

Internal legal ref: MCM186R

Date: 20th December 2021

MEMORANDUM

Service Manager – Strategy and Planning
to FAO: Matthew Worsley
RR/2021/1608/P

copies to Amy Fearn
Land Charges
Graeme Quinnell

**Re: Section 106 Agreement
Former Ashwood Nursing Home, Heathfield Road, Burwash Common
Planning Application: RR/2021/1608/P**

We attach a copy of the completed Section 106 Agreement in respect of the above application.

Please proceed to issue the planning consent and we would be grateful if you could forward to me a copy for my file.

The main requirements of the Section 106 Agreement provide for the following:

- Provision of 2 dwellings as affordable housing (tenure to be agreed) and nominations agreement, or payment in lieu (Additional Affordable Housing Contribution) in the event that it is demonstrated that a Registered Provider cannot be found to take the units;
- Affordable Housing Contribution in the sum of 0.2 of an affordable housing unit; and
- Payment of a Monitoring Fee calculated in light of the Affordable Housing provision above.

Please ensure that the Section 106 Agreement is redacted accordingly if placed on public file/website or if copies are given to the public.

DMH Stallard have acted for Rother District Council in relation to this matter. The internal legal file is to be closed and will be retained in this office for three months and then archived at the Council's Corporate off-site storage facility. It will be retained there for six years and then disposed of.

LAND CHARGES – I would be grateful if you could make the appropriate entry in the Register of Local Land Charges and let me know when this has been completed. The land against which the S106 Agreement should be registered is shown edged red on the plan at Appendix 1.

With kind regards,

Legal Services

DATED 20th of December 2021

ROTHER DISTRICT COUNCIL (1)

and

ARTEMIS DESIGN & BUILD LIMITED (2)

and

DAVID ANDREW HUNT (3)

and

NICHOLAS JOHN COLLINS GREEN (4)

and

TREVOR DIGHTON (5)

PLANNING OBLIGATION BY AGREEMENT

made pursuant to Section 106 of the Town and Country
Planning Act 1990 (as amended) relating to the development of
Former Ashwood Nursing Home, Heathfield Road, Burwash Common

Planning Application: RR/2021/1608/P

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

Legal Ref: MCM186R

DATED.....20th December..... 2021

This Deed is made between:

- (1) **ROTHER DISTRICT COUNCIL** of Town Hall Bexhill-on-Sea East Sussex TN39 3JX ("the Council");
- (2) **ARTEMIS DESIGN & BUILD LIMITED** (Co. Reg. No. 09166401) whose registered office address is at 50 Quinnell Drive, Hailsham, East Sussex BN27 1QN ("the First Owner");
- (3) **DAVID ANDREW HUNT** of Cherry Tree Cottage, Main Road, Hadlow Down Road, East Sussex TN22 4HS ("the Second Owner");
- (4) **NICHOLAS JOHN COLLINS GREEN** of 12 Kentish Mansions, London Road, Tunbridge Wells TN1 1DD ("the Third Owner"); and
- (5) **TREVOR DIGHTON** of 32 Boyne Park, Tunbridge Wells TN4 8ET ("the Mortgagee").

INTRODUCTION

1. The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
2. The First Owner is the legal freehold owner of the Land which is registered at the Land Registry with absolute title under Title Numbers ESX175371 and ESX63141, subject to a charge dated 23 December 2019 for the benefit of the Mortgagee.
3. The Second Owner is the beneficial freehold owner of Plot 1 (being part of the Land) for which a transfer was entered into between the First Owner and the Second Owner on 26 February 2021 and the transfer is in the course of registration at the Land Registry.
4. The Third Owner is the beneficial owner of Plot 2 (being part of the Land) for which a transfer was entered into between the First Owner and the Third Owner on 26 February 2021 and the transfer is in the course of registration at the Land Registry.
5. The Application has been submitted to the Council and the parties have agreed to enter into this Deed in order to secure the provision of Affordable Housing as part of the Development.

6. The Council, having regard to the provisions of the Rother Local Plan and all other material considerations, resolved that Planning Permission should be granted for the Development subject to the prior completion of this Deed and to the conditions to which the Planning Permission is expressed to be subject.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

1.1 For the purposes of this Deed the following expressions shall have the following meanings:

"1990 Act"	the Town and Country Planning Act 1990.
"Additional Affordable Housing Contribution"	the financial contribution which may be payable by the Owners to the Council pursuant to Parts 3 and 4 of Schedule 1;
"Affordable Housing"	local housing provided to specified eligible households whose needs are not met by the market. Affordable Housing should: <ul style="list-style-type: none">• meet the needs of eligible households including availability at a cost low enough for them to afford determined with regard to local incomes and local house prices; and• include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted for the subsidy to be recycled for alternative affordable housing provision in Rother District.
"Affordable Housing Contribution"	the financial contribution which is payable by the Owners to the Council pursuant to Parts 2 and 4 of Schedule 1;
"Affordable Housing Scheme"	the written scheme to be approved by the Council setting out the proposed Registered Provider and the Affordable Housing Tenure Mix.
"Affordable Housing Tenure Mix"	the tenure as shall be agreed in writing by the Director prior to the Commencement of Development), including either Shared Ownership Units, Affordable

Rent Units and / or Social Rent Units.

“Affordable Housing Units”

the two (2) Dwellings as shown on Plan 2 and edged red on Plan 3, to be provided in the Affordable Housing Tenure Mix and any associated amenity land, to be constructed on the Land as part of the Development, and “Affordable Housing Unit” shall be construed accordingly.

“Affordable Rent”

a rent set in accordance with the Government’s rent policy for social rent or affordable rent, and is at least 20% below Local Market Rents and no more than the total applicable Local Housing Allowance rate for Sussex East (including Service Charges where applicable) SAVE THAT the rent charged under all lettings may be increased or decreased annually in line with the Government’s rent policy.

“Affordable Rented Housing”

affordable housing for rent that meets all of the following conditions:

- (a) let at an Affordable Rent;
- (b) the landlord is a Registered Provider; and
- (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision in Rother District

and which shall be offered for rent by a Registered Provider in accordance with the terms of this Deed.

“Affordable Rented Units”

any Affordable Housing Units to be provided as Affordable Rented Housing as approved by the Affordable Housing Scheme, and “Affordable Rented Unit” shall be construed accordingly.

“Application”

the application for detailed planning permission validated on 25 June 2021 submitted to the Council for the Development and allocated reference number RR/2021/1608/P.

“Assured Tenancy”	an assured tenancy agreement granted pursuant to the Housing Act 1988 and the Housing Act 1996 (or such other form of tenancy as may be prescribed from time to time by Homes England as offering to residential tenants of Registered Providers a similar measure of security and approved by the Council in writing).
“BRMA”	Broad Rental Market Area set by the Valuation Office Agency on behalf of the Government.
“Choice Based Lettings System”	the national system of allocating tenancies by allowing persons on the Council’s housing waiting list to bid for properties in the Council’s administrative area or any similar system as may replace it from time to time.
“Commencement of Development”	the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out and “Commence Development” shall be construed accordingly.
“Development”	the development of the Land for demolition of existing buildings and redevelopment of site to provide 12 residential units, car parking, cycle and refuse facilities and associated works pursuant to the Planning Permission.
“Director”	the Council’s Director of Place and Climate Change from time to time in place, and any role which may supersede or incorporate such responsibilities in the future;
“Due Date”	the date specified or the occurrence of the event triggering the making of a payment or the undertaking of an act or the cessation of an activity under the terms of this Deed.
“Dwelling”	a dwelling (including a house flat or maisonette) to be

constructed pursuant to the Planning Permission and "Dwellings" shall be construed accordingly.

"Homes England"

the housing land and regeneration agency for England which expression shall include any successor or replacement organisation to Homes England and as the context so requires the functions conferred on the body known as the Regulator of Social Housing and shall include any successor regulatory body.

"Index"

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 and "Index Linked" shall be construed accordingly.

"Interest"

interest at the rate of 4% over the base lending rate of the Bank of England for the time being.

"Land"

Former Ashwood Nursing Home, Heathfield Road, Burwash Common as shown edged red on Plan 1.

"Local Housing Allowance"

rates that are set by the Valuation Office Agency for different size properties that are used in the calculation of housing benefit for tenants renting from private landlords based on private market rents paid by tenants in the BRMA relevant to the Land.

"Local Market Area"

the parish of Burwash and the adjoining parishes in Rother District.

“Local Market Rent”	the rent (inclusive of Service Charges, where applicable) at which properties comparable to the subject Affordable Housing Unit in terms of location are being commonly let in the Local Market Area.
“Long Lease”	the appropriate form of model lease for a Shared Ownership flat or house published by Homes England (as may be amended from time to time) and which lease shall provide for a long lease of 125 years from the date of its grant and with no unusual or otherwise unduly onerous or burdensome covenants on the lessee.
“Market Dwelling(s)”	any Dwelling which is not an Affordable Housing Unit.
“NDSS”	the Technical Housing Standards – Nationally Described Space Standard published by the Department of Communities and Local Government in March 2015 and includes any amendment or replacement thereof and if withdrawn without replacement refers to such space standards as the Council may itself adopt and apply for the purposes hereof.
“Nominations Agreement”	an agreement entered into by the Registered Provider granting 100% nomination rights to the Council on both initial lets and sales and relets and sales of the Affordable Housing Units to Qualifying Persons with a Local Connection, such agreement to be substantially in the form at Schedule 2.
“Occupy, Occupation” and “Occupied”	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.

“Owners”	the First Owner, the Second Owner and the Third Owner together.
“Phase 3”	that part of the Development shown marked as “Phase 3” and hatched red on Plan 4.
“Plan 1”	the plan attached to this Deed at Appendix 1, showing the Land.
“Plan 2”	the plan attached at Appendix 2, detailing the layout and type of the Affordable Housing Units (unless otherwise agreed in writing with the Council).
“Plan 3”	the plan attached to this Deed at Appendix 3, showing the Affordable Housing Units edged in red (unless otherwise agreed in writing with the Council).
“Plan 4”	the plan attached to this Deed at Appendix 4, showing Phase 3.
“Plan 5”	the plan attached to this Deed at Appendix 5, showing Plot 1.
“Plan 6”	the plan attached to this Deed at Appendix 6, showing Plot 2.
“Plot 1”	that part of the Land shown edged in red on Plan 5.
“Plot 2”	that part of the Land shown edged in red on Plan 6.
“Planning Permission”	the full planning permission subject to conditions to be granted by the Council pursuant to the Application and shall include any planning permission granted or obtained in respect of the Planning Permission pursuant to an application relating to the Planning Permission under Section 73 of the 1990 Act unless the Council advises the Owners that the Council requires fresh planning obligations to be entered into in relation to such planning permission.

**“Qualifying Person(s)
with a Local Connection”**

- (1) in respect of the Affordable Rented Units, means a person who is in need of Affordable Housing and is eligible to join the Council’s housing register who is not easily able to compete in the local housing market and who has a “Local Connection” which shall mean (in no particular order one or more of the following):-
- a) has resided in the District of Rother for a period of at least three (3) out of the preceding five (5) years as their only or principal home (not in a caravan that is sited on an unlicensed site, or a non-permanent or holiday site);
 - b) has close relatives who reside in the District of Rother as their only or principal home and have done so for at least the previous five (5) years (close relatives being parents, adult children or brothers or sisters, including corresponding step relationships (and grandparents, grandchildren, aunts or uncles and non adult children will only be considered as a local connection in certain circumstances as agreed by the Director;
 - c) has (or any family member included the application has) permanent paid employment (or a confirmed offer of such) in the District of Rother;
 - d) applicants who the Council has accepted as homeless or threatened with homelessness under Part VII of the Housing Act 1996;
- (2) in respect of the Shared Ownership Units, means a person who is in need of Affordable Housing and the household or member of the same household can demonstrate a local connection to Rother by either; permanent residency, employment or family living in the district and; where initial eligibility assessments have been approved by the Help to Buy Agent, and subject

to the Registered Provider Assessment including the Capital Funding Guide.

- "Registered Provider"** any registered provider from the list in Schedule 3 who in is registered with Homes England pursuant to the Housing and Regeneration Act 2008 and has not been removed from the register and which is first approved in writing by the Director (such approval not to be unreasonably withheld or delayed).
- "Service Charge"** a charge in addition to any rent payable in respect of an Affordable Housing Unit which covers repairs, maintenance and cleaning for communal areas, the structure of the building, buildings insurance and the landlord's administration or management charges.
- "Services"** mains services and access via an adopted highway and including gas, electricity foul and surface water drainage potable water and telecommunications (including broadband) where connection is available in the area.
- "Shared Ownership"** a type of Affordable Housing which allows a purchaser to buy a share of a Shared Ownership Unit under a Long Lease in a form prescribed by Homes England to ensure that leases are mortgageable and which contains provisions whereby there is a limit on the initial equity share to be sold off and a restricted rent on the balance of the equity unsold as at the date of the grant of the Long Lease.

"Shared Units"	Ownership	any Affordable Housing Units for Shared Ownership as approved by the Affordable Housing Scheme, and "Shared Ownership Unit" shall be construed accordingly.
"Social Rented Units"		any Affordable Housing Units to be let at a Social Target Rent as approved by the Affordable Housing Scheme, and "Social Rented Unit" shall be construed accordingly.
"Social Target Rent"		a rent which does not exceed the guideline target rents as determined through the national rent regime from time to time and no more than the total applicable Local Housing Allowance rate for Sussex East (including service charges where applicable) SAVE THAT the rent charged under all lettings may be increased or decreased annually in line with the Government's rent policy.
"Transfer"		the freehold transfer or long lease of at least 125 years.
"Working Day"		any day other than a Saturday, Sunday, a bank holiday or a public holiday in England.
"Zone Agent"		Local Home Buy Agent (or any other body appointed in substitution therefor) appointed by Homes England which acts as a first point of contact for families and single households seeking to buy a home through Homes England's Home Buy affordable home ownership products in the South East of England the Agent first establishing whether applicants meet eligibility criteria before assessing their financial circumstances to ensure that they can afford home ownership longer term.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 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 unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed 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 the successors to its statutory function.
- 2.7 Any obligation not to do something includes an obligation not to cause or permit the doing of that thing.
- 2.8 References to "Land" include all or any part of it.
- 2.9 The headings and contents list are for reference only and shall not affect construction.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling the parties to enter into this Deed.

3.2 The covenants, restrictions and requirements imposed upon the Owners and the Mortgagee under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority for the area within which the Land is situated against the Owners and the Mortgagee.

3.3 The obligations in this Deed comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

4 CONDITIONALITY

This Deed shall come into effect immediately save for Clause 5 which shall come into effect upon the grant of the Planning Permission.

5 COVENANTS

The Owners and the Mortgagee hereby covenant with the Council to observe the covenants, restrictions and obligations contained in this Deed at Schedule 1 hereto.

6 MISCELLANEOUS

6.1 The First Owner shall pay to the Council on completion of this Deed their legal costs incurred in the negotiation, preparation and execution of this Deed.

6.2 This Deed shall be registrable as a Local Land Charge by the Council.

6.3 Where the agreement, approval, consent or expression of satisfaction is required by the Owners from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Director.

6.4 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

6.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) they are modified by any statutory procedure or expire prior to the Commencement of Development.

6.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission).

- 6.7 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.
- 6.8 The covenants and obligations given by any of the parties hereto shall attach to the Land and each and every part of it and shall bind their successors in title and assignees or any person claiming by, under or through them.
- 6.9 This Deed 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 where specifically provided for in this Deed 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 Deed (and their respective successors in title) may rescind or vary this Deed without the consent of any third party.
- 6.10 The Owners hereby AGREE and DECLARE 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 the officers of the Council (or their nominated representatives) at their own or at the Council's risk to gain access to the Land in order to monitor compliance with this Deed following Commencement of Development.
- 6.11 All approvals certificates consents agreements satisfactions confirmations or calculations (or anything of a similar nature) that may be requested by the Owners and/or given by the Council or their officers in accordance with this Deed 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.
- 6.12 Where this Deed 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 the Owners covenant with the Council that if the notice of a Due Date is not given in accordance with this Deed the Council shall be entitled in its reasonable discretion to determine the Due Date and shall give notice thereafter to the Owners of its determination

7 WAIVER

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall

constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8 DISPUTES

8.1 All differences and disputes which may arise between the parties hereto concerning this Deed shall:-

8.1.1 where the difference or dispute relates to the construction or interpretation of this Deed be referred to the determination (as an expert and not as an arbitrator) of an independent leading conveyancing solicitor or planning counsel agreed upon by the parties in dispute but who in default of such agreement shall be appointed by the President of the Law Society of England or the President of the Bar Association (as applicable) on the application of any of the parties in dispute;

8.1.2 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;

8.1.3 where the difference of dispute relates to the Council refusing or failing to give its agreement, approval or consent or dispensation of satisfaction be referred to the determination (as expert and not as arbitrator) of an independent chartered surveyor being a partner or director practising in a leading firm of surveyors based in the South East of England or London and experienced in the matter in dispute agreed upon by the parties in dispute or in default of that agreement appointed by the President of the Royal Institute of Chartered Surveyors on the application of any of the parties in dispute.

- 8.2 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 either Clauses 8.1.1 or 8.1.2 hereto is applicable.
- 8.3 Except as aforesaid any expert appointed pursuant to Clauses 8.1.1 or 8.1.2 or 8.1.3 or any other person shall:-
- 8.3.1 on his appointment serve written notice thereof on the parties in dispute;
- 8.3.2 consider any written representations by or on behalf of those parties which are received by him within 20 Working Days of such service and immediately forward a copy of the written representation of one party to the other party;
- 8.3.3 allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within 15 Working Days of receipt by the other party thereof;
- 8.3.4 have an unfettered discretion to determine the reference to him;
- 8.3.5 serve notice of his determination as soon as he has made it and in any event not more than 25 Working Days after the conclusion of any hearing that takes place or 25 Working Days after he received any file or written representation;
- 8.3.6 give full and clear reasons for his decision; and
- 8.3.7 be paid his proper fee and expenses in connection with such reference by the parties in dispute 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.

8.4 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, consequential and interim orders and relief.

9 COVENANTS NOT BINDING

9.1 In this Clause 9.1 the following words and expressions shall have the following meanings:

Charge a mortgage, charge or other security or loan documentation granting a security interest in the Affordable Housing Units (or any number of them) in favour of the Chargee;

Chargee any mortgagee or chargee of the Registered Provider of the Affordable Housing Units (or any number of them) and any receiver (including an administrative receiver) and manager appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including housing administrator;

Date of Deemed Service in each instance where a Chargee has served a Default Notice under Clause 9.2.1(a):

(a) in the case of service by delivery by hand of the Default Notice to the Council offices at Town Hall Bexhill-on-Sea East Sussex TN39 3JX during 9 am to 4.30 pm the date on which the Default Notice is so delivered; or

(b) in the case of service by using first class registered post to the Council's offices at Town Hall Bexhill-on-Sea East Sussex TN39 3JX, the second Working Day after the date on which the Default Notice is posted (by being placed in a post box or being collected by or delivered to Royal Mail) PROVIDED THAT the Chargee is

able to evidence that the Default Notice was actually delivered to the Council (by Royal Mail proof of delivery or otherwise);

Default Notice

a notice in writing served on the Council by the Chargee under Clause 9.2.1(c) of the Chargee's intention to enforce its security over the relevant Affordable Housing Units;

Moratorium Period

in each instance where a Chargee has served a Default Notice, the period from (and including) the Date of Deemed Service on the Council of the Default Notice to (and including) the date falling three months after such Date of Deemed Service (or such longer period as may be agreed between the Chargee and the Council).

9.2 The Affordable Housing Units shall be used only for the purposes of Affordable Housing but the obligations in Schedule 1 in this Deed shall not bind the following:

9.2.1 a tenant of an Affordable Rented Unit who has exercised a statutory right to acquire or right to buy such Dwelling or successor in title to such tenant or any mortgagee or chargee exercising any of its powers or pursuant to its mortgage or charge of such Affordable Rented Unit;

9.2.2 a lessee of a Shared Ownership Unit who has staircased his interest in such Dwelling to 100% of the equity and owns the entire Shared Ownership Unit or successor in title to such lessee or any mortgagee or chargee of such Shared Ownership Unit; and

9.2.3 a Chargee or any persons or bodies deriving title through such Chargee PROVIDED THAT prior to seeking to dispose of the relevant Affordable Housing Units pursuant to a default under the terms of the Charge such Chargee must:

- a) serve a Default Notice on the Council by delivery by hand to the Council's offices at Town Hall Bexhill-on-Sea East Sussex TN39 3JX during 9 am to 4.30 pm or using first class registered post to the Council's offices at Town Hall Bexhill-on-Sea East Sussex TN39 3JX

in either case addressed to the Director and Legal Services Manager of the Council prior to seeking to dispose of the relevant Affordable Housing Units;

- b) when serving the Default Notice, provide to the Council official copies of the title registers for the relevant Affordable Housing Units;
- c) not exercise its power of sale over or otherwise dispose of the relevant Affordable Housing Units before the expiry of the Moratorium Period; and
- d) use reasonable endeavours during the Moratorium Period to complete a disposal of the relevant Affordable Housing Units to another Registered Provider or body nominated by the Council or to the Council (provided always this places no obligation on the Council) for a consideration not less than the amount due and outstanding under the terms of the relevant Charge including all accrued principal monies, interest and reasonable costs and expenses and if such disposal has not completed within the Moratorium Period, the Chargee shall be entitled to dispose of the relevant Affordable Housing Units free from the obligations in Schedule 1 in this Deed which provisions shall determine absolutely.

9.3 The obligations contained in this Deed shall not be binding upon or enforceable against:

9.3.1 any statutory undertaker with any existing interest in any part of the Land or acquires an interest in any part of the Land for the purpose of the supply of electricity gas water or sewerage drainage or public telecommunication services necessary for the Development; and

9.3.2 individual owners occupiers or tenants and their mortgagees of individual Dwellings and their successors in title in their capacity as such (except in relation to the obligations in Schedule 1 in respect of the Affordable Housing Units which shall bind subject to Clause 9.1 above and in respect of all Dwellings in relation to the restrictions on occupation)

PROVIDED THAT for the avoidance of doubt the release of liability shall not apply to any person carrying out the Development.

9.4 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land

but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

10 INDEXATION

The Affordable Housing Contribution and the Additional Affordable Housing Contribution (or any part thereof) shall be Index Linked to the Index so that the sum actually payable shall be recalculated by the application of the following formula:

$a = (b \times c) \text{ divided by } d$

where:

- a is the recalculated sum actually payable on the date of the said contribution (or any part thereof)
- b is the amount of the said contribution or fee specified in this Deed
- c is the Index for the month preceding the relevant date of payment of the said contribution (or part thereof)
- d is the Index for the month preceding this Deed

c divided by d is greater than or equal to 1

11 NOTICE OF COMMENCEMENT AND CHANGE IN OWNERSHIP

The Owners agree with the Council to give to the Council:

- 11.1 written notice of the intended Commencement Date 7 Working Days prior to that date;
- 11.2 within 7 Working Days of the Commencement of Development written notice of the Commencement of Development; and
- 11.3 immediate written notice of any change in ownership of any of their respective interests in the Land occurring before all the obligations under this Deed 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 Land or unit of occupation purchased by reference to a plan.

12 NOTICES

- 12.1 Any notice consent approval or other communication required to be given under this Deed shall be in writing and shall be delivered personally or sent by prepaid first class post or recorded delivery post.
- 12.2 The address for service of any such notice, consent, approval or other communication shall be on all of the parties at the addresses set out at the head of this Deed or such other address for service as shall have been previously notified in writing.
- 12.3 Notices to any successor in title to the Owners shall be that successor in title's last known address.
- 12.4 A notice, consent, approval or other communication under this Deed shall be deemed to have been served as follows:
- 12.4.1 if personally delivered, at the time of delivery;
 - 12.4.2 if sent by pre-paid first class post, at the expiration of 2 Working Days after envelope containing the same was delivered into the custody of the postal authority within the United Kingdom;
 - 12.4.3 if sent by recorded delivery, at the time delivery was signed for; and
 - 12.4.4 if a notice, consent approval or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served at 9:00am on the next Working Day
- 12.5 For the avoidance of doubt, where proceedings have been issued in an English Court the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

13 OWNERSHIP

The Owners warrant that no person other than the Owners and the Mortgagee has any legal or equitable interest in the Land.

14 JURISDICTION

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

15 DELIVERY

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

16 MORTGAGEE'S CONSENT

16.1 The Mortgagee hereby consents to the completion of this Deed and declares that from the date of this Deed its interest in the Land shall be bound by the terms of this Deed.

16.2 The Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owners.

SCHEDULE 1

AFFORDABLE HOUSING

The Owners covenant with the Council as follows.

Part 1 - Provision of Affordable Housing

1. Not to cause or permit the Occupation of any Dwelling on Phase 3 unless and until:
 - 1.1 The Affordable Housing Units have been constructed ready for Occupation as shown on the Affordable Housing Plan;
 - 1.2 The Affordable Housing Scheme has been approved by the Council in writing, confirming the Affordable Housing Tenure Mix;
 - 1.3 The Affordable Housing Units have been constructed conforming with the NDSS and Class M4(2) of the Building Regulations 2016; and
 - 1.4 The Affordable Housing Units have been Transferred to a Registered Provider (and a copy of said Transfer has been provided to the Council), including as a minimum the following terms:
 - 1.4.1 free from financial encumbrances;
 - 1.4.2 with all rights of access (including access to a highway built to adoption standards or an existing public highway);
 - 1.4.3 with all the Affordable Housing Units being supplied with Services and with rights to Services;
 - 1.4.4 with no unusual or onerous covenants included in the Transfer which conflict with the nature of the use of the Affordable Housing Land and Affordable Housing Units; and
 - 1.4.5 with vacant possession on the date of the Transfer and full title guarantee deduced in accordance with the Land Registration Act 2002.

2. Not to Occupy or permit or allow the Occupation of any Affordable Housing Unit until the Registered Provider to whom the Affordable Housing Units are transferred has entered into a Nominations Agreement with the Council.
3. Not to use or Occupy or dispose or permit or allow the use or Occupation of any Affordable Rented Unit other than available to rent other than on fixed term assured short hold tenancies and in accordance with Rother District Council's Tenancy Strategy 2012 or such other similar document as may replace it from time to time and for nomination by the Council as to 100% of the initial lettings and 75% of all subsequent lettings through the Nominations Agreement and Choice Based Lettings System.
4. In nominating persons for the Affordable Housing Units the Council will give priority to persons (or couples where one (1) person) who being on its housing register are Qualifying Persons with a Local Connection PROVIDED THAT in respect of Shared Ownership Units where the initial sale or resale is referred back to a Zone Agent if the Owners satisfy the Director that there are no applicants who are Qualifying Persons with a Local Connection, the Owners may on condition that they first obtain the consent in writing of the Director (such consent not to be unreasonably withheld) allocate that Shared Ownership Unit otherwise than in accordance with the terms of this Deed.
5. Not to use or Occupy or dispose of or permit or allow the use or Occupation of any Shared Ownership Unit other than for Shared Ownership by way of a Long Lease.
6. If any tenant of an Affordable Rented Unit is in arrears for a period of three (3) consecutive months (equal to three (3) consecutive months of gross rent) then the Owners shall consult with the Director on how to best support and advise the tenant on how to meet his or her rent obligations.
7. Any Service Charge payable in respect of an Affordable Housing Unit and any associated Affordable Housing Land shall be set in accordance with the actual costs of service provision, charged separately to the rent and be affordable to those purchasing and renting Affordable Housing Units.

Part 2 - Affordable Housing Contribution

8. Prior to Commencement of Development, to pay the Affordable Housing Contribution to the Council in lieu of the provision of 0.2 x Affordable Housing Unit on the Land which would otherwise be required and not to pay such sum any later than 28 days from the date of Commencement of Development PROVIDED THAT where such payment is not

made by the date on which it is due to be paid then Interest shall be payable thereon to the Council from the date that the payment became due to the date of payment such sum to be recoverable as a simple debt.

9. Not to cause or permit the Occupation of the Development unless and until the Affordable Housing Contribution has been paid to the Council pursuant to Paragraph 8 of this Schedule.

Part 3 - Additional Affordable Housing Contribution

10. In the event that the Transfer of the Affordable Housing Units to a Registered Provider cannot be secured in line with Paragraph 1.4 of this Schedule, to seek the Council's written approval that an Additional Affordable Housing Contribution may be payable in lieu of compliance with Part 1 of this Schedule (i.e. provision of the Affordable Housing Units).
11. In the event that the Council have given its written approval that the Additional Affordable Housing Contribution is payable in lieu of provision of the Affordable Housing Units:

11.1 not to cause or permit the Occupation of any Dwelling on Phase 3 unless and until the Owners have paid to the Council the Additional Affordable Housing Contribution in lieu of the provision of two (2) Affordable Housing Units on the Land which would otherwise be required and not to pay such sum any later than 28 days from the date of Commencement of Development PROVIDED THAT where such payment is not made by the date on which it is due to be paid then Interest shall be payable thereon to the Council from the date that the payment became due to the date of payment such sum to be recoverable as a simple debt; and

11.2 the provisions of Part 1 of this Schedule shall no longer apply.

Part 4 - Calculating the Affordable Housing Contribution and Additional Affordable Housing Contribution

12. The Affordable Housing Contribution together with any Interest and Indexation shall be calculated in accordance with the following:

Affordable Housing Contribution = (A x B) x C

Where:

A = the size in metres² of the typical 2 (two) bed (4) four person two-storey house (including built-in storage areas) as set out in the NDSS;

B = one thousand and thirty pounds (£1,030) being the established available subsidy per metre² of any residential development in Rother or such other amount as the Council may reasonably determine;

C = 0.2

13. The Additional Affordable Housing Contribution together with any Interest and Indexation shall be calculated in accordance with the following:

Additional Affordable Housing Contribution = (A x B) x C

Where:

A = the size in metres² of the typical 2 (two) bed (4) four person two-storey house (including built-in storage areas) as set out in the NDSS;

B = one thousand and thirty pounds (£1,030) being the established available subsidy per metre² of any residential development in Rother or such other amount as the Council may reasonably determine;

C = two (2)

Part 5 – Monitoring Fees

14. Prior to Commencement of Development of Phase 3, the Owner shall pay to the Council:

14.1 five hundred pounds (£500) in the event of the provision of the Affordable Housing Units pursuant to Part 1 of this Schedule; and

14.2 5% of the total of the Affordable Housing Contribution and the Additional Affordable Housing Contribution (if relevant)

towards the Council's costs of monitoring and management of this Deed.

15. Not to cause or permit Commencement of Development of Phase 3 unless and until the sums due under paragraph 14 above have been paid to the Council in full.

SCHEDULE 2
Nominations Agreement

DEED OF NOMINATION RIGHTS

DATED **20**

ROTHER DISTRICT COUNCIL

and

[XXX]

Deed of Nomination Rights relating to [XXX]
East Sussex

Vicarage Lane
Hailsham
East Sussex BN27 2AX
Ref: MKN

THIS DEED OF NOMINATION RIGHTS is made the day of 20

BETWEEN:

- (1) ROTHER DISTRICT COUNCIL of Town Hall, Bexhill on Sea, East Sussex
TN39 3JX ('the Council')
- (2) [XXX] (the "Registered Provider")

RECITALS

- 1. The Registered Provider has acquired the [Land which is registered at HM Land Registry under Title Number(s) XXX] and pursuant to the provisions of the Main Agreement the Registered Provider has agreed to grant to the Council the nomination rights hereinafter contained in respect of the Affordable Housing Units.

13.1 NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

[REMEMBER TO CHECK AGAINST THE MAIN AGREEMENT DEFINITIONS TO ENSURE ALL TERMS USED IN THIS NOMINATION AGREEMENT ARE EITHER DEFINED IN THE MAIN AGREEMENT OR SET OUT BELOW AT CLAUSE 1.2]

- 1.1 The terms defined in the Main Agreement shall have the same meaning herein unless specified otherwise in clause 1.2 below or if the context otherwise requires.

- 1.2 In this Deed the following expressions shall have the following meanings:

Affordable Housing Units	means the [XXX] Dwellings comprising the [Affordable Rented Units] and [Shared Ownership Units] as set out in the schedule hereto;
Allocation Scheme	means the scheme adopted by the Council from time to time for

	determining priorities and the procedure to be followed in allocating housing accommodation;
Alternative Tenant	means a person nominated by the Registered Provider being a Qualifying Person with a Local Connection;
Capital Funding Guide	means the rules and procedures published by Homes England on 4 th November 2016 (as amended) or any successor documents issued by Homes England;
Charge	means a mortgage, charge or other security or loan documentation granting a security interest in the Affordable Housing Land and/or the Affordable Housing Unit(s) (or any one or more of them) in favour of the Chargee;
Chargee	means any mortgagee or chargee of the Registered Provider of the Affordable Housing Land and/or the Affordable Housing Units (or any one or more of them) or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator;
Chargee's Duty	means the tasks and duties set out

	in [XXX] of the Main Agreement;
Data Protection Legislation	means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;
Eligible Purchaser	means a shared ownership buyer who meets the Help to Buy: Shared Ownership eligibility assessment AND the Registered Provider Assessment;
Handover Notice	means the prior written notice given in accordance with clause 4.3.1 by the Registered Provider to the Council of the Handover Date;
Handover Date	means the date(s) that the Shared Ownership Unit(s) will be ready for occupation;
Help to Buy Agents	means the body nominated by Homes England who assume administrative responsibility for all low cost home ownership products in a given area and the body to whom local authorities and housing providers must direct all households that are interested in accessing Help

	to Buy: Shared Ownership or any successor in function;
Help to Buy: Shared Ownership	means the government scheme for low cost home ownership products administered by the Help to Buy Agents and "Help to Buy" shall be construed accordingly or such other scheme as may replace it;
Homemove	means the letting scheme for the Affordable Rented Units or such other replacement scheme;
Housing Needs Manager	means the Council's Housing Needs Manager for the time being or such other person as may be appointed to carry out that function from time to time;
Initial Let	means the first letting of each newly constructed and previously unoccupied Affordable Rented Unit;
Initial Sale	means the first sale of a newly constructed and previously unoccupied Shared Ownership Unit;
Initial Sale Nomination Period	means the period of twelve (12) weeks commencing from the Handover Date;
Leaseholder Notice	means a notice received by the Registered Provider in relation to any existing Shared Ownership Unit from an existing leaseholder of a proposed onward sale or assignment in accordance with the alienation provisions (or equivalent)

	contained within the [lease];
Main Agreement	means the Agreement made under (inter alia) Section 106 of the Act in respect of the Site and dated [XXX] (a copy of which is annexed hereto) and which relates to planning permission reference [XXX];
Nominated Tenant	means in relation to Affordable Rented Units, a person being a Qualifying Person with a Local Connection nominated by the Council pursuant to its rights set out in this Deed;
Nominated Purchaser	means in relation to Shared Ownership Units, shared ownership buyers being a Qualifying Person with a Local Connection (part 2 only) nominated by the Council pursuant to its rights set out in this Deed;
Nomination Rights	means the rights granted by the Registered Provider to the Council to nominate in accordance with this Deed;
Qualifying Person with a Local Connection	(1) in respect of the Affordable Rented Units means a person who is in need of Affordable Housing and is eligible to join the Council's housing register who is not easily able to compete in the local housing market and who has a 'Local Connection' which shall mean (in no particular order one or more of the following):-

	<p>a) Has resided in the District of Rother for a period of at least three (3) out of the preceding five (5) years as their only or principal home (not in a caravan that is sited on an unlicensed site, or a non-permanent or holiday site)</p> <p>b) Has close relatives who reside in the District of Rother as their only or principal home and have done so for at least the previous five (5) years (close relatives being parents, adult children or brothers or sisters, including corresponding step relationships (and grandparents, grandchildren, aunts or uncles and non adult children will only be considered as a local connection in certain circumstances as agreed by the Service Manager -Community and Economy);</p> <p>c) Has (or any family member included the application has) permanent paid employment (or a confirmed offer of such) in the District of Rother</p> <p>d) applicants who the Council has accepted as homeless or threatened with homelessness</p>
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	<p>under Part VII of the Housing Act 1996</p> <p>(2) in respect of the Shared Ownership Units means a person who is in need of Affordable Housing and the household or member of the same household can demonstrate a local connection to Rother by either; permanent residency, employment or family living in the district and; where initial eligibility assessments have been approved by the Help to Buy Agent, and subject to the Registered Provider Assessment including the Capital Funding Guide;</p>
<p>Registered Provider Assessment</p>	<p>means the assessment conducted by the Registered Provider of individual applicants to ensure that they meet all eligibility criteria;</p>
<p>Re-Sale Shared Ownership Units</p>	<p>means any existing Shared Ownership Units in respect of which the Registered Provider:-</p> <p>(a) has received from the existing leaseholder thereof notice of a proposed onward sale or assignment in accordance with the alienation provisions (or equivalent) contained within the [lease] of the same; or</p> <p>(b) is entitled to dispose via the grant of a fresh [lease] (whether as a result of a surrender or</p>

	forfeiture of the previous [lease] or otherwise) and "Re-Sale Shared Ownership Unit" and "Re-Sale" shall be construed accordingly;
Re-Sale Nomination Period	means the period of twelve (12) weeks commencing from the date the Council receive notification from the Registered Provider that a Shared Ownership Unit has become available for Re-Sale under clause 4.4.2;
Re-Sale Event	means any existing Shared Ownership Unit which has become available for purchase (whether as a result of a surrender or forfeiture of the previous [lease] or otherwise);
Working Days	means any day from Monday to Friday (inclusive) but not including Christmas Day, Good Friday or any statutory bank holiday;

1.3 WORDS IMPORTING THE MASCULINE INCLUDE THE FEMININE AND VICE VERSA.

1.4 WORDS IMPORTING THE SINGULAR INCLUDE THE PLURAL AND VICE VERSA.

2. AGREEMENT

The parties hereby agree to comply with the provisions of this Deed for a period of ONE HUNDRED AND TWENTY FIVE (125) YEARS from the date hereof.

3. NOMINATION TERMS

- 3.1 The Council agrees to make nominations to the Affordable Housing Units using the procedures in use by the Council at the time of nomination.
- 3.2 The Registered Provider covenants with the Council:
 - 3.2.1 to use the Council's Standard procedures to give notice when a vacancy arises;
 - 3.2.2 to grant the Nomination Rights to the Council upon the terms contained in this Deed and that the Affordable Housing Units shall only be occupied by persons who meet the criteria set out in this Deed and in accordance with the Allocation Scheme (unless otherwise agreed in writing by the Housing Needs Manager);
 - 3.2.3 to comply with the covenants in the Main Agreement in relation to the use and occupation of the Affordable Housing Units provided or to be provided at the [Site] and acknowledges and agrees that a 'Local Connection' is required to be demonstrated and it will need to be evidenced with copies of any documentary evidence submitted to the Council to demonstrate eligibility within the terms of this Deed and the Council shall decide whether such evidence meets the requirements of a 'Local Connection'.
- 3.3 The Council reserves the right to exercise its discretion when considering allocation under the terms of this Deed in order to ensure a balanced and mixed community is maintained.
- 3.4 Nothing contained or implied in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.
- 3.5 Both parties will comply with all applicable requirements of the Data Protection Legislation.

4. NOMINATION PROCEDURE FOR AFFORDABLE RENTED HOUSING AND SHARED OWNERSHIP UNITS

- 4.1 In respect of the Affordable Housing Units constructed on the [Site] the Registered Provider covenants with the Council that the Council shall have the right to nominate up to 100% of the Initial Lets and Initial Sales of the Affordable Housing Units and [XXX] of subsequent lettings and Re-Sales.

Affordable Rented Units

- 4.2 Before all Initial Lets of the Affordable Rented Units:
- 4.2.1 The Registered Provider shall give to the Council a minimum of 24 hours written notice prior to the Registered Provider publishing an advert via Homemove providing the anticipated date on which each Affordable Rented Unit will be available for occupation and the Council shall within five (5) Working Days of the Affordable Rented Unit being advertised on Homemove supply to the Registered Provider the names and addresses of at least three (3) Nominated Tenants in respect of each Affordable Rented Unit;
- 4.2.2 Save as provided for in clauses 4.2.7 and 4.2.8 below the Registered Provider will by notice in writing offer an assured tenancy of the Affordable Rented Unit to the first Nominated Tenant and such Nominated Tenant shall have three (3) Working Days from the date of receipt of the notice in which to accept such an offer in writing; and
- 4.2.3 If the first Nominated Tenant does not accept such offer in writing within three (3) Working Days the Registered Provider will by notice in writing offer a tenancy of the Affordable Rented Unit to the second Nominated Tenant who shall have three (3) Working Days from the date of receipt of the notice in which to accept such offer in writing;
- 4.2.4 If the second Nominated Tenant does not accept such offer in writing within three (3) Working Days the Registered Provider will by notice in writing offer a tenancy of the Affordable Rented Unit to the third Nominated Tenant who shall have three (3) Working Days from the date of receipt of the notice in which to accept such offer in writing; and
- 4.2.5 In circumstances where any of the three (3) nominations referred to above have been offered to a Nominated Tenant whom the Council

have assessed as statutorily homeless and where the Nominated Tenant has refused an offer of accommodation (hereinafter referred to as a 'Relevant Nomination'), the Registered Provider must not offer a tenancy to the next Nominated Tenant unless and until the following have occurred:

- 4.2.5.1 the Registered Provider has served notice on the Council of the reasons why the Relevant Nomination has been refused; and
- 4.2.5.2 the Registered Provider has confirmed the Nominated Tenant was informed that the offer from the Registered Provider would be regarded as an offer from the Council in the discharge of its statutory duty;
- 4.2.5.3 the Council has confirmed the Registered Provider can proceed to offer a tenancy of the Affordable Rented Unit to the next Nominated Tenant;
- 4.2.6 For the avoidance of doubt the procedure set out in clauses 4.2.1 to 4.2.5 shall be repeated (which process may include the Register Provider re-advertising the relevant Affordable Rented Unit on Homemove if advised by the Council to do so) until such time as the Council notify the Registered Provider that they are permitted to offer a tenancy of an Affordable Rented Unit to an Alternative Tenant.
- 4.2.7 Subject to clause 4.2.8, in the event of the Registered Provider declining to accept a Nominated Tenant the Registered Provider shall update Homemove within 24 hours and confirm to the Council within three (3) Working Days written reasons for refusal ("the Refusal Notice") of the name of the Nominated Tenant and the Council shall within three (3) Working Days of receipt of the Refusal Notice supply to the Registered Provider the name and address of a further Nominated Tenant in respect of the Affordable Rented Unit by way of replacement and this process shall be repeated until such time as the Council confirm in writing that the Registered Provider can offer a tenancy of an Affordable Rented Unit to an Alternative Tenant.
- 4.2.8 If having received a Refusal Notice the Housing Needs Manager shall be of the opinion that the Refusal Notice has been issued

unreasonably then the Housing Needs Manager shall, instead of nominating another person, inform the Registered Provider in writing with reasons that the Refusal Notice is rejected and request the Registered Provider withdraw it and if the Registered Provider shall refuse to do so the provisions of clause 9 (dispute resolution) shall be applied and in no circumstances should the Registered Provider proceed to the next nomination where a nomination has been declined, without first obtaining agreement from the Council in writing to do so.

4.2.9 The Registered Provider shall not decline a Nominated Tenant where the Council has a statutory duty to house them under the current homelessness legislation unless there is a reasonable risk to other residents in that location from a member of the household of the Nominated Tenant or any other reason that must be agreed by the Council in writing.

4.2.10 Where an Affordable Housing Unit has been advertised and the ready to let date has been either delayed or withdrawn the Registered Provider shall inform the Council within twenty four (24) hours of becoming aware of any changes.

4.2.11 Subsequent Lettings

The Registered Provider further grants to the Council the right to nominate from its housing register a Nominated Tenant in respect of [XXX] of the Affordable Rented Units which become a true void. Where required to do so the Registered Provider may from time to time be asked to provide evidence of all voids generated and offered to the Council within a twelve (12) month period to demonstrate compliance with the Councils overall Nomination Rights. For the purpose of this Deed the definition of true and non true voids shall be as follows:

True voids comprise:

1. Voids within new build/newly rehabilitated schemes
2. Voids created through tenant moves to landlords where no reciprocal arrangements exist

3. Voids created through tenant transfers to another local authority where no reciprocal arrangements exist
4. Voids created by the death of a tenant where there is no statutory right of succession
5. Voids created by tenants buying or renting their own property in a private sector
6. Voids created by eviction or abandonment of property
7. Voids created by permanent decants

Non true voids comprise:

8. Voids created through tenant transfers where tenants move within the Registered Provider's own Housing Stock
9. Voids created through re housing via mobility schemes or other mobility schemes where a reciprocal arrangement exists
10. Voids created by decants who are returning

For the avoidance of doubt the nomination provisions set out in clause 4.2 shall apply to all Initial Lets and [XXX] of re-lets of the Affordable Rented Units.

Shared Ownership Units

- 4.3 Before the Initial Sale of all Shared Ownership Units:
 - 4.3.1 The Registered Provider shall give the Council the Handover Notice not less than eight (8) weeks prior to the Handover Date and at all times during any period of marketing prior to the Handover Date the Registered Provider shall ensure that at least one Shared Ownership Unit is available for prospective purchasers to view; and
 - 4.3.2 Shared Ownership Units shall only be allocated to a Nominated Purchaser during any period of marketing before the Handover Date and during the Initial Sale Nomination Period SAVE THAT if no suitable Nominated Purchaser is available to be put forward after the Initial Sale Nomination Period AND the Council has been provided with such evidence, as it may reasonably require in order to demonstrate that sufficient marketing has taken place locally in Rother prior to the Handover Date and during the Initial Sale

Nomination Period then after the expiration of the Initial Sale Nomination Period the Registered Provider may make its own allocation in respect of the relevant Shared Ownership Unit PROVIDED ALWAYS that all shared ownership buyers must be an Eligible Purchaser AND FURTHER PROVIDED ALWAYS that where a Nominated Purchaser has applied following the expiration of the Initial Sale Nomination Period, priority over first refusal shall be given to such Nominated Purchasers in respect of all remaining Shared Ownership Units AND secondly, to prioritise offers to any Eligible Purchaser from adjoining districts.

- 4.4 In the case of [XXX] of all Re-Sale Shared Ownership Units:
- 4.4.1 On receipt of a Leaseholder Notice or on occurrence of a Re-Sale Event the Registered Provider must:
- 4.4.2 within twenty eight (28) Working Days of either receipt of a Leaseholder Notice or occurrence of a Re-Sale Event (as applicable), notify the Council in writing that a Shared Ownership Unit has become available for Re-Sale, such notification to include confirmation of the date of any Leaseholder Notice and the date on which the relevant Re-Sale Shared Ownership Unit is advertised and the means of advertisement;
- 4.4.3 the Re-Sale Shared Ownership Units shall be allocated to a Nominated Purchaser SAVE THAT if no suitable Nominated Purchasers are available to be put forward within the Re-Sale Nomination Period AND the Council has been provided with such evidence, as it may reasonably require in order to demonstrate that sufficient marketing has taken place locally in Rother prior and during the Re-Sale Nomination Period then after the expiration of the Re-Sale Nomination Period the Registered Provider may make its own allocation in respect of the relevant Re-Sale Shared Ownership Unit PROVIDED ALWAYS that all shared ownership buyers must be an Eligible Purchaser.

5. ENFORCEMENT

It is hereby agreed that the provisions of this Deed shall not be binding upon nor enforceable against the following:-

- 5.1 *[Note: to cross reference any applicable mortgagee protection provisions within the Main Agreement]* any Chargee disposing of the Affordable Housing Units (or any one or more of them) pursuant to any default under the terms of its mortgage or charge PROVIDED THAT the Chargee has first complied with the *[Chargee's Duty]* EXCEPT THAT the Council will retain the Nomination Rights as set out in this Deed in the event of a disposal of the Affordable Housing Units (or any one or more of them) (as applicable) to another registered provider of *[affordable housing]*;
- 5.2 a tenant of an Affordable Rented Unit who has exercised the right to acquire the whole of the Dwelling pursuant to section 180 of the Housing and Regeneration Act 2008 (or any equivalent statutory provision for the time being in force) in respect of a particular Affordable Housing Unit or any mortgagee or chargee of such tenant exercising any of its powers by or pursuant to its mortgage of the Affordable Rented Unit or any successor in title to or person deriving title from such tenant, mortgagee or charge; and
- 5.3 a Shared Ownership Unit lessee who has acquired the freehold reversion of the Affordable Housing Unit (if a house) or 100% equity in the *[lease]* of the Shared Ownership Unit (if a flat) or any mortgagee or chargee of such lessee exercising any of its powers by or pursuant to its mortgage of the Shared Ownership Unit or any assignee, transferee or successor in title to or person deriving title from such lessee, mortgagee or chargee.
6. The obligations contained in this Deed are covenants for the purpose of the Section 33 of the Local Government (Miscellaneous Provisions) Act 1982.
7. If the Registered Provider shall transfer the *[Affordable Housing Units or any of them]* 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.

8. The Registered Provider shall pay to the Council on or before the date of this Deed the Council's reasonable legal costs together with all disbursements incurred in connection with the preparation, negotiation and completion of this Deed.

9. DISPUTE RESOLUTION

9.1 In the event that any difference or dispute arises between the parties with regard to this Deed such matter shall in the first instance be referred to the Housing Needs Manager for the Council and [Lettings Manager or Sales Manager] for the Registered Provider (or any persons nominated by them to act on their behalf) who shall within ten (10) Working Days of the referral to them, negotiate in good faith and attempt to resolve the dispute. The parties agree that the Allocations Policy shall be the primary policy used to resolve disputes.

9.2 If the matter cannot be resolved as provided for in clause 9.1 then it shall be referred to the respective Chief Executive Officers of the Registered Provider and the Council (or any persons nominated by them to act on their behalf) who shall within twenty eight (28) Working Days of the referral to them negotiate in good faith and attempt to resolve the dispute.

9.3 If the matter cannot be resolved as provided for in clause 9.2 then either person referred to in clause 9.2 may refer it to be determined by a person chosen by the Chief Executive for the time being of the Chartered Institute of Housing. That person shall act as an expert and not an arbitrator but shall consider written representations made to him/her by the parties.

9.4 The parties agree that the decision of the person named in clause 9.3 shall be binding and that each party shall bear its own costs of resolving the dispute and share equally the costs of such person (unless otherwise directed by such person).

10. NOTICES

- 10.1 Any notice, confirmation, agreement, consent or other communication required or permitted to be given under this Deed shall be given in writing and addressed to:
- 10.1.1 For the Council: the Housing Needs Manager at the following e-mail address
housing-needs@rother.gov.uk
- 10.1.2 for the Registered Provider: [XXX]
or to such other person or address as one party shall notify to the other in writing from time to time.
- 10.2 Any notice provided in accordance with clause 10.1 shall be deemed to be served as described in clause 10.2.1 unless the actual time of receipt is proved.
- 10.2.1 By email to a party will be deemed served if sent on a business day before 4. pm on that day; or in any other case, on the next business day after the day on which it was sent.

11. SUPPLY OF INFORMATION AND MONITORING MEETINGS

- 11.1 The Registered Provider shall promptly provide to the Council upon reasonable request at any time any information in relation to the Affordable Housing Units relating to:-
- 11.1.1 waiting lists, allocation criteria, vacancies, allocations and (where applicable) rent levels and any policy relating to rent in advance payments;
- 11.1.2 any proposed or actual sales pursuant to any statutory or contractual right to buy;
- 11.1.3 any proposed or actual staircasing to 100% under any [lease];
- 11.1.4 such other information that the Council may reasonably require in order to enable it to ensure that the Registered Provider is at all times complying with the provisions of this Deed

11.2 If so requested by the Council and upon reasonable written notice from the Council the Registered Provider will attend monitoring meetings to consider and discuss its compliance with the provisions of this Deed and in particular the Registered Provider shall ensure that:-

11.2.1 any information requested by the Council pursuant to clause 11.1 shall be provided to it not less than five (5) Working Days prior to any such meeting; and

11.2.2 staff and agents with reasonable seniority and experience of the subject matter of this Deed attend any such meeting

PROVIDED THAT the Council shall not call such meetings more than once annually, unless the Council has reasonable grounds to believe that the Registered Provider is in material breach of any of its any obligations under this Deed (in which event the Council will set out these grounds in its written notice to the Registered Provider requesting such meeting)

12. GOVERNING LAW

This Deed shall be governed and interpreted in accordance with the law of England.

In witness whereof the parties hereto have duly executed this Deed on the day and year first before written

SCHEDULE OF AFFORDABLE HOUSING UNITS

Plot	Postal No.	Street	Town	Postcode	Type	Tenure

THE COMMON SEAL of
ROTHER DISTRICT COUNCIL
was affixed in the presence of

Executive Director

Member of the Council

SIGNED as a DEED by
affixing the Common Seal of
[] in the presence of

Authorised Signatory

Authorised Signatory

SCHEDULE 3
Registered Provider

Clarion Housing Group Limited

Hyde Housing Association Limited

Optivo Horizon Limited

Orbit Housing Association

Saxon Weald Housing Association

Moat Housing Group Limited

Places for People Group Limited

English Rural Housing Association

Hastoe Housing Association

and any other Registered Provider that the Council may approve from time to time.

Appendix 1

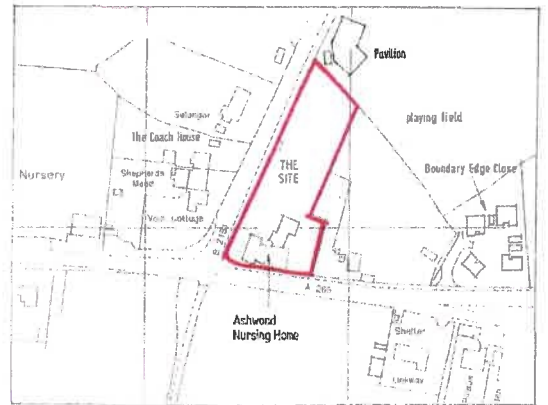
Plan 1 - Land

MEMBER OF THE COUNCIL

CHIEF EXECUTIVE

No. in Seal Register

11074



Site Location Plan

0 50 100m 1:1250



Block Plan

0 10 20 30 40 50m 1:500

Project
Proposed Development at
Ashwood Nursing Home
Heathfield Road
Burwash Common
Etchingham
East Sussex
TN19 7LT

Client
Artemis Design & Build Ltd

Site
Site Location &
Block Plans

Date
13th Oct

As shown at A2
16th December 2019

1932/03

Roger Howells Dip Arch. (RIBA)
Architect, Interior Designer and Surveyor

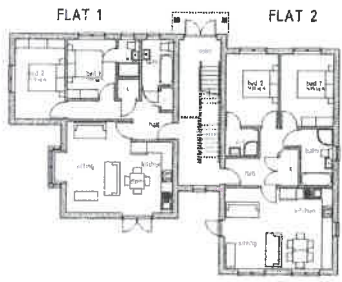
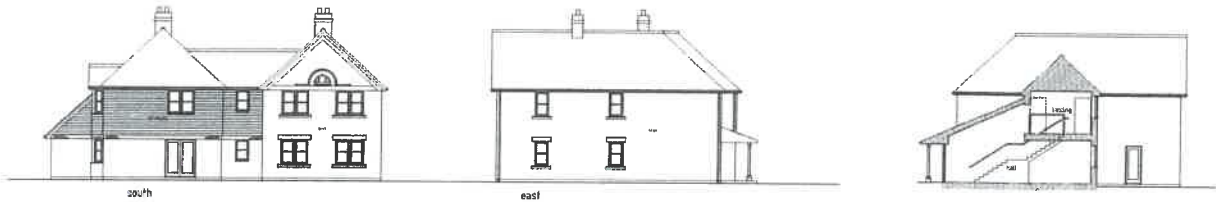
Sparks Facilities,
Spencers Road,
Northiam,
Rise
TN31 6JP 01580 810745

Appendix 2
Plan 2 – Affordable Housing Units

No. in Seal Register
11074

Pa

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CHIEF EXECUTIVE



ground floor plan
FLATS 1 & 2
0 1 2 3 4 5 10m



first floor plan
FLATS 3 & 4
gross internal floor areas: flat 1, 705 sq m (70)
flat 2, 705 sq m (70)
flat 3, 576 sq m (50)
flat 4, 795 sq m (70)
(Minimum national described space standards in brackets)
gross external floor areas: flat 1, 829 sq m (first circulation)
flat 2, 821 sq m
flat 3, 684 sq m
flat 4, 821 sq m
gross external floor area for both floors including shared circulation 243 sq m
195 sq m ground floor, 64 sq m first floor
footprint 185 sq m

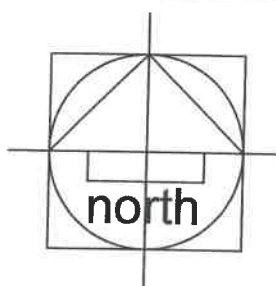
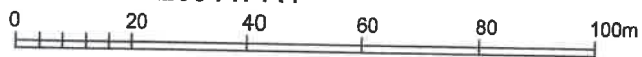
Review B 9 Feb 2020 Review D 23 Nov 2019 Review C 9 Sep 2020 Review B 19 August 2020 Review A 27 July 2020	
Draft Issue 03 March 2020 Draft Issue 20 March 2020	
Project Proposed Development at Agricultural Winding House Houghton Road Bishops Cleeve East Sussex TN20 2JZ	
Site Ardenon Estate & Road Ltd	
Four 2 Bedroom Flats	
Date 19/02/21	Author J. B. B.
Drawing No. 1952/11	Scale 1:100
Project Ardenon Estate & Road Ltd	Architect Roger Howells by J&A Edward
Project Ardenon Estate & Road Ltd	Date 19/02/21

1-2-4-C

Appendix 3
Plan 3 – Affordable Housing Units



SCALE 1:1250 AT A4



Proposed Development at Ashwood Nursing Home
 Burwash Common TN19 7LT drawing no. 1932/AU1
 Flats 1 & 2, Affordable Units

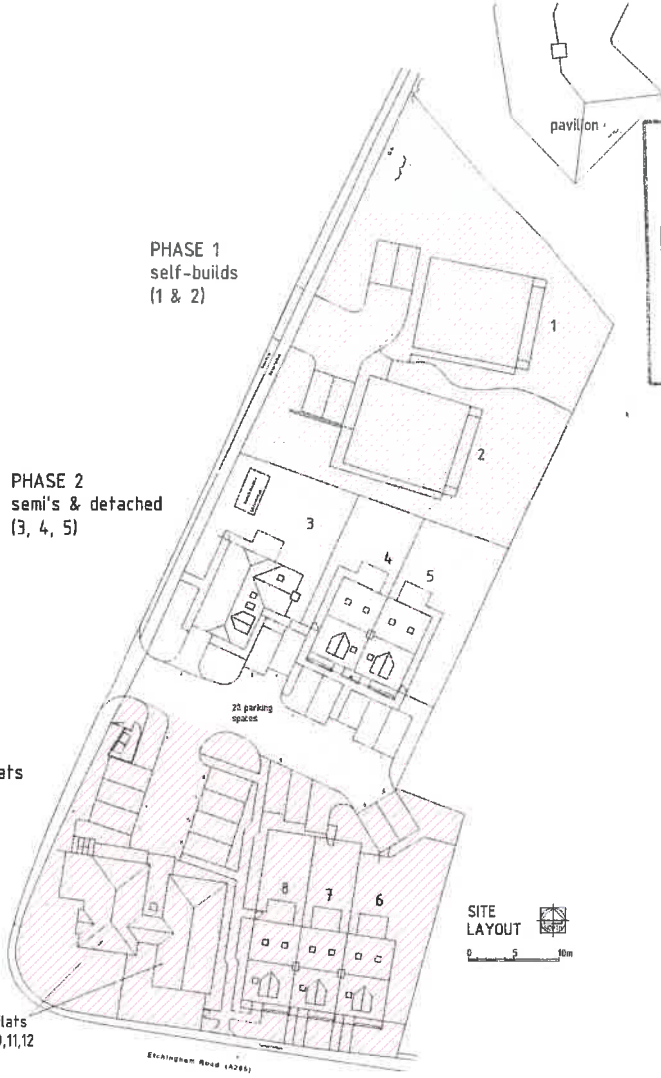
19 October 2021

Appendix 4
Plan 4 – Phase 3

1 u

No. in Seal Register
11074

MEMBER OF THE COUNCIL
RW
CHIEF EXECUTIVE



PHASE 1
self-builds
(1 & 2)

PHASE 2
semi's & detached
(3, 4, 5)

PHASE 3
terrace and flats
(6, 7, 8, 9, 10, 11, 12)

4 Flats
9, 10, 11, 12

SITE LAYOUT
0 5 10m

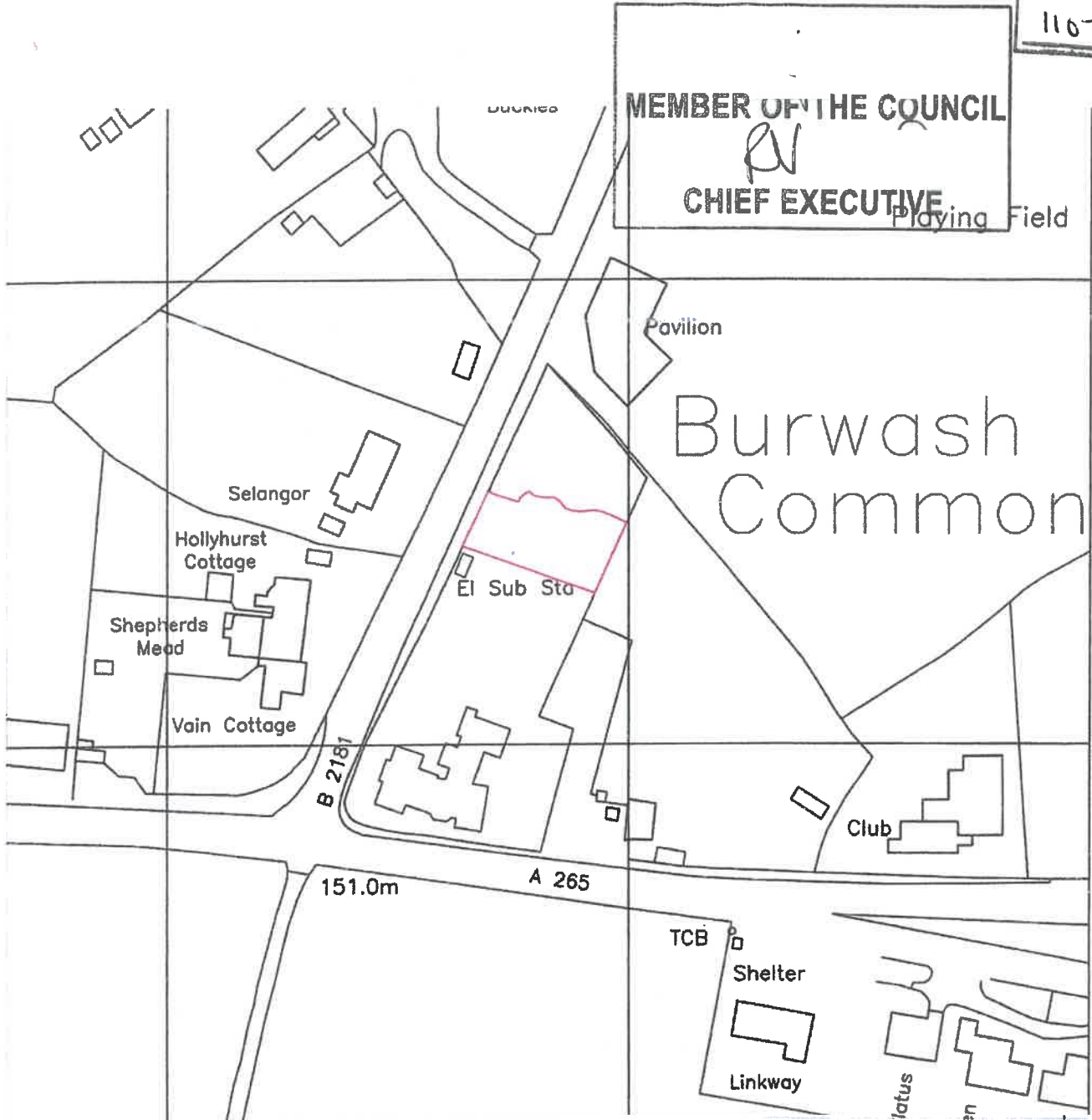
EVAINGHAM ROAD (A286)

Reviewed 11.02 March 2011	
Drawn 14.02 May 2007	
Project Fingwood Development, at Fingwood Farm, near Northfield Road, Rushmore, Berkshire, UK. Grid Ref. TQ19 217	
Site Rushmore Fingwood & Park Site	
Phasing Plan	
Client	Private
Date	11.02.11
Drawn	14.02.07
Scale	1:1000
Sheet	1 of 1
1932/16	
Roger Howells - by Mrs. M. Howells	
Author	
Scale	
Revision	
Date	
No.	
By	
Date	

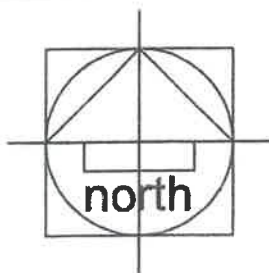
Appendix 5
Plan 5 – Plot 1

No. in Seal Register
11074

MEMBER OF THE COUNCIL
AV
CHIEF EXECUTIVE

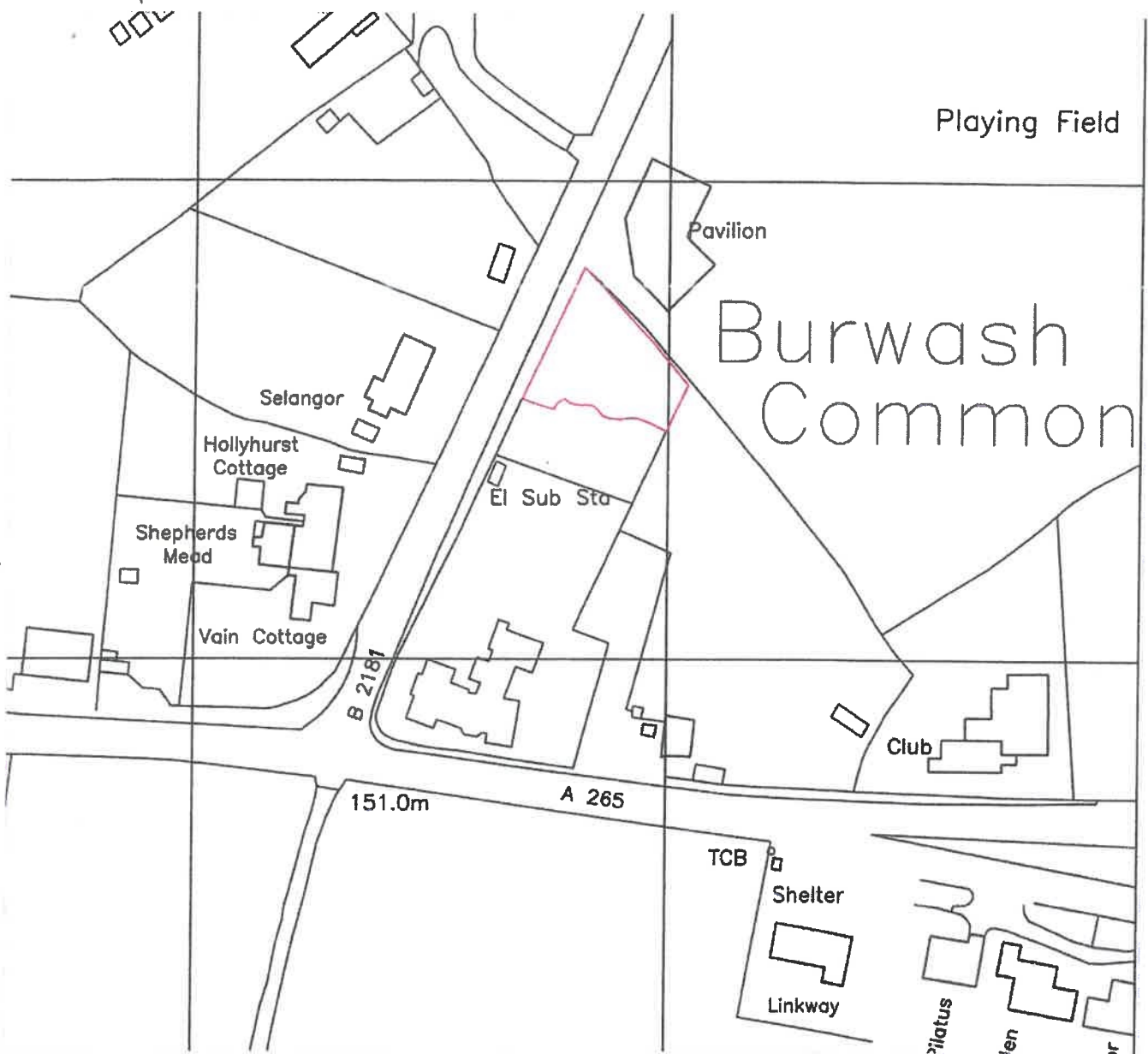


SCALE 1:1250 AT A4

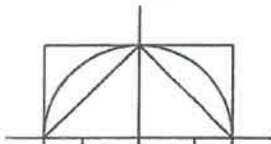


Land at Ashwood Nursing Home
Burwash Common TN19 7LT

Appendix 6
Plan 6 – Plot 2



SCALE 1:1250 AT A4



no h

No. in Seal Register
11074

MEMBER OF THE COUNCIL

CHIEF EXECUTIVE

**Land at Ashwood Nursing Home
Burwash Common TN19 7LT**

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

THE COMMON SEAL of **ROTHER DISTRICT COUNCIL** was hereunto affixed in the presence of:



Member of the Council

Executive Director

Signed as a Deed by

ARTEMIS DESIGN & BUILD LIMITED

acting by a Director in the presence of

Signature of Wit

Name (in BLOC

TOMAS POVILAITIS

Address

ST MARYS, CHURCH STREET, HARTFIELD

Occupation

builder

EXECUTED AS A DEED BY)

DAVID ANDREW HUNT)

.

in the presence of:

Signature of Witness

Name (in BLOCK capitals)

TOMAS POVILAITIS

Address

ST MARYS, CHURCH STREET, HARTFIELD

Occupation

builder

EXECUTED AS A DEED BY)
NICHOLAS JOHN COLLINS GREEN)

in the presence of:

Signature of Witness

Name (in BLOCK capitals) *TOMAS POVILAITIS*

Address *ST MARYS, CHURCH STREET, HARTFIELD*

Occupation *builder*

EXECUTED AS A DEED BY)
TREVOR DIGHTON)

in the presence of:

Signature of Witness

Name (in BLOCK capitals) *TOMAS POVILAITIS*

Address *ST MARYS, CHURCH STREET, HARTFIELD*

Occupation *builder*