East Sussex County Council
County Hall
St. Anne's Crescent
Lewes
East Sussex BN7 1UE

ref. CE/[_____]/

said works on its behalf on the terms hereinafter contained and accordingly proposes to invoke its further powers under Section 111 of the 1972 Act and Section 1 of the Localism Act 2011 (“the 2011 Act”) to be used in conjunction with its said powers under Section 278 of the 1980 Act in order to enter into this Agreement in the following terms

(6) The parties hereto have therefore agreed to enter into this Agreement pursuant to Section 278 and Section 38 of the 1980 Act Section 111 of the 1972 Act and Section 1 of the 2011 Act and all other powers them enabling for the purposes specified in Clause 2.1 below

IT IS HEREBY AGREED as follows:-

1.1 INTERPRETATION

IN this Agreement unless the context otherwise requires:-

“Accredited Supervisor” means a supervisor who is accredited under the New Roads and Street Works Act 1991

"Approach Road" means , East Sussex

“Bond Sum” means the sum of [(£) being the amount which is in the opinion of the Director the cost of carrying out the Highway Works within the period specified in Clause 5.2 or such other sum as may be notified to the Developer upon the grant of any extension of time under this Agreement in accordance with Clause 6.2. The Bond Sum shall on each Review Date be increased by an amount equal in proportion to any increase in the RP Index over the period of twelve calendar months ending on the day before the Review Date

“CDM” means the Construction (Design and Management) Regulations 2015 and any successor legislation

"Commencement of Development" shall refer to the Proposed Development and shall have the same meaning as ascribed to a "material operation" by Section 56(4) of the Town and Country Planning Act 1990 and “Commence” and “Commenced” shall be construed accordingly

“Competent Person in Health and Safety” means an employee/contractor/consultant with health and safety training experience and qualifications

"Director" means the Director of Communities, Economy and Transport for the time being of the County Council and shall include his duly authorised agents and representatives and any successor of his

“Exception Report” means the report from the Developer to the Director on each recommendation of any Safety Audit that the Developer proposes should be implemented

"Highway Drawing" means the drawing(s) numbered [] annexed hereto which have incorporated the findings of a Stage Two Safety Audit and which may be subject to amendments as agreed by the Director

"Highway Works" means the highway works described in the Schedule and the Highway Drawing

"Land" means the freehold land as described in Recital (1)

"Occupation" means first beneficial occupation for any use permitted by the Planning Permission but not including occupation for the purposes of construction fitting out marketing security or repair and "Occupy" and "Occupied" shall be construed accordingly

"Proposed Development" has the meaning assigned to it in Recital (1)

"Review Date" means the anniversary of the date hereof and each subsequent anniversary thereof

"RP Index" means the Index of Retail Prices prepared by the Office for National Statistics or any successor Ministry or department and published by the Office for National Statistics or in the event that the reference base used to compile the Index changes after the date of this Agreement the figure taken to be shown in the Index after the change is to be the figure that would have been shown in the Index if the reference base current at the date of this Agreement had been retained or if the RP Index shall cease to exist then there shall be substituted such other index as may replace the same or the County Council shall determine in consultation with the Developer.

"Safety Audit" means a safety audit (which shall include a site visit) and which has been approved by the Director in writing and carried out at the Developer's expense by a consultant independent of the Highway Works design consultant and reference herein to a Stage One Stage Two Stage Three or Stage Four Safety Audit shall be construed accordingly and the results of which shall be submitted together with the appropriate Exception Report to the Director on receipt of such by the Developer

"Specified Date" means the date upon which an obligation arising under this Agreement is due to be performed or payment is to be made

"Statutory Undertaker" shall have the meaning ascribed to it by Section 329 of the 1980 Act and shall include persons authorised under any enactment to carry on an undertaking for the supply of electricity gas or water and any sewerage undertaking and shall also include the Environment Agency the holder of a licence to operate telecommunication systems the Civil Aviation Authority and the holder of a licence to supply cable television

"Statutory Undertakers' Works" shall mean all works required by any Statutory Undertaker to be carried out in connection with the Highway Works

1.2 Unless the context requires otherwise references in this Agreement to a clause schedule or paragraph are references respectively to a clause or paragraph of or schedule to this Agreement

1.3 Where any party to this Agreement comprises two or more persons any obligations and covenants on the part of that party contained or implied in this Agreement shall be deemed to be joint and several obligations on the part of those persons and references to that party shall include references to each or any of those persons

1.4 A reference to any statute or statutory section shall be taken to include a reference to any statutory amendment modification or re-enactment of it for the time being in force

1.5 The headings to this Agreement do not and will not by implication form any part of this Agreement and shall have no legal force whatsoever

1.6 The expression "the County Council" shall include any statutory successor authority of it and the expression "the Developer " shall include all persons deriving title to the Land under it and shall include (if appropriate) two or more owners of the legal estate

1.7 A reference to one gender shall include other genders and a reference to the singular shall include the plural and vice versa.

2. PRELIMINARY

2.1 Enforceability

2.1.1 This Agreement is entered into pursuant to Section 278 and Section 38 of the 1980 Act Section 111 of the 1972 Act and Section 1 of the 2011 Act and all other powers enabling for the purposes of securing the construction of the Highway Works at no cost to the County Council.

2.1.2 In the event of a breach by the Developer (or its successors in title as described in Clause 1.6) of Clause 3.2 the County Council shall have full power pursuant to Section 278 (5) and (6) of the 1980 Act and Section 111 of the 1972 Act to execute such works as are necessary to carry out its obligations under this Agreement and may for that purpose enter the Land

2.2 Expiry

If the Planning Permission shall expire or shall have been revoked before either the Proposed Development or the Highway Works have been commenced this Agreement shall forthwith determine and cease to have effect

2.3 Commencement

The obligations and covenants contained in this Agreement shall take effect on the date hereof

2.4 Fettering of discretion

Nothing in this Agreement shall fetter or restrict the discretion of the County Council in the exercise of its powers under any statutory enactment or other enabling power for the time being in force

2.5 Service of Notices

Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by prepaid registered or recorded delivery post to the party to be served at its address herein specified or such other address as may from time to time be notified for the purpose by notice in writing

2.6 Requirements to be Reasonable

Subject to Clause 2.4:-

2.6.1 where any agreement certificate consent permission expression of satisfaction or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the same shall not be unreasonably withheld or delayed and

2.6.2 where any requirements or decisions are to be made by the Director under the terms of this Agreement they shall be made or imposed upon reasonable grounds and

2.6.3 where any payment is required to be made by the Developer under the terms of this Agreement (other than those required under Clauses 4.2 4.3 4.4 and 4.5) the Developer shall be entitled to require the County Council to first produce to it a statement of account in that respect

2.7 Covenants

The Developer hereby covenants with the County Council as specified in Clauses 3 to 9 and the County Council hereby covenants with the Developer as specified in Clauses 4.1.5 and 10

2.8 Contracts (Rights of Third Parties) Act 1999

Nothing in this Agreement confers or purports to confer on any third party any benefit or rights to enforce any terms of this Agreement

2.9 Assignment

This Agreement may not be assigned by the Developer and/or the Surety without the consent of the County Council which consent shall not be unreasonably withheld.

2.10 Jurisdiction

This Agreement is governed by and interpreted in accordance with the law of England.

3 PRE-COMMENCEMENT MATTERS

3.1 The Highway Works shall not be commenced until:-

3.1.1 The Director has given his written approval to:-

3.1.1.1 all drawings and specifications for the Highway Works (which drawings and specifications shall incorporate the findings of a Stage Two Safety Audit of the Highway Works and which specifications shall comply with the East Sussex County Council Highway Construction Specification for Developers, supplemented by the Specification for Highway Works published by stationary office for Highways England) ("the Contract Documents") such approval to be given before invitations to tender are sought

3.1.1.2 the acceptance of the contractor and any subcontractor of his (which contractor and subcontractor shall be accredited for the purposes of the New Roads and Street Works Act 1991) whose tender for the Highway Works the Developer proposes

to accept together with satisfactory documentary evidence of the total cost of the construction of the Highway Works ("the Construction Costs") and the total cost of the Statutory Undertakers' Works ("the Statutory Undertakers' Costs) such acceptance to be given before the contract for the Highway Works is awarded

3.1.1.3 a preliminary programme of work for the Highway Works ("the Programme") and a detailed programme of works incorporating the principles of the Programme ("the Final Programme")

3.1.1.4 detailed proposals and drawings showing the traffic management measures to be implemented throughout the duration of the Highway Works (including any temporary signing and routing of construction and haulage traffic) ("the Approved Traffic Measures") together with satisfactory documentary evidence of the estimated total costs thereof ("the Approved Traffic Measures Costs")

3.1.1.5 detailed proposals and drawings showing all signs road markings and permanent street lighting and traffic signal installations (both vehicular and pedestrian)

3.1.1.6 detailed proposals of alterations to Statutory Undertakers' plant apparatus or other equipment and the submitted details shall include all drawings (if any) received from any Statutory Undertaker showing existing and proposed services

3.1.1.7 a schedule of the condition of the Approach Road to include an admission of liability in respect of construction traffic that will use the Approach Road for the purpose of Section 59(3) of the 1980 Act

3.1.2 the Notice pursuant to Clause 5.1 has been delivered to the County Council

3.1.3 all land required for or in connection with the Highway Works is owned by or under the control of the Developer or the County Council

3.1.4 the Developer shall have publicised the Highway Works in such a way and to such an extent as the Director considers necessary in order to advise properly members of the public as to the nature timing duration and progress of the Highway Works

3.2 The Highway Works shall not be brought into use and the Proposed Development under the Planning Permission or any other subsequent permission shall not be Occupied or brought into use until the Director shall have issued the Certificate referred to in Clause 7.1 and the County Council agrees to use its reasonable endeavours to expedite the issuing of consents after service of the Notice by the Developer upon the County Council pursuant to Clause 5.1

4 FINANCIAL PROVISIONS

4.1 Bond

4.1.1 If the Developer at any time fails to perform or observe any of the conditions stipulations or obligations on its part contained in this Agreement and the Director determines that failure does not adversely affect safety (the decision of the Director in this respect being final) the Director may without prejudice to any statutory rights or powers or any other right claim or remedy under this Agreement send to the Developer and to the Surety notice in writing (hereinafter referred to as the "Default Notice"):-

4.1.1.1 Specifying the work (hereinafter referred to as the "Default Work") to be carried out in order that the Highway Works may be executed or completed as the case may be in accordance with this Agreement and

4.1.1.2 Containing an estimate by the Director of:-

4.1.1.2.1 the cost of carrying out the Default Work; and

4.1.1.2.2 the cost of maintaining the Highway Works for the Maintenance Period

4.1.1.2.3 all sums due to the County Council pursuant to this Agreement together with interest thereon (if any)

4.1.1.2.4 such sums as will in the opinion of the Director cover the Council's necessary proper administrative and legal expenses

(together hereinafter referred to as the "Default Cost") which cost:-

(i) shall not exceed the Bond Sum and

(ii) shall not exceed 25% of the Bond Sum should the Default Notice be served after the issue of the Preliminary Certificate.

4.1.2 Provided that the Director has determined that the breach does not adversely affect safety (thereby enabling the service of the Default Notice) the Council shall take no further action until twenty-eight (28) days (or such other period as may be agreed in writing by the Council and the Developer) from the date of the Default Notice

4.1.3 On the happening of any one of the events referred to in Clause 4.1.4 the Surety shall forthwith pay the Default Cost to the Council

4.1.4 The events referred to in Clause 4.1.3 are:-

4.1.4.1. The Director determines at his absolute discretion (with such a decision being final) that the breach does affect safety

4.1.4.2 Any failure by the Developer to complete the Highway Works within the time period referred to in Clause 4.1.2 and in accordance with the Contract Documents and the Highway Drawing and all other requirements of this Agreement.

4.1.4.3 A receiving order in bankruptcy is made in respect of the Developer's estate or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of reconstruction or amalgamation)

4.1.5 THE County Council HEREBY COVENANTS with the Developer and with the Surety:-

4.1.5.1 To use its best endeavours in consultation with the Surety to mitigate any loss or damage sustained by reason of any default by the Developer by taking such reasonable steps as the County Council shall think fit.

4.1.5.2 To apply all monies received from the Surety as hereinbefore mentioned toward the expenditure involved in executing or completing the Highway Works and maintaining and making good all defects for the Maintenance Period and defraying the Council's administrative and legal expenses incurred in respect thereof

4.1.5.3 In the event of the sum paid by the Surety to the County Council exceeding the cost of executing or completing the Highway Works and maintaining and making good all defects as aforesaid together with the amount of the County Council's usual establishment charges to repay to the Surety within twenty-eight days after the date of the Certificate of Final Completion the amount of such excess with interest calculated at half-yearly rests on the unexpended balance for the time being of the sum paid by the Surety to the

County Council at the rate of interest prevailing from time to time on monies held in a deposit account with the County Council's bankers.

4.1.6 The liability of the Surety shall be reduced to twenty-five per centum (25%) of the Bond Sum upon the issue of the Preliminary Certificate.

4.1.7 The liability of the Surety shall cease and determine absolutely on the issue of the Certificate of Final Completion.

4.2 Design Check and Inspection Fee

4.2.1 Upon execution of this Agreement the Developer shall pay to the County Council the sum of [POUNDS] (£) equal to ten per centum (10%) of the total of the Construction Costs and the Approved Traffic Measures Costs such sum being the charge for the Director's design checks and inspection of the Highway Works ("the Design Check and Inspection Fee")

4.2.2 If the County Council shall grant to the Developer an extension of time in accordance with Clause 6.2 then the Developer shall pay such further Design Check and Inspection Fee as is determined by the Director in his absolute discretion as necessary to reimburse to the County Council the additional cost (if any) incurred in inspecting the Highway Works by reason of the grant of such extension of time and such further Design Check and Inspection Fee will be payable to the County Council forthwith on demand and be due to the County Council as a debt

4.2.3 Receipt by the County Council of the sum referred to in Clauses 4.2.1 and 4.2.2 shall not create any contractual relationship between the County Council and the Developer as to the inspection of the Highway Works nor absolve the Developer from any liability or obligation imposed upon him by the terms of this Agreement or by statute or at common law and the County Council will not be liable for any loss damage or injury which the Developer may sustain by reason of insufficient or faulty check of the engineering design or inspection of the Highway Works by the County Council.

4.3 Traffic Signs Fee

Upon execution of this Agreement the Developer shall pay to the County Council the sum of THREE HUNDRED POUNDS (£300) such sum being the cost of the supply erection and removal of signs to Diagram 7014 under the Traffic Signs Regulations & General Directions 2002.]

4.4 Construction Traffic Management Fee

Upon execution of this Agreement the Developer shall pay to the County Council the sum of ([POUNDS (£)]) being the cost to the County Council of ensuring compliance with the Approved Traffic Measures.

4.5 Indemnity

The Developer shall fully and completely release and indemnify and keep indemnified the County Council from and against

4.5.1 any valid claims properly payable under Section 10 of the Compulsory Purchase Act 1965 and under Part I and Part II of the Land Compensation Act 1973 (or any other enactment or provision replacing or re-enacting the same) arising out of or in connection with or incidental to the carrying out of the Highway Works and/or use of the Highway Works or any part thereof and

4.5.2 all valid and properly payable actions claims charges costs damages demands expenses and proceedings (including claims relating to the infringement or disturbance or destruction of any right easement or privilege) arising out of or in connection with or incidental to the carrying out of the Highway Works and their subsequent use (unless caused directly by or through the negligence or other tortious action of the County Council).

4.5.3 For the avoidance of doubt such indemnification referred to in this Clause 4.5 shall include all fees reasonably incurred by claimants and those of the County Council or its agent or contractor in negotiating any claims (together with Value Added Tax payable upon the claimants' professional advisors' fees) and statutory interest payments to claimants and their professional advisors together with the County Council's reasonable legal costs in making such payments of compensation fees and interest.

4.5.4 The Developer shall have the County Council's interest endorsed on an existing policy of insurance to cover the indemnity in Clause 4.5.2 and the certificate of insurance shall be produced to the Director prior to the commencement of the Highway Works.

4.5.5 The policy referred to in Clause 4.5.4 shall have a minimum third party public liability cover of £10million ("the Cover") and the Developer hereby undertakes to maintain the Cover until the issue of the Final Certificate and on notice from the Director the Developer shall increase the Cover to such additional amount of cover as specified in the notice.

4.6 Costs

The reasonable and proper professional and administrative costs of the County Council of preparing this Agreement shall be paid by the Developer on the execution hereof.

4.7 Payment of Sums Due

4.7.1 The Developer agrees with the County Council that where this Agreement imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Specified Date:-

4.7.1.1 notice of the Specified Date shall be given to the County Council as appropriate not more than seven days after such Specified Date

4.7.1.2 if the notice of a Specified Date is not given the County Council as appropriate shall be entitled in its absolute discretion to determine the Specified Date and shall give notice to the Developer of its determination

4.7.1.3 the Developer shall make any and all payments due under this Agreement to the County Council as appropriate

4.7.2 All sums payable under this Agreement shall (unless otherwise stated in this Agreement) become due fourteen days after the Specified Date ("the Due Date") and shall henceforth be debts due to the County Council recoverable by action as a simple contract debt and may be deducted from any monies due to the Developer from the County Council under any contract agreement or arrangement whatsoever.

4.7.3 If any such sums are not paid by the Due Date then the Developer shall thereafter be liable to pay to the County Council interest on the same calculated on a daily basis at a daily rate of 1/365th of the annual rate of interest of 4% per annum greater than the National Westminster Bank PLC base rate in force from time to time from the Specified Date to the date of payment thereof.

5 EXECUTION OF HIGHWAY WORKS

5.1 Notice of Commencement

To give the County Council fourteen days prior written notice ("the Notice") of the date on which the Highway Works are to commence ("the Start Date").

5.2 Time for completion

To execute forthwith and complete the Highway Works in accordance with the Highway Drawing and the Contract Documents to the reasonable requirements and reasonable satisfaction of the Director for no charge whatsoever to the County Council within [] of the Start Date (“the Completion Date”) PROVIDED ALWAYS that there shall be excluded from any calculation of the period of [] any time during which the Highway Works or the part thereof for the time being remaining to be executed cannot be carried out on account of any act of God fire explosion flood war industrial action sabotage national emergency government direction or direction of a statutory authority.

5.3 Supervision

To ensure throughout the duration of the Highway Works that they are supervised by an Accredited Supervisor as necessary for the proper superintendence of the Highway Works.

5.4 Statutory Undertakers Requirements

To comply at its own expense at all times with the special requirements of any Statutory Undertakers and to pay (if in any case a Statutory Undertaker requires that the County Council shall be responsible for the cost of any removal protection or alteration of its apparatus) on the Specified Date the costs incurred or to be incurred by the County Council due to the removal protection or alteration of Statutory Undertakers' apparatus necessitated by the Highway Works.

5.5 Approved Traffic Measures and Final Programme

To ensure that the Approved Traffic Measures and Final Programme are implemented retained and adhered to as far as reasonably practicable throughout the duration of the Highway Works.

5.6 Testing of Materials

Throughout the duration of the Highway Works and the Maintenance Period as defined in Clause 8.1 to undertake routine testing of materials used in and workmanship in connection with the construction of the Highway Works when required and to a standard agreed by the Director and shall forthwith send a copy of the results of such testing (free of charge) to the County Council.

5.7 Notice of Cessation and Recommencement

5.7.1 To notify the Director in writing if before completion of the construction of the Highway Works the Highway Works shall cease for a period of more than one week and any such notice shall specify the dates of the cessation and re-commencement of the Highway Works.

5.7.2 In the event of any failure by the Developer to notify the Director of the dates of any cessation or re-commencement of the Highway Works in accordance with the provisions of Clause 5.7.1 the amount of any Design Check and Inspection Fee pursuant to Clause 4.2 shall be increased by such amount as specified by the Director to reimburse the County Council with the additional costs incurred in inspecting the Highway Works by reason of any such failure as aforesaid such additional cost to be paid to the County Council on request.

5.8 Noise Insulation

To carry out such works and investigations as may be deemed appropriate and notified as necessary by the County Council to be carried out under the Noise Insulation Regulations 1975 (as amended) as a result of the Highway Works and reimburse by the Due Date the County Council's actual costs of carrying out statutory functions under the aforesaid Regulations.

5.9 NRSWA Notices/TMA Roadspace

To ensure that the necessary notices are served under the New Roads and Street Works Act 1991 and that the necessary road space is booked under the Traffic Management Act 2004.

5.10 Health and Safety

5.10.1 To comply with the Health and Safety at Work Act etc. 1974 and all other current relevant legislation approved codes of practice British-European Harmonised Standards and relevant industry best guidance applicable to the safe undertaking of the Highway Works.

5.10.2 To have suitable and sufficient safe working systems in place for ensuring that all contractors engaged on the Highway Works are competent to fulfil their relevant functions pursuant to the CDM and any other applicable legislation and subsequent amending legislation and evidence of the existence of such systems shall be provided to the satisfaction of the Director at the Director's request.

5.10.3 To ensure that a Competent Person in Health and Safety is employed until the issue of the Certificate of Final Completion.

5.10.4 The Developer hereby confirms that it has the competence to perform the duties imposed on a client by the CDM.

5.10.5 The Developer is hereby appointed pursuant to regulation 4 of the CDM to act as the only client in respect of the Highway Works.

6 COUNTY COUNCIL'S POWERS

6.1 Testing of Workmanship and Materials

The Director shall have full power to:

6.1.1 Check and test all materials and workmanship and the costs actually incurred by the Director in undertaking such testing shall be paid by the Developer on the Specified Date.

6.1.2 Reject any materials or workmanship which he may reasonably and properly consider not to be in accordance with the Contract Documents and/or the Highway Drawing or which show faults or signs of weakness or damage by frost or other weather condition or any other cause or any other defect whatsoever of any kind and to order their removal from the Highway Works and to require other proper materials or workmanship to be substituted for them whether the works have been carried out or the materials supplied or procured by the Developer or otherwise and such work shall forthwith at the Developer's own cost be re-executed made good or replaced with proper materials and workmanship as the case may require and the Director's directions on such subjects are to be final and binding on the Developer and shall be promptly attended to by the Developer.

6.2 Works in default

6.2.1 If any works to be carried out by the Developer under this Agreement are not carried out and completed in accordance with the Developer's obligations and covenants contained in this Agreement and to the satisfaction of the Director by the Completion Date or within such further time as the Director may in his discretion by notice in writing to the Developer allow then without prejudice to its other rights or remedies and powers against the Developer for such non-performance or non-observance after the Director has first given twenty-eight (28) days notice in writing (except in the case of emergency when no notice shall be necessary) to the Developer and the Surety of his intentions in that behalf the County Council may enter the Land and carry out and complete the said works and the Developer or in default the Surety shall upon demand pay to the County Council all the cost it has incurred including the necessary cost of preparation and service of such notices the outstanding works and all the associated supervision and administration.

6.2.2 That should the Developer become bankrupt or enter into any composition with its creditors or if the Developer being a company shall enter into liquidation whether compulsory or voluntary (not being merely a voluntary liquidation for the purpose of amalgamation or reconstruction) then in any such case the County Council shall be entitled to exercise its rights under the provisions of this Clause and recover any loss from the Surety.

6.3 Access for County Council

The Developer shall at all times:

6.3.1 permit the County Council to enter onto and upon and remain upon with or without workmen plant and machinery so much of the land in the ownership of or under the control of the Developer as shall be necessary for the County Council to carry out its obligations under this Agreement but so that the County Council shall not obstruct or delay the carrying out of the Highway Works; and

6.3.2 give the County Council free and unrestricted access to every part of the Highway Works during their construction upon reasonable prior notice except in the event of emergencies and at any time during the Maintenance Period.

6.4 Determination by the County Council

If the Developer fails to perform or observe any of the conditions stipulations or obligations on its part contained herein or if a receiving order in bankruptcy is made against the Developer or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangements (otherwise than for the purpose of amalgamation or reconstruction) the County Council may without prejudice to any of its rights claims or remedies against the Developer in respect of such non-performance or non-observance determine this Agreement (except for Clauses 4.1 and 6.2 and such other Clauses as may be necessary for their interpretation) by notice in writing signed by the Director and delivered to the Developer or sent by post to the address stated in this Agreement.

7. PRELIMINARY CERTIFICATE

7.1 When the carrying out of the Highway Works shall have been executed and completed (including the payment of all charges levied by any Statutory Undertaker in connection with the Highway Works) to the reasonable satisfaction of the Director in accordance with the Contract Documents and the Highway Drawing and any sewer constructed as part of the Highway Works in connection with an Agreement under Section 104 of the Water Industry Act 1991 has been certified by the appropriate sewerage undertaker as being or having been on maintenance the Director shall forthwith issue a preliminary certificate (or letter in lieu thereof) to that effect ("the Preliminary Certificate") and the Developer hereby agrees and declares that on the issue of the Preliminary Certificate the Highway Works (insofar as they are not already public highway) shall become public highway open for use by the public at large.

7.2 Before the issue of the Preliminary Certificate the Developer shall:

7.2.1 provide in accordance with the detailed design approved pursuant to Clause 3.1.1.5 to the satisfaction of the Director all such signs road markings signal installations (both vehicular and pedestrian) street lighting and sources of illumination electrical cables and apparatus for the supply of electrical power for such signs street lighting and signals

7.2.2 make payment of all sums due under this Agreement to the County Council together with interest thereon (if any) and including (but not by way of limitation)

7.2.2.1 the costs of providing all or any of such things as aforesaid as the County Council may at the request of the Developer agree to provide

7.2.2.2 the costs of the service and posting of notices and the making and bringing into effect of any road traffic regulation orders or other orders that may be necessary in the Director's opinion as a result of the Highway Works

7.2.3 make payment of all charges levied by any Statutory Undertaker in connection with the Highway Works

7.2.4 deliver to the County Council the results of a Stage Three Safety Audit which has been carried out to the satisfaction of the Director by a professional and independent Safety Auditor whose identity has been approved by the Director

7.2.5 undertake and have completed such remedial works as have been identified by the Stage Three Safety Audit in Clause 7.2.4 as being necessary to the satisfaction of the Director

7.2.6 undertake and have completed such works to the Approach Road as have been identified by the Director as being necessary to reinstate the Approach Road in accordance with the schedule of condition provided under Clause 3.1.1.7

7.3 After the execution hereof should further legal advice need to be given including attendance at meetings in connection with this Agreement called at the request of the Developer and all costs associated

with any action taken pursuant to the provisions of Clause 4.1 the Developer agrees to pay all such additional costs so incurred by the County Council.

8 POST-COMPLETION MATTERS

8.1 Maintenance Period

The Developer shall:-

8.1.1 maintain the Highway Works (including all grassed and planted areas) and to include all such routine maintenance and repair as may be necessary to facilitate the use of the Highway Works by vehicles and members of the public generally (as appropriate) to the satisfaction of the Director at its own expense for a period of twelve months or in the event of construction vehicles continuing to use the Highway Works in connection with the construction of the Proposed Development such longer period as the Director may stipulate ("the Maintenance Period") from the date that the Preliminary Certificate is issued

8.1.2 pay to the County Council any costs incurred by it during the Maintenance Period in respect of the maintenance and/or replacement of damaged equipment and the supply of electricity to the street lighting signs traffic signals and other apparatus provided in accordance with Clause 7.2.1

8.1.3 at the discretion of the Director deliver to the County Council the results of a Stage Four Safety Audit which has been carried out to the satisfaction of the Director by a professional and independent Safety Auditor whose identity has been approved by the Director and undertake and complete such remedial works as have been identified by the Stage Four Safety Audit as being necessary to the satisfaction of the Director.

8.2 Certificate of Final Completion

At such time as:-

8.2.1 all works of maintenance notified to the Developer by the Director within the Maintenance Period in respect of the Highway Works have been executed and completed to the Director's satisfaction in all respects; and

8.2.2 all sums due under this Agreement to the County Council have been duly paid; and

8.2.3 the Director has confirmed in writing that the Stage Four Safety Audit has been acted upon to his satisfaction; and

8.2.4 the Developer has without cost to the County Council executed or procured the execution by all necessary parties of such deeds as are in the opinion of the County Council necessary to secure to the County Council full drainage rights in respect of such parts of the surface water drainage system of the highway as are situate outside the limits of the Highway Works and the County Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the execution of any such deeds; and

8.2.5 the Developer has delivered to the County Council two complete sets of "as built" drawings showing the Highway Works as actually constructed; and

8.2.6 the Developer has delivered the Health & Safety file for the Highway Works as required by CDM the information content of which shall be as defined by the Approved Code of Practice and Guidance to the CDM and as specified by the Director

the Director shall forthwith issue a certificate (or letter in lieu thereof) ("the Certificate of Final Completion") which shall confirm that the Maintenance Period is then deemed to have been duly completed and shall release the Surety from all liability hereunder.

9 DECLARATION UNDER SECTION 38 OF THE 1980 ACT

The County Council and the Developer hereby agree and declare in pursuance of Section 38 of the 1980 Act that upon the issue of the Certificate of Final Completion the Highway Works insofar as they are not already highway maintainable at the public expense will become highway maintainable at the public expense.

10 COUNTY COUNCIL'S COVENANTS

10.1 Access for Highway Works

The County Council will permit the Developer to enter onto and upon and remain upon with or without workmen plant and machinery so much of the land in the ownership of the County Council or under its control (including public highway) as shall be reasonably necessary for the Developer to carry out its obligations under this Agreement and it is hereby agreed and declared that such permission extends (upon reasonable notice and compliance with the provisions of Chapter Eight of the Traffic Signs Manual 2006 as from time to time revised and published by the Department of Transport) to breaking open the said land (subject where appropriate to making good its surface) and without limitation to the foregoing carrying out works in on or under the said land PROVIDED that the appropriate licence for existing publicly maintained highway has been issued by the Director and that the County Council may at any time

temporarily prohibit the Developer from entering onto or remaining upon the existing publicly maintained highway if the Director considers that this is necessary.

10.2 Publication of Orders etc

The County Council will from time to time at the reasonable and proper request and cost of the Developer and then as expeditiously as possible consider the exercise and use of such powers as are available to it to assist the carrying out of the Highway Works and if the County Council in its sole discretion considers it desirable and appropriate it will publish and make or procure the publishing and making of such orders or notices for the temporary or permanent stopping up or diversion or restricted use of publicly adopted highways (including highway drainage and any public service apparatus) as may in each case be reasonably necessary to facilitate the carrying out of the Highway Works.

SCHEDULE

(Highway Works)

The Highway Works are to include:-

[] as illustrated on the Highway Drawing together with any other ancillary works reasonably required by the Director.

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

EXECUTED as a DEED by affixing hereto)
the COMMON SEAL of EAST SUSSEX)
COUNTY COUNCIL In the presence of:-)

.....
Authorised Signatory

EXECUTED as a DEED by affixing hereto)
the COMMON SEAL of [Developer])
was affixed hereto in the presence of:-)

.....

Director

.....

Director/Secretary

EXECUTED as a DEED by affixing hereto)
the COMMON SEAL of [Surety])
was affixed hereto in the presence of:-)

.....

Director

.....

Director/Secretary

THE COMMON SEAL of)

ROTHER DISTRICT COUNCIL)

Was affixed in the presence of:)

Authorised Signatory

THE COMMON SEAL of)

EAST SUSSEX COUNTY COUNCIL)

Was affixed in the presence of:)

Authorised Signatory

EXECUTED AS A DEED by

MAYO LAND COMPANY LIMITED

In the presence of:

.....

Witness name:

Witness address:

.....

.....

Occupation:

EXECUTED as a deed by

GLADMAN DEVELOPMENTS LIMITED

Acting by a director

.....

Director

in the presence of:

Witness name:

Witness address:

.....

.....

Occupation: