DATED 6 November 2015

WEALDEN DISTRICT COUNCIL (1)

and

LOUISE MARY SAVAGE AND SALLY CATHERINE SILK (2)

and

RYDON HOMES LIMITED (3)

PLANNING OBLIGATION BY AGREEMENT
pursuant to Section 106 of the Town and Country Planning Act 1990 relating to the development of Land on the east side of Lower High Street, Wadhurst East Sussex

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Wealden
District Council

Legal Services Manager
Wealden & Rother Shared Legal Service
Wealden District Council
Council Offices
Vicarage Lane, Hailsham
East Sussex
BN27 2AX

PLANNING OBLIGATION BY AGREEMENT

THIS AGREEMENT is dated the 6th day of November 2015

BETWEEN:

(1) **WEALDEN DISTRICT COUNCIL** of the Council Offices Vicarage Lane, Hailsham East Sussex, BN27 2AX ("**the Council**"); and

(2) **LOUISE MARY SAVAGE of** Cornfields Vicarage Road Wingfield Diss Suffolk IP21 5RB **AND SALLY CATHERINE SILK** of Cosy Cottage Ulwell Swanage Dorset BH19 3DG ("**the Owner**"); and

(3) **RYDON HOMES LIMITED** (Company Number: 04773137) whose registered office is at Rydon House, Station Road, Forest Row, East Sussex, RH18 5DW ("**the Developer**").

WHEREAS:

(A) The Owner has the freehold interest in the Property registered at the Land Registry under Title Number ESX275716.

(B) The Developer has an interest in the Property by virtue of the Option Agreement

(C) For the purposes of the 1990 Act the Council is the local planning authority and the local housing authority for the area in which the Property is situated.

(D) For the purposes of the 1990 Act the County Council is the county planning authority for the purposes of the Highways Act 1980 is the Highway Authority and is responsible for the provision of rights of way for the area in which the Property is situated.

(E) The Developer has submitted the Application to the Council and the parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement.

(F) The Council resolved on 27 August 2015 to grant the Planning Permission subject to the prior completion of this Agreement.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS

1 Interpretation

1.1 In this Agreement, unless the context otherwise requires:

"**the 1990 Act**" means the Town & Country Planning Act 1990 or any re-enactment or modification thereof for the time being in force

"**the 1980 Act**" means the Highways Act 1980 or any re-enactment or modification thereof for the time being in force

"**Affordable Housing**" means housing provided within the Development in accordance with the Affordable Housing Tenure Plan with private or public subsidy, for people who are unable to meet their housing needs in the local housing market because of the relationship between housing costs and income.

"**Affordable Housing Land**" means that part or parts of the Property upon which Affordable Housing Units is to be constructed

"**Affordable Housing Size Mix**" means the following numbers of the total number of Affordable Housing Units which shall have the following minimum net floor areas and comprising the following mix of one bedroom, two bedrooms and three bedrooms per unit respectively which shall be constructed at the Property:

4 x one bedroom Flats at no less than 51m2 or Bungalows at no less than 52 m2

6 x two bedroom Houses at no less than 77m2

2 x three bedroom Houses at no less than 90m2

"**Affordable Housing Tenure Plan**" means the plans details and specifications to be submitted in respect of the Development (or as the case may be each Phase thereof) by the Owner prior to the Commencement of Development (or Commencement of any relevant Phase) showing:

i. which Dwellings are to be constructed within the Development (or within a Phase thereof) as Affordable Housing Units;

ii. which if any of the Affordable Housing Units shall be Social Rented Units, which if any shall be Intermediate Housing Units and which if any shall be Affordable Rented Units in accordance with a tenure split to be approved pursuant to the Affordable Housing Tenure Plan having regard to the Council's adopted Development Plan Policy or policies relating to Affordable Housing at the date of approval of the Affordable Housing Tenure Plan; and

iii. the precise location of the Affordable Housing Units together with the floor plans and specifications in accordance with Homes and Communities Agency's Design and Quality Standards unless otherwise agreed in writing by the Council

"**Affordable Housing Units**" shall mean 35% of the total number of Dwellings in the Development being 12 units shown for identification purposes as edged and hatched blue on the Site Plan which shall be for use as Affordable Housing which shall all be built in compliance with the provisions of paragraph 10 of Schedule 1 to this Agreement

"**Affordable Rented Unit**" means an Affordable Housing Unit which is to be offered at an Affordable Rent by the Registered Provider under an Assured Tenancy

"Affordable Rent" means a rent to be charged for an Affordable Rented Unit which shall not exceed 80% of gross market rents including all service charges for properties of similar size and location in the locality

"**agreed**" or "**approved**" means agreed or approved in writing and given for the purpose of this Agreement

"**Application**" means the application for planning permission bearing reference number WD/2014/2320/MEA

"**Approved Timetable and Programme**" is the timetable and programme for the phasing of the Development including the provisions and delivery of Affordable Housing which shall be submitted to and approved by the Head of Planning and Environmental Services together with any amendments thereto subsequently approved in writing by the Head of Planning and Environmental Services prior to Commencement of Development.

"**Assured Tenancy**" means an assured tenancy agreement for an Affordable Rented Unit granted by the Registered Provider to a tenant at an Affordable Rent

"Children's Equipped Play Space Commuted Sum" means the total sum of £51,440.67 which is payable for providing, improving and maintaining Children's Equipped Play Space at the Sparrows Green Recreation Ground, Wadhurst due to a shortfall on the Property of children's equipped play space

"Clean Condition" means free from any contamination which would in the reasonable opinion of the Head of Planning and Environmental Services prejudice the use of the Property for the purposes of the Development

"Commencement of Development" means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work,

archaeological investigations, investigations for the purposes 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 or ecological mitigation measures and "Commence Development" shall be construed accordingly

"**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

"**Contribution for Rights of Way Improvements**"means the total payment of £770 payable as specified in Schedule 8

"**Contribution for Wadhurst High Street Pedestrian Improvement Scheme**" means the total payment of the sum of £35,000.00 payable as specified in Schedule 8

"**the County Contribution**" means the Contribution for Rights of Way Improvements and the Contribution for Wadhurst High Street Pedestrian Improvement Scheme

"**County Council**" means East Sussex County Council of County Hall, St Anne's Crescent, Lewes, East Sussex BN7 1SW

"**Development**" means the development of the Property pursuant to the Planning Permission and any development in respect of which details have been submitted to and approved by the Council pursuant to the Planning Permission

"**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

"**Due Date**" means the date specified for payment in the relevant clause or paragraph or if no date is specified then 21 days after the occurrence of the event triggering the relevant payment

"**Dwelling(s)**" means any unit(s) of self-contained residential accommodation within the meaning of Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended including any flat apartment or maisonette comprised in the Development

"Ecological Area" means the land shown edged green on the Site Plan which shall comprise a new area of woodland as shown edged brown on the Site Plan planted with native tree and shrub species of local provenance with the remainder of the existing semi-improved grassland area being over sown with a native wildflower seed mixture to increase floristic diversity and the Ecological Area is to be managed and maintained in accordance with the provisions of the Landscape and Ecological Areas Maintenance Plan

"**Flat(s)"** means a separate and self-contained set of premises constructed for use for the purpose of a Dwelling and forming part of a building from some other part from which it is divided horizontally

"**Fully Serviced**" means in relation to the Affordable Housing Units serviced by the Owner with roads provided without intervention to the boundary of the relevant parcel of Affordable Housing Land such roads to be:

(a) adopted; or

(b) completed to an adoptable standard and either:

(i) are or have been the subject of all reasonable efforts on the part of the Owner to negotiate and complete an adoption agreement with the local highways authority; or

(ii) the subject of adoption agreements with the local highway authority

and (in all cases) to afford proper access to the main highway network together with all mains services of electricity, gas, telephone, potable water foul and surface water drainage to a conveniently located point or points abutting without intervention the boundary of the relevant parcel of Affordable Housing Land

"**Head of Housing and Property Services**" means the Head of Housing and Property Services for the time being of the Council and shall include his duly authorised agents and representatives and any successor of his

"**Head of Planning and Environmental Services**" means the Head of Planning and Environmental Services for the time being of the Council and shall include his duly authorised agents and representatives and any successor of his

"**Highway Works**" means the works referred to in Part 2 of Schedule 7

"**Homes and Communities Agency** means the body known as the Homes and Communities Agency or any successor organisation or body which regulates and provides funding to Registered Providers

"**Homes and Communities Agency Design and Quality Standards**" means achievement of at least the minimum of each of the three core performance standards of the Design and Quality Standards published by the Homes and Communities Agency as amended from time to time

"**House(s)**" means a separate and self-contained set of premises constructed for use for the purpose of a Dwelling which is not a Flat

"**Indexation**" means that where a sum payable under this Agreement is required to reflect changing costs the sum shall be increased or reduced in accordance with the provisions of Clause 4 of this Agreement and "Index Linked" shall be construed accordingly

"Intermediate Housing Units" means those Affordable Housing Units which shall be provided as Shared Ownership Units

"Landscaped Areas" means those areas within the Property edged yellow on the Site Plan and the areas which do not form part of the curtilage of any Dwelling which are not within the Ecological Area, or the Affordable Housing Land and which do not form part of any public highway maintainable at public expense but which are to be approved pursuant to the Planning Permission and managed and maintained in accordance with the provisions of the Landscaped and Ecological Areas Maintenance Plan

"Landscaped and Ecological Areas Maintenance Plan ("LEMP")" means the plans, details and specification for the long term management and maintenance of the Landscaped Areas and Ecological Areas to be submitted to and approved in writing by the Council pursuant to the terms of the Planning Permission.

"**the Management Company**" means a company which will be established by the Owner for the purpose of maintaining and managing land and or premises and chattels and rights which has been transferred to it as set out in Schedules 4 and 6

"Occupation" means beneficial occupation for any use for which the building was designed other than occupation for the purpose of construction fitting out security marketing or repair and **Occupy** and **Occupied** shall be construed accordingly

"**Option Agreement**" means the option agreement to purchase the freehold of the Property from the Owner dated 24 July 2013 made between (1) the Owner and (2) the Developer

"**Payment Notice**" means a notice in the form set out in Appendix 1.

"**Phase**" means the part of the Development within a particular parcel of the Property approved in writing by the Head of Planning and Environmental Services in the Approved Timetable and Programme for the provision and delivery of Affordable Housing together with any amendments thereto subsequently approved in writing by the Head of Planning and Environmental Services

"**the Planning Permission**" means the planning permission(s) to be granted by the Council pursuant to the Application.

"**Private Dwelling Unit(s)**" means any Dwelling which is not an Affordable Housing Unit

"**the Property**" means the land on the east side of Lower High Street, Wadhurst, East Sussex shown edged in red and green on the Site Plan

"**Registered Provider**" means any Registered Landlord within the meaning of and registered in accordance with the provisions of the Housing and Regeneration Act 2008 as approved in writing by the Council provided always the Council shall be entitled to withhold or refuse approval unless the Provider does comply with the selection criteria set out in Schedule 10

"**Section 278 Agreement**" means the agreement substantially in the form set out in Schedule 11 with such amendments as may be agreed with the County Council and made under section 278 of the 1980 Act to secure the carrying out of the Highway Works

"**Shared Ownership**" means a shared ownership scheme provided by a Registered Provider which allows a purchaser to buy a share of the Affordable Housing Unit under a form of shared ownership lease prescribed by the Homes and Communities Agency (to ensure that leases are mortgageable and contain provisions that qualify the scheme for grant) and whereby there is a limit on the initial equity share to be sold off

"**Shared Ownership Unit**" means an Affordable Housing Unit to be provided by a Registered Provider under Shared Ownership

"**Site Plan**"means the plan attached hereto and numbered 10460-L-02

"**Social Rented Unit**" means an Affordable Housing Unit let by a Registered Provider at a target rent determined in accordance with the National Rent Regime

"**Travel Plan**" means a package of information provided to individual households in the Development upon occupation designed to reduce single occupancy car use and support alternative forms of transport

"**Parish Council**" means the Wadhurst Parish Council of Chiltern, Stone Cross Road, Wadhurst, East Sussex TN5 6LR

"**Youth and Adult Play Space Commuted Sum**" means the total sum of £37,311.63 which is payable for providing improving and maintaining youth and adult recreational facilities in the Sparrows Green Recreation Ground, Wadhurst due to a shortfall on the Property of youth and adult play space payable in accordance with Schedule 5.

"**Wadhurst High Street Pedestrian Improvement Scheme**" means the scheme of works implemented by the County Council to improve pedestrian accessibility along Wadhurst High Street

1.2 Words importing the masculine include the feminine and vice versa.

1.3 Words importing the singular include the plural and vice versa.

1.4 Words importing persons include companies and corporations and vice versa.

1.5 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.

1.6 Any reference to a Clause, Paragraph, Schedule, Annex or Plan is to one in or attached to this Agreement.

1.7 Any reference to a colour or letter is to be on the plans attached to this Agreement.

1.8 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it.

1.9 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and the County Council the successors to their functions.

1.10 This Agreement is a planning obligation for the purposes of Section 106 of the 1990 Act.

2 Main Operative Clauses

2.1 Legal Powers

This Agreement is made in pursuance of Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 Section 120 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and Section 609 of the Housing Act 1985 (as amended) and all other powers so enabling the parties to enter this Agreement and to the extent that this Agreement includes planning obligations for the purposes of Section 106 of the 1990 Act then those obligations relate to the Property and are enforceable by the Council as the local planning authority for the area within which the Property is situated

2.2 Enforceability and Liability

The various covenants restrictions requirements stipulations and other obligations on the part of the Owner contained in this Agreement are entered into under the provisions and powers referred to in clause 2.1 and are planning obligations for the purposes of Section 106 of the 1990 Act whether expressed to be planning obligations or not and are enforceable by the Council to the extent specified in this Agreement against the Owner and any person deriving title from the Owner and shall run with the Property and shall bind the Owner its successors in title and assigns PROVIDED ALWAYS THAT:-

(a) the covenants restrictions and obligations contained in this Agreement shall not be enforceable against the owners or owner-occupiers or tenants of individual dwellings or in each case against those deriving title from them which are not Affordable Housing Units comprised in the Development or their respective mortgagees PROVIDED FURTHER THAT for the avoidance of doubt the release of liability in this clause 2.2(a) shall not apply to any person carrying out the Development

(b) paragraphs 5-8 of Schedule 1 of this Agreement shall not be binding upon a mortgagee or chargee of a Registered Provider with respect to those parts of the Development where loan facilities have been provided to a Registered Provider and where the mortgagee or chargee has taken possession of the Property or part of it and is seeking to dispose of the Affordable Housing Units or the Affordable Housing Land pursuant to its power of sale or other remedies under the terms of its mortgage or charge PROVIDED THAT where a mortgagee or chargee of a Registered Provider of any of the Affordable Housing Units or the Affordable Housing Land or of any of the Registered Provider's interest in that part of the Property upon which the Affordable Housing Units are to be or have been constructed decides to exercise any power conferred by the mortgage or charge the mortgagee or chargee shall first notify the Council and the Homes and Community Agency that it wishes to exercise its power of sale and only if within 3 months of such written notification, the mortgagee or chargee is unable, despite using all reasonable endeavours, to enter into a contract of sale of the Affordable Housing Units or the Affordable Housing Land to another Registered Provider upon terms that on completion thereof the mortgagee or chargee shall be repaid the full market value of the relevant Affordable Housing Units or Affordable Housing Land, shall such mortgagee or chargee not be bound as

aforesaid AND PROVIDED FURTHER THAT at all times the rights and obligations included in this clause 2.2(b) shall not require the mortgagee or chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interests of the mortgagee or chargee in respect of monies outstanding under the charge or mortgage

(c) If any person occupying a dwelling constructed as Affordable Housing under an arrangement for shared ownership exercises his right to acquire a 100% share in such dwelling or if any person occupying a Affordable Rented Unit or Social Rented Unit constructed as Affordable Housing lawfully exercises a statutory right to acquire such dwelling then the provisions of paragraphs 5-8 of Schedule 1 of this Agreement shall not be binding on any such person or on any mortgagee of any such dwelling or on the successors in title of any such person or mortgagee

(d) The Owner and the Developer shall not be liable for any default or breach of the covenants or obligations contained in this Agreement occurring before the Commencement of Development save for those parts of this Agreement that take effect upon execution hereof as provided for in Clause 2.3

(e) The Owner and the Developer shall not be liable for any default or breach of the covenants or obligations contained in this Agreement after he/she/it shall have parted with his/her/its interest in the Site but without prejudice to liability for any breach of covenant subsisting prior to parting with such interest

Legal Effect

2.3 Clauses 1-3, 7 and 8 of this Agreement but not the Schedules referred to in those clauses shall take effect upon completion of this Agreement and the remainder of this Agreement shall take effect upon the grant of the Planning Permission and Commencement of Development

Warranty as to title

2.4 The Owner confirms and warrants to the Council that it has not leased mortgaged charged or otherwise created any interest in the Property other than the Option

Agreement at the date of this Agreement and that Recital (A) of this Agreement is correct and accurate in every respect

General Covenants

2.5 In order to (inter alia) create planning obligations for the purposes of Section 106 of the 1990 Act in respect of the Property the Owner COVENANTS with the Council to fully comply with and to perform the obligations contained herein and in all Schedules of this Agreement in accordance with the requirements and timescales contained therein

2.6 In order to (inter alia) create planning obligations as aforesaid the Owner HEREBY FURTHER COVENANTS to carry out the Development of the Property and use the Property in strict accordance with the Planning Permission and this Agreement and not otherwise unless agreed in writing by the Council

2.7 For the purpose of such parts of this Agreement as may be subject to the rule against perpetuities the perpetuity period applicable to this Agreement shall be eighty years from the date hereof

2.8 The Owner hereby AGREES and DECLARES that permission shall be granted to authorised Officers of the Council upon reasonable notice and request and at reasonable times (except in an emergency) and subject to any instructions which any contractor may give to ensure safety for Officers of the Council (or their nominated representatives) at their own or at the Council's risk to gain access to the Property in order to monitor compliance with this Agreement

2.9 On the execution hereof the Developer shall pay to the Council

2.9.1 the Council's proper and reasonable legal costs in the sum of £2,250.00 inclusive of any VAT payable in connection with this Agreement

2.9.3 the County Council's proper and reasonable legal and administrative costs in this matter

2.10 This Agreement may be varied only by deed between the parties hereto or their respective successors in title and assigns provided that the Council may approve changes or variations in writing and for the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 it is hereby AGREED AND DECLARED that the

parties to this Agreement (and their respective successors in title) may rescind or vary this agreement without the consent of any third party

2.11 All approvals certificates consents agreements satisfactions confirmations or calculations (or anything of a similar nature) that may be requested by the Owner and/or given by the Council or its officers in accordance with this Agreement shall be in addition to any other approvals consents agreements or confirmations that may be required by the 1990 Act or by any other statute or regulations

2.12 In the event that any part of this Agreement may be subject to challenge review deletion or otherwise rendered null/void or voidable the balance of the said Agreement shall remain in full force and effect

2.13 Notices required to be given or served under this Agreement shall be addressed to the parties at their addresses referred to in the commencement of this Agreement or in the case of the County Council to County Hall, St. Anne's Crescent, Lewes, East Sussex BN7 1SW

2.14 Where payment of any sum payable as aforesaid is made after the Due Date interest shall be payable from the Due Date until the date of actual payment and shall be added to and form part of such sum at the rate of four per cent above the base rate for the time being of Lloyds Bank Plc

2.15 For the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 nothing in this agreement is intended to confer any benefit upon or create rights in favour of any party other than the parties executing this Agreement and their respective successors in title

2.16 Where a transfer of land forming part of the Property to the Management Company is contemplated by this Agreement and in the event of that transfer not taking place the Owner HEREBY FURTHER COVENANTS with the Council as (inter alia) a planning obligation as aforesaid that it will PERMIT the use of the land in question for the purposes in respect of which the transfer was intended and GRANT all such rights whatsoever as are necessary to enable both the enjoyment of the land in question by the public for the said intended purpose

2.17 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 Due Date

(a) notice of the Due Date shall be given to the Council in the form of the Payment Notice not more than seven days after such Due Date

(b) if the notice of a Due Date is not given the Council shall be entitled in its absolute discretion to determine the Due Date and shall give notice to the Owner of its determination

(c) to make any and all payments due under this Agreement to the Council and to attach a fully completed Payment Notice with each payment

2.18 The Owner shall within seven days of the Commencement of Development give the Council and the County Council written notice of the Commencement of Development

2.19 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Property occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Property or unit of occupation purchased by reference to a plan PROVIDED THAT this clause shall not apply to the disposal of individual Dwellings

2.20. No liability in respect of any of the obligations under this Agreement shall attach to any mortgagee of the Property in respect of a mortgage hereinafter charged over any part of the Property save in respect of any breach which commenced while the mortgagee was a mortgagee in possession of all or part of the Property over which its charges apply further, for the avoidance of doubt, it shall not in any event be liable for any breach of this Agreement arising prior to it becoming a mortgagee in possession of the Property regardless of whether or not such pre-existing breach shall continue for any period during which it is a mortgagee in possession of the Property PROVIDED ALWAYS that this limitation of the liability of the mortgagee in possession arising from this clause shall not apply to any successor in title to any such mortgagee which is not also a mortgagee in possession

3. **Disputes**

3.1 All differences and disputes which may arise between the parties hereto concerning this Agreement shall:

(a) where the difference or dispute relates to the construction or interpretation of this Agreement be referred to the determination (as an expert and not as an arbitrator) of an independent leading conveyancing/planning counsel agreed upon by the parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales on the application of any of the parties in dispute;

(b) where the difference or dispute relates to the carrying out of works or construction be referred to the determination (as expert and not as an arbitrator) of an independent Chartered Surveyor or Civil Engineer as appropriate being a partner or director practising in a leading firm of surveyors or civil engineers based in the South East of England or London and experienced in the matter in dispute agreed upon by the parties in dispute but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers as appropriate on the application of any of the parties in dispute PROVIDED that where a contract for the relevant works has been let and provides that the dispute or difference under it shall be referred to arbitration or the court any such dispute or difference which may arise between the parties in connection with those works shall be determined likewise

3.2 If the parties in dispute shall fail to agree on the nature of the difference or dispute between them then any of them may apply to the President of the Law Society to appoint an independent solicitor being a partner in a leading firm of solicitors practising in the South East of England or London to decide (as expert and not as arbitrator) in relation to any such matter which of Clauses 3.1(a) or 3.1(b) hereto is applicable

3.3 Except as aforesaid any expert appointed pursuant to Clauses 3.1(a) or 3.1(b) or any other person shall:

(a) on his appointment serve written notice thereof on the parties in dispute;

(b) consider any written representations by or on behalf of those parties which are received by him within twenty working days of such service and immediately forward a copy of the written representation of one party to the other party;

(c) allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within fifteen working days of receipt by the other party thereof;

(d) have an unfettered discretion to determine the reference to him;

(e) serve notice of his determination as soon as he has made it;

(f) give full and clear reasons for his decision;

(g) be paid his proper fee and expenses in connection with such reference by the parties in dispute in equal shares or in such shares as he may determine and his determination shall be final and binding on the parties in dispute (save in the case of manifest error) PROVIDED THAT if any such expert shall die become insolvent or of unsound mind or if either of the parties in dispute shall serve on him written notice in their opinion he has unreasonably delayed making his determination he shall be ipso facto discharged and be entitled only to his reasonable expenses prior to such discharge and another person shall be appointed in his place as such expert

3.4 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Agreement and consequential and interim orders and relief.

4. Indexation

4.1 The Contribution for the Youth and Adult Play Space Commuted Sum and the Children's Equipped Play Space Commuted Sum or any part thereof shall be Index Linked so that the sum actually payable to the Council ("the Indexed Sum") shall be calculated in accordance with the following formula

Indexed Sum = (Initial Sum x Inflation Index at the month preceding the Due Date) ÷ Inflation Index at the month preceding the Base Date

Where:

the "Initial Sum" is the original sum specified in this Agreement

the "Due Date" is as previously defined

the "Base Date" is the date of this Agreement.

"Inflation Index" means the "all items" index figure of the Retail Prices Index published by the Office for National Statistics or such other index as the Council may reasonably nominate in the event that the Retail Prices Index shall no longer be published or its name or methodology be materially altered

4.2 The County Contribution (or any part thereof) shall be Index Linked so that the sum actually payable shall be recalculated by the application of the following formula:

A = (B x C) ÷ D

Where:

A is the recalculated sum actually payable on the relevant Due Date for payment of the County Contribution (or any part thereof)

B is the amount of the County Contribution specified in this Agreement

C is the Construction Index for the quarter preceding the relevant Due Date for payment of the relevant instalment

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

C divided by D is equal to or greater than 1

5. Council's Covenants

5.1 On receipt of all or part of the sums comprising the County Contribution the Youth and Adult Play Space Commuted Sum and the Children's Equipped Play Space Commuted Sum the Council will separately identify and place such monies in an interest bearing account until required for payment for the purposes described in this Agreement and will maintain a record of all payments received and made pursuant to this Agreement which shall be made available to the Owner and will also make available to the Owner upon request in respect of each date which is the tenth anniversary of the receipt by the Council of each of the payments ("the date of accounts") comprised in the sums comprising the County Contribution the Youth and Adult Play Space Commuted Sum and the Children's Equipped Play Space Commuted Sum detailing how they have been allocated.

5.2 County Contribution

5.2.1 The Council covenants to pay from the County Contribution to the County Council such sums from its constituent contributions including any accrued interest which the County Council has authorised to be expended for their respective purposes as identified in Clause 5.2.2 and which have been notified to the Council by the County Council

5.2.2 The Council covenants not to pay the County Contribution otherwise than as follows:

(i) the Contribution for Rights of Way Improvements shall not be paid otherwise than for the purposes of improving public rights of way in Wadhurst and the surrounding area

(ii) the Contribution for Wadhurst High Street Pedestrian Improvement Scheme shall not be paid otherwise than for the purposes of improving Wadhurst High Street as part of the Wadhurst High Street Pedestrian Improvements Scheme

5.2.3 If or to the extent that any of the contributions comprising the County Contribution as referred to in Paragraph 5.2.2 above shall not have been allocated to the County Council at the date of each of the accounts referred to in paragraph 5.1 above the Council shall on such date refund to the Owner such sums as have not been allocated together with accrued interest on such sum from the date of receipt by the Council of the County Contribution (or from the date of receipt of the last instalment of County Contribution making up the sum not allocated whichever is the later) to the date of payment to the Owner

5.3 Youth and Adult Play Space Commuted Sum and the Children's Equipped Play Space Commuted Sum

5.3.1 The Council covenants to pay from the Youth and Adult Play Space Commuted Sum and the Children's Equipped Play Space Commuted Sum to the Parish Council such sums from its constituent contributions including any accrued interest which the Parish Council has either authorised to be expended or has produced a budget or plan to justify such expenditure for the purposes of providing and/or improving and maintaining off site youth and adult play space and children's equipped play space facilities at Sparrows Green Recreation Ground, Wadhurst

5.3.2 If the Youth and Adult Play Space Commuted Sum and the Children's Equipped Play Space Commuted Sum as referred to in Paragraph 5.3.1 above has not been allocated to the Parish Council as appropriate at the date of the accounts referred to in Paragraph 5.1 above the Council provided a prior written request has been served upon the Council shall on such date refund to the Owner such sums as have not been allocated together with accrued interest on such sums from the date of receipt by the Council of the payment to the date of payment to the Owner

Notices requiring Compliance with Obligations

5.4 At any time after the Owner has complied with any of its obligations under this Agreement the Owner may serve a written notice on the Council requesting the Council to confirm that the clauses set out in the notice have been complied with

5.5 The Council covenants and undertakes to use all reasonable endeavours to respond in writing to the written notice by the Owner within 28 days from the date of receipt of the said notice and such response shall state whether or not the clauses set out in the notice have been complied with

6. **VAT**

All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable unless stated otherwise

7 **Jurisdiction**

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

8. **Delivery**

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

9. **Local Land Charge**

9.1 This Agreement shall be registered as a local land charge by the Council.

9.2 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

EXECUTED as a DEED by the parties hereto and delivered on the date set out at the head of this Agreement

SCHEDULE 1

Affordable Housing

1. Not to commence any works of construction or development whatsoever in respect of the Development (or any Phase thereof) on the Property until the Approved Timetable and Programme in respect of the Development (or that Phase) has been approved by the Head of Planning and Environmental Services and thereafter the Approved Timetable and Programme shall be fully complied with subject to any amendments agreed in writing by the Head of Planning and Environmental Services

2. Prior to Commencement of Development (or commencement of development upon a Phase agreed in the Approved Timetable and Programme) the Owner shall agree with the Council the Affordable Housing Tenure Plan

3. The Owner covenants to construct the Affordable Housing Units in accordance with the Approved Timetable and Programme and the agreed Affordable Housing Tenure Plan

4. No more than 25% of the Private Dwelling Units upon the Property or if the Development is developed in phases within a relevant Phase of the Development on the Property shall be Occupied unless and until EITHER the land upon which the Affordable Housing Units are to be constructed is the subject of a binding contract that provides for the disposal of the Affordable Housing Land in that Phase from the Owner to a Registered Provider together with a contract for the construction of the Affordable Housing Units OR the Affordable Housing Units are the subject of a binding contract for transfer from the Owner to a Registered Provider in a Clean Condition and Fully Serviced unless otherwise agreed in writing by the Council

5. Not to Occupy or cause or allow the Occupation of any of the Affordable Rented Units, Social Rented Units and Intermediate Housing Units to be constructed upon the Property other than as Affordable Rented Units Social Rented Units and Intermediate Housing Units respectively unless otherwise agreed in writing by the Council

6. Not to Occupy or cause or allow the Occupation of any Affordable Rented Unit or the Social Rented Unit other than by virtue of Assured Tenancies pursuant to the Housing Act 1988 and Housing Act 1996 (or such other form of tenancy as may from time to time be prescribed by statute as offering residential tenants of Registered Providers a similar measure of security of tenure) or on such other basis as may from time to time be approved in writing by the Head of Planning and Environmental Services

7. Not to occupy or cause to allow the occupation of any Affordable Housing Unit or any part thereof until the Registered Provider that owns the Affordable Housing Unit enters into a Nomination Agreement in the form of the draft annexed hereto at Schedule 3 subject to such variation as the Council and the Registered Provider shall jointly agree whereby the Registered Provider shall grant to the Council and the Council shall retain nomination rights in respect of 100% of the initial lettings of the Affordable Rented Units and the Social Rented Units and thereafter 75% of re-lettings of the Affordable Rented Units and the Social Rented Units.

8. Not to dispose of less than 50% of the Shared Ownership Units at an initial equity share at a maximum of 40% of the open market value of the unit being sold and not to dispose of the remaining Shared Ownership Units at an initial

equity share exceeding 50% of the open market value of the unit being sold PROVIDED ALWAYS THAT firstly in each case the occupier pays a maximum rent of 2.75% of the value of unsold equity at the date of the sale of the initial equity share, rising by no more than RPI plus 0.5% per annum, provided always that there is no prohibition on additional equity shares being subsequently sold and secondly that the provisions relating to the size of the initial equity share in this paragraph may be varied in writing by the Council's Head of Housing and Property Services subject to an affordability check.

9. The Owner and the Registered Provider shall inform the Council of any applications for waivers for the Homes and Communities Agency Design and Quality Standards they may seek from the Homes and Communities Agency within 5 workings days and also inform the Council of the outcome within five working days of being so informed

10. The Affordable Housing Units shall not be built other than (unless otherwise agreed in writing by the Council's Head of Housing and Property Services) in compliance with:

(a) the Lifetime Homes standard published by The Foundation for Lifetime Homes and

(b) the Homes and Communities Agency Design and Quality Standards and

(c) the relevant Registered Providers preferred partners design brief current at the date of the erection of those units but in the event of any conflict then the Homes and Communities Agency Design and Quality Standards would apply

and the above references to standards and documents published by particular a body or organisation shall include a reference to any replacement standards and documents published by that body or organisation any successor body or organisation

SCHEDULE 2

Terms related to the transfer of the Affordable Housing Units

1. Not to execute any transfer of the Affordable Housing Units within each Phase comprised in the Development except upon the following terms and conditions unless otherwise agreed in writing by the parties to the transfer:

   (a) title to the Affordable Housing Units within the Phase shall be deduced in accordance with Land Registration Act 2002

   (b) the Affordable Housing Units will be transferred free of any financial charges together with the rights and easements but subject to the exceptions reservations rights easements and other matters contained and referred to in the Owner's title and subject to such other matters as the parties may agree

   (c) vacant possession of the Affordable Housing Units within each Phase shall be given on completion

   (d) completion shall take place within the time limits provided by this Agreement with the date of completion to be agreed between the parties to the transfer or any extension of it agreed by the Owner and the Registered Provider

   (e) the transfer of the Affordable Housing Units will be made with full title guarantee

   (f) the Standard Conditions of Sale (Fifth Edition) shall apply to the proposed Transfer so far as they are not inconsistent with the conditions contained in this Agreement

   (g) the Transfer will grant:

      (i) all such rights and easements over the Property as are appropriate to the transfer of the Affordable Housing Units together with a right of way with or without vehicles of any description and with or without domestic pets to and from the Affordable Housing Units and a public

highway suitable for motor vehicles and pedestrians over the estate roads to be constructed as are reasonably required for the use and enjoyment of the Affordable Housing Units and subject to an obligation to contribute to the costs incurred in the future upkeep repair replacement and maintenance of the same (if not adopted by the East Sussex County Council) according to user

(ii) such rights as may be reasonably required for the free and uninterrupted passage and running of water soil gas electricity telephone signals and like services from and to the Affordable Housing Units through the drains watercourses service cables pipes and wires which are now or may within a period of eighty years from the date hereof be in or under or over the Property and benefiting the Affordable Housing Units and to make connections to and use all such conduits as aforesaid in and under the Property with all easements rights and privileges proper for repairing maintaining and reinstating the same the person or persons exercising the same making good all damage thereby occasioned subject to an obligation to contribute to the costs incurred in the future upkeep repair replacement and maintenance of the same if applicable

SCHEDULE 3

Form of Nomination Agreement

THIS AGREEMENT is made on the day of 20XX
BETWEEN

(1) LIMITED ( ) whose registered office is at ("the Registered Provider")

(2) WEALDEN DISTRICT COUNCIL of the Council Offices Vicarage Lane Hailsham East Sussex BN27 2AX ("the Council")

(together hereinafter called "the Parties")

WHEREAS

(A) The Registered Provider is a registered provider as defined in Section 80(2) of the Act and registered with the Homes and Communities Agency with registered number xxxxx.

(B) The Registered Provider has purchased the Land on which the Housing Units have been built.

(C) The Registered Provider has agreed to enter into this Nomination Agreement on the terms hereinafter appearing

(D) The Land and Housing Units are subject to the provisions of the S106 Agreement and the provisions of that agreement shall apply to this Nomination Agreement and in the event of any conflict between the two provisions the s106 Agreement shall prevail

(E) This Agreement is personal between the Registered Provider and the Council and shall not bind successors in title

DEFINITIONS

In this Agreement and the Schedule the following words and expressions shall have the following meanings unless the context requires otherwise:

"the Act" means the Housing and Regeneration Act 2008

"Affordable Housing" means housing provided for people who are unable to meet their housing needs in the local housing market because of the relationship between housing costs and income

"Allocations Policy" means the Council's policy as at the point of offer of accommodation setting out the priorities and procedures for the letting of council housing and nominations to registered providers which may be found at www.wealden.gov.uk/applyforhousing

"Homemove" means the choice-based letting scheme operated in Sussex as a letting and bidding scheme for Council and Register Provider homes or such other scheme as the Council may from time to time adopt

"Homes and Communities Agency" means the agency established under Chapter 1 of the Act to regulate social housing or such other replacement organisation as may be appointed from time to time to carry out that function

"Housing Units" means the X units of Affordable Housing on the Land

"S106 Agreement" means the Agreement under s.106 of the Town and Country Planning Act 1990 dated 20XX and made between the Council (1) and (2) and (3)

"the Land" means the land known as land at East Sussex registered at the Land Registry under Title Number XXXX

"Void" means a Housing Unit which is vacant, otherwise than as a result of a tenant having:-

a) moved to other accommodation either by transfer or decant provided by the Registered Provider, or
b) moved to other accommodation under a reciprocal arrangement provided by another registered provider registered with the Homes and Communities Agency

IT IS HEREBY AGREED by and between the Parties as follows:

1. For so long as the Registered Provider is the freehold owner of the Land the Council shall have the right and ability to nominate persons to occupy the Housing Units as follows:-

1.1. In respect of 100% of the initial lettings of any of the Housing Units, and

1.2. XX% of Voids thereafter.

2. The Registered Provider shall, within twenty four hours of a Void becoming available for nomination under Clause 1 above, inform the Council of such by email or telephone. Where email or telephone notification is not possible, the Registered Provider shall place an advert on the Homemove locata system ready to be published and advertised at www.homemove.org.uk PROVIDED ALWAYS that the Registered Provider and the Council shall operate their vacant property procedures through Homemove and in accordance with the Schedule hereto.

3. If the Registered Provider shall transfer the Land to another registered provider the said transfer shall require that the new registered provider enter into an agreement with the Council in similar terms to those contained herein.

4. This agreement is subject to and shall be construed in accordance with the matters referred to in the s106 Agreement]and the matters approved thereunder and the Council's Allocations Policy shall apply to any allocation of accommodation comprised in the Housing Units

THE SCHEDULE above referred to

A. **The Council shall:**

1. Provide the choice-based letting scheme called Homemove.

2. Advertise available properties on the Internet Site www.homemove.org.uk.

3. Publish a scheme user's guide for Homemove and make this available to all applicants and make this document available on the internet.

4. On payment of an agreed fee (currently £65) place an advert for the Registered Provider if required and ensure that all properties ready to nominate are checked and made ready to advertise no later than noon on the deadline day for property adverts

5. Produce a verified shortlist of applicants from the Council's housing register for the Registered Provider. This shortlist shall follow the process where applicants bid for a Housing Unit of their choice and the shortlist will be sent to the Registered Provider within 5 working days of close of bidding of an applicable Housing Unit.

4. All shortlists will be prioritised by the date the property is available for letting, the applicant's ranking by priority band (A, B, C or D), the time they have waited in accordance with the Council's Allocations Policy and any amendment modification or replacement thereof subsequently approved on behalf of the Council

5. The list shall contain the names of all applicants who satisfy the allocations criteria up to a maximum of three or such other number as may be agreed by the Council and the Registered Provider making the request in any specific case.

6. The Council agrees to supply the following information on shortlisted applicants:

- Name and current address;
- Household type and composition;
- Details of access route (homeless, transfer, housing register);
- Priority banding
- Ethnic origin;
- Support needs and packages;
- Relevant accommodation history
- Whether the applicant is subject to a "do not visit alone" warning.

7. Ensure that information requests will comply with the Data Protection Act 1998.

8. Keep the Registered Provider informed of any changes to Homemove.

B. **The Registered Provider shall:**

1. Inform the Council by email when a property is ready to advertise for occupation. The Registered Provider shall, as soon as they receive notice that a property is or will be available (those properties that will be available within 6 weeks or less) and will advertise the available property via the Homemove website or provide advert details in accordance with paragraph A4 of this Schedule. The Registered Provider is responsible for ensuring that property adverts will withstand scrutiny under the Property Misdescriptions Act 1991.

2. Supply the following information about the property:

- Who is eligible for the property – Transfer/Homeseekers or both;
- Address of property;
- Size;
- Property type;
- Bedroom number;
- The minimum and maximum number of permitted occupants;
- Number of reception rooms (in larger units);
- Floor level;
- Rent level;
- Shared amenity space;
- Any sensitive lettings criteria;
- Any local lettings requirements;
- Heating type;
- Level of mobility accessibility (including wheelchair accessibility);
- Any other information needed by the choice based lettings scheme (if applicable);
- Unique selling points;
- Property available date;
- Photograph of the property if available.

3. On receipt of a shortlist in respect of a proposed letting, make an offer of the tenancy ("the Offer") to the applicant with the greatest priority.

4. Following acceptance of the Offer and where the applicant is a current tenant of the Council or another registered provider, the Registered Provider shall ensure that the tenancy start date enables the applicant to give four weeks' notice to terminate their existing tenancy.

5. Applicant(s) defined as statutorily homeless and being made an offer of the tenancy must be informed that this offer from the Registered Provider will be regarded as an offer from the Council in discharge of its statutory duty. If an applicant refuses an offer, the Council must be informed first before the Housing Unit is re-offered. (This is crucial so that homeless households can be informed of the consequences of refusing the offer).

6. Notify the Council as soon as an applicant accepts the Offer.

7. Notify the Council as soon as an applicant refuses the Offer and set out the reasons for refusal of any Offer when they are known.

8. Not reject an applicant unless under one of the following grounds:

- Circumstances of applicant's household have changed since last assessment and the Housing Unit is not suitable;
- Inaccurate information provided by the Council;
- New information is received about the applicant's circumstances which affects the applicant's eligibility or suitability for the Housing Unit;
- Applicant's household is too large for the Housing Unit;
- Applicant's household is too small for Housing Unit;
- Unit not suitably adapted for applicant's household (please state reason)
- Accepted higher priority nomination; or
- Very exceptional circumstances following agreement by the Council.

9. Inform the Council with the results of the Offer on the same day as the Offer is made.

IN WITNESS whereof the Common Seals of the Registered Provider and the Council have been hereunto affixed but so that this Deed shall not take effect until it has been dated the day and year first above written

SCHEDULE 4

Management Company

1. The Owner shall not occupy or permit the first occupation of any Private Dwelling Unit until it has:

1.1 set up a limited company as the Management Company;

1.2 made provision to include in the transfer of each Dwelling a covenant by the purchaser to pay an annual charge as determined by the Management Company for the maintenance of the Ecological Area and the Landscaped Areas and which have been or are to be transferred to the Management Company

1.3 not dispose of any Dwelling without imposing a covenant on the purchaser of such Dwelling to pay an annual charge as determined by the Management Company towards the costs incurred in maintaining the parcels of land referred to in Paragraph 1.2 above or parts thereof

1.4 upon the sale of the first Private Dwelling to forthwith provide the Council with copies of the Articles and Memorandum of Association of the Management Company and a copy of the transfer relating to the Private Dwelling including the covenants referred to in Paragraph 1.2 of this Schedule

SCHEDULE 5

Youth and Adult Play Space Commuted Sum and the Children's Equipped Play Space Commuted Sum

The Owner covenants with the Council:

1. to pay to the Council the Youth and Adult Play Space Commuted Sum and the Children's Equipped Play Space Commuted Sum including any interest or Indexation payable under this Agreement on or before the date of Occupation of the 13th Private Dwelling to be Occupied

2. not to Occupy or cause or allow the Occupation of the 13th Private Dwelling to be Occupied until the Youth and Adult Play Space Commuted Sum and the Children's Equipped Play Space Commuted Sum including any interest or Indexation payable under this Agreement shall have been paid to the Council

SCHEDULE 6

Ecological Areas and Landscaped Areas

1 Not to occupy or cause or allow Occupation of the 13th Private Dwelling to be Occupied until:

1.1 All works have been carried out for the initial provision and enhancement of:

1.1.1 the Ecological Area; and

1.1.2 The Landscaped Areas

in accordance with the requirements and timescales in the planning conditions relating to these areas comprised in the Planning Permission to the Council's written approval

1.2 The Owner has received written approval from the Council of the LEMP submitted in accordance with the Planning Permission (such approval not to be unreasonably withheld or delayed).

1.3 and, following completion of the works in accordance with paragraph 1.1 above, the Owner has entered into a binding contract for the transfer for the sum of £1 the Ecological Area and the Landscaped Areas to the Management Company which the Management Company will be required as successor in title to the Owner to maintain the Ecological Area and the Landscaped Areas and the Owner shall not transfer these areas except upon the following terms and conditions unless otherwise agreed between the parties:

(i) title shall be deduced in accordance with the Land Registration Act 2002

(ii) the parcels of land comprising or comprised Ecological Area and the Landscaped Areas will be transferred free of any financial charges together with the rights and easements but subject only to the exceptions reservations rights easements and other matters contained and referred to in the register of title to the Property

(iii) vacant possession of the parcels of land comprising or comprised Ecological Area and the Landscaped Areas shall be given on the date of the transfer in accordance with the provisions of this Agreement

(iv) subject to restrictive covenants restricting the uses of the Ecological Area and the Landscaped Areas as set out in paragraphs 5, 6 and 7 of this Schedule:

2 The LEMP shall be reviewed periodically in accordance with its terms and any amendments thereto must be approved by the Council in writing.

3 The Owner shall maintain the Ecological Area and the Landscaped Areas for the lifetime of the development in accordance with the approved LEMP and any subsequent approved amendment.

4 No disposal or transfer of the Ecological Area and the Landscaped Areas shall take place without the written consent of the Council other than (following approval of the LEMP) to a Management Company who shall carry out the maintenance and management of the Ecological Area and the Landscaped Areas in accordance with paragraph 3 of this Schedule

5 The Ecological Area shall be retained in one single ownership and only be used for the visual amenity of the area and the ecological habitat and for informal access for the residents of the Development and shall not be used for any trade or business or for any formal recreational purposes for the public and no development requiring planning permission shall be carried out thereon unless it is for the maintenance of these areas or is required to be carried out by a statutory undertaker

6 The Landscape Areas shall be retained for visual amenity, water attenuation and for casual informal amenity space for the Development and shall not be incorporated into any residential curtilage and no development requiring planning permission shall be carried out thereon unless it is required for the maintenance of these areas or is required to be carried out by a statutory undertaker

7 The transfer to the Management Company shall contain covenants not to erect or construct any buildings structures hardstandings or station any structure caravan shed boat or other chattel or carry out any building or engineering operations on the Landscaped Areas and Ecological Area as applicable save for the repair and renewal

of any fences forming the boundary of the Landscaped Areas and Ecological Area and the repair and renewal of any cable pipe duct or other services under the soil within Landscaped Areas and Ecological Area and save for structures which may reasonable be required by the Statutory Undertakers or Utility Service companies in connection with the supply of their utility provided that after such renewal or repair works or construction of a structure the Landscaped Areas and Ecological Area shall be reinstated to the reasonable satisfaction of the Council

SCHEDULE 7

Covenants Regarding Highway Works

PART 1–Section 278 Agreement

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

2. The Owner shall not Commence Development until it has entered into the Section 278 Agreement paying all of the County Council's proper and reasonable legal costs relating to the Section 278 Agreement

3. Prior to Occupation of the first (1st) Dwelling to be Occupied the Owner will complete the Highway Works in accordance with the provisions of the Section 278 Agreement

4. The Owner shall not Occupy or cause or allow the Occupation of the first (1st) Dwelling to be Occupied until it has completed the Highway Works in accordance with the provisions of the Section 278 Agreement

PART 2 – Highway Works

1. The Highway Works are to include:-

   (a) reconstruction of the footway along the western boundary of the Property adjacent to Lower High Street,

   (b) realignment of the carriageway along the western boundary of the Property adjacent to Lower High Street in order to form the proposed access

   (b) improved road markings to reinforce the speed limit at Village Gate on Lower High Street; and

   (c) repositioning/renewing of a vehicle activated sign south of the gateway into Wadhurst village

   together with any other ancillary works reasonably required by the Director

PART 3

1. Nothing in this Schedule shall require the performance by the Owner of any obligation upon the land outside its ownership or on land which is not highway maintainable at the public expense

SCHEDULE 8

Contributions towards County Council services provision

The Owner covenants with the Council:

1. to pay to the Council the County Contribution including any interest or Indexation payable under this Agreement before Occupation of the 1st Dwelling to be Occupied

2. not to Occupy or cause or allow the Occupation of the 1st Dwelling to be Occupied until the County Contribution including any interest or Indexation payable under this Agreement has been paid to the Council

SCHEDULE 9

Travel Plan

The Owner covenants with the Council:

1. To submit for approval the Travel Plan to the Head of Planning and Environmental Services before Commencement of Development
2. Not to Commence Development until the Travel Plan has been submitted to and approved by the Head of Planning and Environmental Services
3. To fully implement and comply with the approved Travel Plan subject to any amendments agreed in writing by the Head of Planning and Environmental Services and in accordance with any additional measures considered appropriate at the time of any review required as part of the approved Travel Plan

SCHEDULE 10

the Registered Provider Selection Criteria

1. That the Registered Provider is registered with the Homes and Communities Agency

2. That the Registered Provider has a current satisfactory Homes and Communities Agency assessment

3. That the Registered Provider has a staff structure showing which officers are / will be dedicated to the Wealden area providing details of how the properties will be managed

4. That the Registered Provider has a management base located in offices within 50 miles of Wealden District

Schedule 11

Section 278 Agreement

DATED 20[ ]

EAST SUSSEX COUNTY COUNCIL

and

and

and

AGREEMENT

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 1SW

Ref: PH/ [ ]/

Standard Agreement (BOND) – Owner & Developer

THIS AGREEMENT is made the day of 20[ ]

BETWEEN

(1) **EAST SUSSEX COUNTY COUNCIL** (Governance Services) of County Hall, St. Anne's Crescent, Lewes, East Sussex BN7 1SW (hereinafter called "the County Council") of the first part and

(2) [ ] (Company Number [ ]) of/whose registered office is situate at [ ] (hereinafter called "the Owner") of the second part and

(3) [ ] (Company Number [ ]) of/whose registered office is situate at [ ] (hereinafter called "the Developer") of the third part and

(4) [ ] (Company Number [ ]) of [ ] (hereinafter called "the Surety") of the fourth part

RECITALS

WHEREAS:-

(1) The Owner is the freehold owner of the land known as [ ]shown for the purposes of identification only edged red on the plan annexed hereto and registered at the Land Registry under title number ESX[ ] ("the Land")

(2) The Developer is the developer of the Land [and has entered into a contract for the purchase of the Land dated]

(3) The Owner/Developer has applied for and been granted planning permission ("the Planning Permission") by Borough/District Council (under reference [ ]) for development of the Land comprising [ ] ("the Proposed Development")

(4) The County Council considers that before the Proposed Development is Occupied/is Commenced it will be necessary for certain Highway Works (as hereinafter defined) to be carried out in order that the traffic which will be generated by the Proposed Development can be accommodated satisfactorily on the surrounding highway network.

(5) For the area within which the Proposed Development is to be situated the County Council is for the purposes of the Highways Act 1980 ("the 1980 Act") and Section 111 of the Local Government Act 1972 ("the 1972 Act") respectively the Highway Authority and a local authority

(6) Section 278 of the 1980 Act provides that a highway authority may if satisfied it will be of benefit to the public enter into an agreement with any person for the execution by the authority of any works which the authority may be authorised to execute on terms that the person pays the whole or part of the cost of the works

(7) The County Council is authorised to execute the Highway Works contemplated by this Agreement and is satisfied that they will be of benefit to the public but is desirous that the Developer undertakes the said works on its behalf on the terms hereinafter contained and accordingly propose 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

(8) The parties hereto have therefore agreed to enter into this Agreement pursuant to Section 278 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 hereof 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 hereof. 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
"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	:	means an employee/contractor/consultant with health

Safety		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 the 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 hereto 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 (3)
"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 change after the date of this Agreement the figure taken t be shown in the Index after the change is to be th figure that would have been shown in the Index if th reference base current at the date of this Agreemen had been retained or if the RP Index shall cease t exist then there shall be substituted such other inde as may replace the same or the County Council shal 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 ir 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 o 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 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 schedule or paragraph of this Agreement

1.3 Where any party to this Agreement comprises two or more persons any obligations 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 its successors in title and any statutory successor authority of it and the expressions "the Owner" and "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

2. **PRELIMINARY**

2.1 **Enforceability**

This Agreement is entered into pursuant to section 278 of the 1980 Act section 111 of the 1972 Act and Section 1 of the 2011 Act and in the event of a breach by the Owner or the Developer (or their successors in title as described in clause 1.6 above) of clause 3(2) hereof 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 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

delivered 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 the Owner hereby covenants with the County Council as specified in clauses 6.3 and 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

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 the Highways Agency) ("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 routeing 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 (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 which 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 Owner the Developer and/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 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.

(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 of this Agreement the Surety shall forthwith pay the Default Cost to the Council

4.1.4 The events referred to in Clause 4.1.3 of this Agreement 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 at paragraph 4.1.2 of this Agreement 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 towards 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 a sum 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 hereof 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 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 the Owner and/or the Developer as to the inspection of the Highway Works nor absolve the Owner or 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 Owner or 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 claims 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) in respect of depreciation in the value of any interest in land which may have been caused by or resulted from the execution and/or use of the Highway Works or any part thereof and

4.5.2 all 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)

4.6 **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 Sub-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 Road Space**

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 1971 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 he 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 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 then 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 Owner and/or 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 Owner and/or 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 hereof 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 s104 Water Industry Act 1991 has been certified by the appropriate Water Company 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 Owner and the Developer hereby agree and declare 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 street lighting and sources of illumination electrical cables and apparatus for the supply of electrical power for such signs and street lighting

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 Owner and/or 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 above 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 hereof.

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 Owner and/or the Developer and all costs associated with any action taken pursuant to the provisions of clause 4.1 of this Agreement the Owner and/or the Developer agree to pay all such additional costs so incurred by the County Council

8 POST-COMPLETION MATTERS

8.1 Maintenance Period

8.1.1 To 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 ("the Maintenance Period") from the date that the Preliminary Certificate is issued

8.1.2 To 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 the 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 the Owner 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 their 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**

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.

THE COMMON SEAL of **EAST SUSSEX COUNTY COUNCIL** was hereunto affixed in the presence of:-)

Authorised Signatory

[ATTESTATION CLAUSES]

EXECUTED as a deed by affixing the common seal of **WEALDEN DISTRICT COUNCIL** in the presence of:

Authorised Signatory

24509

SIGNED as a deed and delivered by LOUISE MARY SAVAGE in the presence of:

Sign here

Louise Savage

Signature of witness

Name (in CAPITAL LETTERS) IAN BLACKFORD

Address 11 OAST VIEW, HORSMONDEN
TONBRIDGE, KENT TN12 8LE

SIGNED as a deed and delivered by SALLY CATHERINE SILK in the presence of:

Sign here

Sally Silk.

Signature of witness

Name (in CAPITAL LETTERS) PAUL BRITTON

Address 43 HUNTER ROAD, ASHFORD, KENT
TN24 0RT.

SIGNED as a deed by **RYDON HOMES LIMITED** acting by a director and its secretary / two directors

Signature of director

Director

Full name (in block capitals) WARWICK BARNES

Signature of director or secretary

Director / Secretary

Full name (in block capitals) PAUL MEPHAM

Appendix 1

PAYMENT NOTICE

Agreement Details	
Application Site address	
Application	
Date of original agreement [under S106 of the Town and Country Planning Act 1990]	
Date of variation of original agreement [where relevant]	
Parties to: 1. original agreement 2. variation [where relevant]	
Payee Details	
Payee [name, address and reference]	
Payee's relationship to the Parties to the agreement	

Rev. Description Date By

LEGEND

- PROPERTY
- AFFORDABLE HOUSING LAND
- ECOLOGICAL MITIGATION AREA
- WOODLAND AREA
- LANDSCAPE AREA

STONE CROSS ROAD

LOWER HIGH STREET

Broadwater Lodge

Summerfields

Heronpale

Proposed Woodland

El Sub Sta

Attenuation Basin

Gabion Wall

Pumping Station

POS

LAP

Landscape Buffer

Wesley House

Pond

Pond

0 10 20 30 40 50m

Rydon Homes Ltd
Rydon House
Station Road
Forest Row
East Sussex
RH18 5DW
T 01342 825151
E-mail:design@rydon.co.uk

Lower High Street Wadhurst

Section 106 Plan

Drawing No: 10460-L-02

Date: September 2015
Drawn by: MAH
Scale: 1:500 @ A1
Rev: