DATED 9th August 2024

(1) WORTHING BOROUGH COUNCIL

AND

(2) WEST SUSSEX COUNTY COUNCIL

AND

(3) LONDON & CONTINENTAL RAILWAYS LIMITED

AND

(4) ~~UNION GARDENS LLP~~ ROFFEY HOMES LIMITED

JGler

PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 AND SECTION 111 OF THE LOCAL GOVERNMENT ACT 1972

relating to Union Place, Worthing
Planning Application Reference
AWDM/1618/23

RL
PH, DB
IRC
JGler

IM irwinmitchell

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APPENDIX A

Plan 1

APPENDIX B

Plan 2

THIS DEED is made on 9th August 2024

BETWEEN:

(1) **WORTHING BOROUGH COUNCIL** of Town Hall, Chapel Road, Worthing, West Sussex BN11 1HA (**"Council"**);

(2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester PO19 1RQ (**"County Council"**);

(3) **LONDON & CONTINENTAL RAILWAYS LIMITED** (company number 02966054) whose registered office is at 20 Cranbourn Street, 2nd Floor, London WC2H 7AA (**"Owner"**); and

(4) ~~**UNION GARDENS LLP** (Partnership Number OC449891)~~ ROFFEY HOMES LIMITED, Company Number 00657938 whose registered office is at Amelia House, Crescent Road, Worthing, West Sussex, BN11 1QR ("**Developer**").

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BACKGROUND

A The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.

B The County Council is the highway authority for the area in which the Property is situated.

C The Council is the freehold owner of part of the Property free from financial encumbrances registered with title numbers WSX280571 and WSX25882.

D The Owner is the freehold owner of part of the Property free from financial encumbrances registered with title number WSX298191.

E National Car Parks Limited (company number 253240) is the leasehold owner of part of the Property free from financial encumbrances registered with title number WSX266549 and for which the lease is due to be surrendered on or prior to ~~Actual Completion~~ the date of the Land Transfer (and on this basis National Car Parks Limited is not a party to this Agreement and its interest in the Property is not bound by the terms hereof).

F The Applicant submitted the Planning Application to the Council. The Developer is proposing to carry out the Development.

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G The Council having regard to the provisions of the Development Plan and to all other material considerations resolved at its meeting on 28 February 2024 that Planning Permission should be granted for the Development subject to the prior completion of this deed.

IT IS AGREED that:

1 DEFINITIONS AND INTERPRETATION

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

"1980 Act" means the Highways Act 1980;

~~**"Actual Completion"** means the date of transfer of the Council Land to the Developer pursuant to the Joint Venture;~~

"Affordable Housing" shall have the same meaning as in Annex 2 of NPPF or such other replacement document;

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"Affordable Housing Commuted Sum" means the sum of £1,004,004 (one million four thousand and four pounds) being a financial contribution towards the provision and management of Affordable Housing in the Borough of Worthing;

"Affordable Housing Delivery Plan" means a plan showing the tenure of the Affordable Housing Units and setting out the delivery timescales of the Affordable Housing Units to be agreed in writing between the Council and the Owner pursuant to paragraph 1 of Schedule 2 or such replacement plan as may be approved in writing by the Council from time to time;

"Affordable Housing Units" means 20% or 43 (forty three) Units to be provided as Affordable Housing to be constructed and delivered pursuant to the Planning Permission in accordance with the Affordable Housing Delivery Plan;

"Affordable Rented Units" means affordable housing to be made available by a Registered Provider to households with a Local Connection whose needs are not adequately served by the commercial housing market at rents which shall not exceed the Local Housing Allowance (as published from time to time) or up to 80% of the local Market Rent (including service charges where applicable), whichever is lower and **"Affordable Rent"** shall be construed accordingly;

"Applicant" means Roffey Homes Limited (company number 00657938) whose registered office is Amelia House, Crescent Road, Worthing, West Sussex, BN11 1QR;

"Base Rate" means the base rate from time to time of National Westminster Bank plc;

"Car Club" means a scheme which gives members access to a pool of cars or other light vehicles for flexible periods of time on a pay-as-you-drive or similar basis;

"Car Club Membership" means in respect of the first occupier of each Unit or Commercial Unit (as relevant), membership at nil cost to the occupier for a period of 1 (one) year on the date that occupier first Occupies the Unit or Commercial Unit (as relevant) including an initial one-off credit of £50 (fifty pounds) for each membership PROVIDED THAT the membership at nil cost to the occupier shall only be offered to one occupier per Unit or Commercial Unit (as relevant);

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

(a) demolition works;

(b) site clearance;

(c) ground investigations;

(d) remedial work in respect of any contamination or other adverse ground conditions;

(e) site survey works;

(f) temporary access construction works;

(g) archaeological investigation;

(h) diversion and laying of services;

(i) erection of any means of enclosure including fences and hoardings around the Property;

(j) provision of the pumping station and rising main;

(k) the provision of contractors' offices and compounds;

(l) construction of a haul road within the site boundary;

(m) the temporary display of site notices or advertisements; and

(n) any works that do not directly relate to either the construction of new Units or Commercial Units on the Property

(o) any works relating to the installation of the electrical and District Heating Network sub-stations

the words **"Commence"**, **"Commences"** and **"Commence Development"** shall be construed accordingly;

"Commercial Units" means the units comprising commercial floor space to be provided as part of the Development;

"Council Land" means all that freehold land at the date of this deed owned by the Council and registered at the Land Registry under title numbers WSX25882 and WSX280571;

"Council Monitoring Contribution" means the total sum of £3,600 payable to the Council on Commencement of Development for monitoring the delivery and performance of a Council Qualifying Trigger over the lifetime of the Development calculated on the basis of £300 (three hundred pounds) per Council Qualifying Trigger;

"County Council Monitoring Fee" means the total sum of £1,440 (One Thousand Four Hundred and Forty Pounds) payable to the County Council for monitoring the delivery and performance of a Qualifying Trigger contained in this Deed over the lifetime of the Development;

"County Council Monitoring Fee" means the total sum of £1,440 (One Thousand Four Hundred and Forty Pounds) payable to the County Council for monitoring the delivery and performance of a Qualifying Trigger contained in this Deed over the lifetime of the Development;

"Council Qualifying Trigger" means any trigger contained within this deed that attracts the Council Monitoring Contribution as applicable because its implementation and/or adherence requires monitoring by the Council;

"Default Interest Rate" means 3% per annum above the Base Rate;

"Development" means construction of a mixed-use development between 4 and 11 storeys, comprising 216 residential apartments (including 20% affordable housing), of which six comprise live/work units at Union Place, together with commercial ground floor space at High Street, associated residential car parking, cycle parking, communal residential gardens and vehicular access from Chatsworth Road. In addition, provision of a replacement public car park accessed from Union Place, and new public realm provision all of which are authorised by the Planning Permission (and any variations of those planning conditions under section 73 of the TCPA 1990);

"Development Plan" means the Worthing Local Plan 2023;

"Disposal" means a disposal of any Affordable Housing Units to a Registered Provider whether by the transfer of the freehold or the grant of a long lease for a term of at least 125 years and the term **"Dispose"** shall be construed accordingly;

"District Heating Network" means the Council's proposed district heating systems which is intended to use air source heat pumps located on the Council's multi-storey car park to generate and distribute heat around the heat network;

"Estate Management Company" means a management company established to be responsible for the ongoing management and maintenance of all or part of the Development;

"First Operation" means the first operation of any part of the District Heating Network;

"Heating Supply Options Study" means the study to be undertaken by the Developer or Owner to assess the technical feasibility and viability of connecting the Development to the District Heating Network identified by the Developer or Owner which shall include, but shall not be limited to, details and an assessment of the following:

(a) the connection route from planned or existing networks; and

(b) the capability of the District Heating Network to supply sufficient heating and power to the Development; and

(c) where applicable, the proposed costs, terms and conditions of the connection being offered by the operator of the District Heating Network applying a whole life costing methodology over a 30 (thirty) or 40 (forty) year period, comparing the capital and operational costs for connection and supply of heating energy from the network compared to alternative supply of heating from on-site plant and associated infrastructure and including any opportunity to sell surplus heat generated within the Development to the operator of the District Heating Network;

(d) a technical standard to which the Development would be fitted; and

(e) where applicable, the timeframe for the District Heating Network to be delivered compared to the timeframe for the construction, Practical Completion and Occupation of the Development;

"Highways Contribution" means a contribution payable to the County Council towards the Highways Scheme calculated as follows:

A – B - C = D

where:

- A = £279,074 which is the Total Access Demand Contribution as calculated using the County Council's TAD Methodology;
- B = the value of the Reserved Cycle Route Land;
- C = the value of Infrastructure and Urban Realm Improvements;
- D = the Highways Contribution

PROVIDED THAT in the event that the above calculation results in a negative number, the Highways Contribution shall be taken as £0.00 and paragraphs 4.3 - 4.3.3 of Schedule 3 shall cease to apply;

"Highways Scheme" means the Reserved Cycle Route Land Works identified in the Adur and Worthing Local Cycling and Walking Infrastructure Plan and the Worthing Area Sustainable Transport Package Feasibility Study along the A259 High Street and/or pedestrian and cycle improvements in the immediate vicinity of the Property;

"Index Linked" means either:

(a) in relation to the Open Space Contribution, increased in accordance with the following formula:

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

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

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

(b) in relation to the Total Access Demand Contribution, increased in accordance with the following formula:

A = B x C is equal to or greater than 1 where:

A is the sum actually payable on the date of payment

B is the original sum mentioned in this Deed

C is the BCIS Index at the date payment falls due

D is the BCIS Index at 8th March 2024

and Indexation shall be construed accordingly;

"Infrastructure and Urban Realm Improvements" means the infrastructure and urban realm improvements provided by the Development which are to be deducted from the Highways Contribution which comprise but are not limited to the proposed planting area, paving to footpaths and squares, tree planting and benches, falling within the Highways Scheme area only;

"Intermediate Housing" means Shared Ownership Housing or such other tenure that may be agreed in writing by the Council and the Owner provided that such other tenure is in accordance with the definition of **"Affordable housing"** in Annex 2 of the NPPF or such other replacement document and **"Intermediate Housing Units"** shall be construed accordingly;

~~**"Joint Venture"** means the joint venture agreement to be entered into between the Applicant and the Council (acting in its capacity as freehold owner of the Council Land) pursuant to which the Council (as freehold owner of the Council' Land) will transfer the Council's Land to the Developer to enable the regeneration of the Property;~~

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"LCR Land" means all that freehold land at the date of this deed owned by the Owner and registered at the Land Registry under title number WSX298191;

"Local Connection" means persons who meet the definition of having a Local Connection, as set out in the Worthing Borough Council Choice Based Lettings Policy, as amended from time to time;

"Land Transfer" means the transfer of title in the Council land to the Developer by way of a duly completed TR1.

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"Local Housing Allowance" means the local housing allowance provided by the Valuation Office Agency and applicable from time to time to the area within which the Development is located;

"Market Housing Units" means a Unit that is not an Affordable Housing Unit;

"Market Rent" means the estimated amount for which the relevant Unit should lease (let) on the date of valuation between a willing lessor and willing lessee on appropriate lease terms in an arm's length transaction after proper marketing wherein the parties had acted knowledgeably, prudently and without compulsion;

"Marketing Period" means a period of 12 months from the date on which the Registered Provider is provided with the marketing information for the Affordable Housing Units;

"Nomination Rights" means that the Council will have the right to nominate the occupier for 100% of the Affordable Rented Units for first lettings and 75% of the Affordable Rented Units for subsequent lettings;

"Nominations Agreement" means an agreement to be entered into between the Council and the Owner setting out the Nomination Rights;

"Non-Financial Trigger" means a trigger contained within this deed applicable to the Highway Scheme;

"NPPF" means the National Planning Policy Framework (September 2023);

"Occupation" means the beneficial occupation for the purposes for which the Planning Permission was granted but which shall exclude occupation for the purposes of construction, fitting out, decoration, marketing or display, or occupation in relation to security operations or (for the purposes of the Commercial Units) training purposes and Occupy and Occupied shall be construed accordingly;

"Open Space Contribution" means the sum calculated in accordance with paragraph 2.7 of Schedule 2 which shall be used for open space and recreation facilities in the Worthing Central Ward or adjoining wards;

"Open Space Scheme" means a detailed scheme or plan setting out:

- the location of the open space and recreation facilities within the Development;
- the amount, location and specification of any play, recreation or exercise equipment to be provided thereon;
- a detailed planting and landscaping schedule relating to the open space and recreation facilities within the Development;
- a detailed schedule of costs particularising the cost of providing the above; and
- a worked estimated calculation of the Open Space Contribution

together with any revisions or amendments that may be agreed between the parties, in writing, from time to time.

"Open Space Works" means the works required to deliver open space and recreation facilities as part of the Development within the redline boundary of the Property in accordance with the approved Open Space Scheme;

"Plan 1" means the plan attached at Appendix A hereto;

"Plan 2" means the plan attached at Appendix B hereto;

"Planning Application" means the application for Planning Permission registered by the Council on 23 November 2023 under reference number AWDM/1618/23;

"Planning Permission" means the planning permission to be granted by the Council in respect of the Planning Application (and any variations of those planning conditions under section 73 of the TCPA 1990);

"Practical Completion" means issue of a certificate of practical completion in respect of the Development or such part as may be specified, by the Owner or Developer's architect, surveyor, engineer or other relevant professional advisor (as applicable in the relevant circumstances) or in the event that the Development or relevant part is constructed by a party other than the Developer or Owner, the issue of such a certificate by that other party's architect, surveyor, engineer or other relevant professional advisor (as applicable in the relevant circumstances);

"Property" means Union Place Car Park, Union Place, Worthing, West Sussex as shown edged red on Plan 1;

"Qualifying Trigger" means any trigger contained within this deed including a Non-Financial Trigger that attracts the County Council Monitoring Fee because its implementation and/or adherence requires monitoring by the County Council;

"**Reserved Cycle Route Highways Agreement**" means an agreement pursuant to Section 38 and/or Section 278 of the 1980 Act to enable the Reserved Cycle Route Land Works to be carried out by the County Council and provide for the subsequent adoption of the Reserved Cycle Route Land as highway maintainable at the public expense following the completion of the Reserved Cycle Route Land Works in accordance with the terms of the agreement;

"Reserved Cycle Route Land" means an area of land shown shaded green and orange on Plan 2 (drawing number 23780) and identified as "Segregated cycleway" and "Combined cycle footway" to be set aside and safeguarded for the Reserved Cycle Route Land Works in accordance with paragraph 3 of Schedule 2;

"Reserved Cycle Route Land Notice" the notice from the County Council to the relevant Owner of the Reserved Cycle Route Land confirming that the County Council has approved by its committee to carry out the Reserved Cycle Route Land Works;

"Reserved Cycle Route Land Period" the period of 10 (ten) years from the date of the Planning Permission or any such earlier period as the County Council may notify the Owner expressly confirming that the Reserved Cycle Route Land is not required in relation to the Highways Scheme;

"Reserved Cycle Route Land Works" means the works required to be carried out on the Reserved Cycle Route Land by the County Council in the event that Highways Scheme is brought forward by the County Council, to provide a shared use pedestrian / cycle route with a minimum width of up to 5m at its narrowest point running adjacent to the proposed building at the corner of Union Place and High Street;

"Registered Provider" means a registered provider of social housing as defined in the Housing and Regeneration Act 2008 who is registered with the Regulator pursuant to that Act;

"Regulator" means Homes England as the Regulator of Social Housing established pursuant to Part 2 of the Housing and Regeneration Act 2008 or any similar future

authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;

"Shared Ownership Housing" means a form of tenure granted by lease by a Registered Provider to be disposed pursuant to shared ownership arrangements within the meaning of section 70(4) Housing and Regeneration Act 2008 whereby a purchaser is able to purchase a share of the equity in an Affordable Housing Unit from 25% to a maximum of 75% initially (at the option of the buyer) with no limitation in the aggregate equity that can be subsequently acquired by the lessee and such form of lease shall comply with the Regulator's standard form of lease for shared ownership housing or such other form of lease as maybe agreed in writing by the Council and **"Shared Ownership Lease"** shall be interpreted accordingly;

"Shared Ownership Housing Unit(s)" means the Unit(s) within the Development which are to be provided as Shared Ownership Housing;

"Staircased" means the purchase by the owner of an individual Unit of additional equity in a Shared Ownership Housing Unit;

"Supplemental Deed" means a supplemental deed to this deed binding all legal interests in the Council's Land by the terms of this deed a draft form of which is annexed hereto at Schedule 6;

"TCPA 1990" means the Town and Country Planning Act 1990;

"Total Access Demand Contribution" means the sum of two hundred and seventy nine thousand and seventy four pounds (£279,074) which is calculated using current occupancy rates from census statistics published by the Office for National Statistics payable in accordance with paragraph 4 of Schedule 3 of this Agreement which is calculated in accordance with the Total Access Demand Methodology and to be used towards the Highways Scheme PROVIDED THAT should Commencement of Development takes place after 2024, the sum shall be re-calculated using the latest published census statistics published by the Office for National Statistics;

"Total Access Demand Methodology" means the methodology developed by the County Council and adopted by the Council which requires contribution towards the cost of infrastructure and other measures that are necessary to mitigate the impact of the Development;

"Transfer" means the transfer of the freehold or grant of a lease for a term of at least 125 years unless otherwise agreed in writing with the Council and **"Transferred"** shall be construed accordingly;

"Travel Plan" means a travel plan to be approved in writing by the County Council which is intended to promote the use of more sustainable modes of transport and shared transport by occupiers of the Development with particular emphasis on encouraging a modal change away from the use of private motor vehicles (based on the transport assessment dated November 2023 prepared by The Civil Engineering Practice and submitted as part of the Planning Application);

"Travel Plan Auditing Contribution" means the sum of £3,815 (three thousand eight hundred and fifteen pounds) payable to the County Council towards monitoring of the Travel Plan;

"Travel Plan Coordinator" means a coordinator appointed by the Owner or Developer for a period of five years following Occupation of the first Unit to monitor the Travel Plan;

"Travel Voucher" means a voucher up to the value of £150 (one hundred and fifty pounds) to be made available to the first occupier of each Unit and to be used by the recipient towards cycle vouchers;

"Unit" means a self-contained unit of residential accommodation constructed after the date hereof pursuant to the Planning Permission and Units shall be construed accordingly;

"VAT" means Value added tax chargeable under the Value Added Tax Act 1994; and

"Working Day" means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday or the period from and including 24 December to 2 January in England.

1.2 Clause headings shall not affect the interpretation of this deed.

1.3 A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a **"company"** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council or the County Council the successors to its respective statutory functions.

1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

1.10 A reference to **"this deed"** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.

1.11 References to clauses and Schedules are to the clauses and Schedules of this deed.

1.12 An obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.13 Any words following the terms **"including"**, **"include"**, **"in particular"**, **"for example"** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.14 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually subject always to clauses 8 and 22.

2 STATUTORY PROVISIONS

2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, and is also entered into pursuant to section 111 of the Local Government Act 1972 and any other enabling powers.

2.2 The covenants, restrictions and obligations specified in clause 4 of this deed relating to the LCR Land are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by the Owner in the LCR Land and their respective successors and assigns save for as set out in clause 8 and clause 22.

2.3 The covenants, restrictions and obligations specified in clause 4 of this deed relating to the LCR Land are enforceable by the Council or the County Council (as applicable) in accordance with section 106 of the TCPA 1990.

2.4 All other covenants, restrictions and requirements imposed upon the Owner and the Developer (as applicable) under this deed are enforceable by the Council against the Owner and the Developer (as applicable) in accordance with section 111 of the Local Government Act 1972 and any other enabling powers.

3 CONDITIONALITY

3.1 With the exception of clause 1 clause 2, clause 3, clause 5 (in so far as it relates to Schedule 1 only), clause 8, clause 9, clause 10, and clauses 13 - 25 (inclusive) (which take effect immediately), this deed is conditional on:

3.1.1 the grant and issue of the Planning Permission; and

3.1.2 Commencement of Development.

3.2 In the event that the Planning Application is subject to appeal, or called in for determination by the Secretary of State then each obligation in this deed is also conditional upon:

3.2.1 the Secretary of State or the Planning Inspector determining the Planning Application being satisfied that it is:

3.2.1.1 necessary to make the Development acceptable in planning terms;

3.2.1.2 directly related to the Development;

3.2.1.3 fairly and reasonably related in scale and kind to the Development; and

3.2.1.4 complies in all other respects with Regulation 122 of the Community Infrastructure Levy Regulations 2010 as amended; and

3.2.2 Commencement of Development.

3.3 In the event that the Secretary of State or the Planning Inspector determining the Planning Application expressly states in their decision letter that any individual planning obligation within this deed is not compliant with the Community Infrastructure Levy Regulations 2010 as amended /or the NPPF or is immaterial to the grant of Planning Permission and that no weight has been given to the same in reaching their decision then that planning obligation or those planning obligations will cease to have effect and shall be void for the purposes of this deed and shall have no effect and the Owner and Developer shall not be obliged to comply with the terms of that obligation and the

remaining clauses will remain in full force and effect provided that severance is achievable.

4 PLANNING OBLIGATIONS AND COVENANTS RELATING TO THE LCR LAND

4.1 The Owner and the Developer hereby covenant with the Council that the LCR Land shall be subject to the restrictions and provisions regulating the Development and use thereof contained in Schedule 2 of this deed.

4.2 The Owner and the Developer hereby covenant with the County Council that the LCR Land shall be subject to the restrictions and provisions regulating the Development and use thereof contained in Schedule 3 of this deed.

4.3 The Council hereby covenants with the Owner and the Developer (as applicable) to comply with the obligations contained in Schedule 4 of this deed.

4.4 The County Council hereby covenants with the Owner and the Developer (as applicable) to comply with the obligations contained in Schedule 5 of this deed.

5 COVENANTS RELATING TO THE COUNCIL LAND

5.1 The Owner and the Developer covenant with the Council and the County Council as follows:-

5.2 To comply with the restrictions and provisions in Schedule 1, Schedule 2 and Schedule 3 of this deed in relation to the Council Land.

5.3 To inform the Council and the County Council in writing of the date that the Owner or the Developer (as applicable) first acquires an interest in the whole or any part of the Council Land within 5 (five) Working Days thereof;

5.4 To inform the Council in writing on each occasion when the Owner or the Developer (as applicable) acquires any subsequent interest or interests in the Council Land within 5 (five) Working Days thereof; and

5.5 To deliver a duly executed and irrevocably released engrossment of the Supplemental Deed to the Council on each occasion the Owner or the Developer (as applicable) acquires an interest in the Council Land so as to render such part of the Council Land subject to the terms set out in the Supplemental Deed and not to transfer any such interest so acquired until the Supplemental Deed has been completed.

6 COVENANTS RELATING TO THE COMMENCEMENT OF DEVELOPMENT

6.1 The Council and the Developer covenant with the Owner not to Commence Development on any part of the Property unless and until ~~the Council or~~ the Developer ~~(as applicable)~~ has acquired the legal freehold interest in the entirety of the LCR Land.

6.2 The ~~Council and the~~ Developer covenants with the Owner that they will ~~jointly and severally~~ indemnify and keep indemnified the Owner against any and all losses, costs, claims, liabilities and/or expenses suffered or incurred by the Owner as a result of any breach by the Council or the Developer of the covenants in clause 6.1 PROVIDED THAT the Owner agrees that the indemnities in this clause 6.2 shall not apply in the event that the Owner procures or knowingly permits the Commencement of Development by a party other than the Council or the Developer.

6.3 The Developer covenants with the Council and the County Council not to Commence Development unless and until:-

6.3.1 the Developer has acquired a legal interest in the Council Land; and

6.3.2 a Supplemental Deed has been entered into and is binding the Council Land to the terms of this deed.

7 INDEXATION

7.1 The Open Space Contribution and the Highways Contribution shall be Index Linked.

7.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council or County Council shall advise the Owner in writing.

8 RELEASE

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

8.2 No planning obligations contained in this deed shall be binding on:

8.2.1 any owners or occupiers of the Market Housing Units, nor the Commercial Units, nor their respective mortgagees or chargees; or

8.2.2 (with the exception of paragraphs 1.14 and 1.15 of Schedule 2) any owners or occupiers of the Affordable Housing Units, nor their respective mortgagees or chargees;

8.2.3 land held by any utility company or public authority which acquires any part of the Property or an interest in it for the purpose of its statutory undertaking or functions or in which statutory apparatus is situated by the Owner on the authority of such a body; or

8.2.4 any person whose only interest in the Property is the benefit of a covenant or easement.

9 DETERMINATION OF DEED

9.1 The obligations in this deed shall cease to have effect if before the Commencement of Development, the Planning Permission:

9.1.1 expires or is superseded by the grant of alternative Planning Permission save that in the event that the Owner (or any successor in title) obtains Planning Permission pursuant to an application under s.73 of TCPA 1990 to vary or remove any condition of the Planning Permission then this deed shall be binding upon both the Planning Permission and any Planning Permission granted pursuant to such application as if it were the Planning Permission (unless otherwise agreed in writing by the Council and County Council and the Owner);

9.1.2 is varied or revoked other than at the request of the Owner; or

9.1.3 is quashed following a successful legal challenge.

10 LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the Council provided that if the Planning Permission expires unimplemented or is revoked or if all obligations under this deed have been discharged then the registered charge shall be treated as having ceased to have effect under rule 8 of the Local Land Charges Rules 1977 or any statutory re-enactment thereof and the registration shall be cancelled.

11 INTEREST ON LATE PAYMENT

If any sum or amount has not been paid to the Council or County Council on or before the date that it is due and remains unpaid for a period exceeding 28 (twenty eight) Working Days thereafter the Owner shall pay upon written demand to the Council and the County Council (as relevant) interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

12 REASONABLENESS

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

13 CANCELLATION OF ENTRIES

On the written request of the Owner at any time after each or all of the obligations herein have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council or County Council (as relevant) will issue a written confirmation of such performance or discharge.

14 NO FETTER OF DISCRETION

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

15 WAIVER

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

16 FUTURE PERMISSIONS

Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any Planning Permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission. Unless agreed otherwise in writing by the Council and the County Council and the Owner in the event that the Owner (or any successor in title) obtains Planning Permission pursuant to an application under s.73 of TCPA 1990 to vary or remove any condition of the Planning Permission then this deed shall be binding upon both the Planning Permission and any Planning Permission granted pursuant to such application as if it were the Planning Permission.

17 AGREEMENTS AND DECLARATIONS

17.1 The parties agree that:

17.1.1 nothing in this deed constitutes a Planning Permission or an obligation to grant Planning Permission; and

17.1.2 nothing in this deed grants Planning Permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

18 NOTICES

18.1 Any notice to be given under this deed must be in writing and must be:

18.1.1 delivered by hand; or

18.1.2 sent by pre-paid first class post or other next Working Day delivery service.

18.2 Any notice to be given under this deed must be sent to the relevant party as follows:

18.2.1 to the Council at Adur and Worthing Planning Departments, Worthing Borough Council, Portland House, 44 Richmond Road, Worthing BN11 1HS marked for the attention of Head of Planning and Development;

18.2.2 to the County Council at County Hall, West Street, Chichester, PO19 1RQ marked for the attention of the Planning Services Monitoring and Records Team;

18.2.3 to the Owner at the address at the beginning of this deed and marked for the attention of the Senior Development Manager;

18.2.4 to the Developer at the address at the beginning of this deed and marked for the attention of Ben Cheal

or as otherwise specified by the relevant party by notice in writing to each other party.

18.3 Any notice given in accordance with clause 18.1 and clause 18.2 will be deemed to have been received:

18.3.1 if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9 am on a Working Day, the notice will be deemed to have been received at 9 am on that day, and if delivery occurs after 5 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9 am on the next Working Day; or

18.3.2 if sent by pre-paid first class post or other next Working Day delivery service, at 9 am on the second Working Day after posting.

18.4 A notice given under this deed shall not be validly given if sent by email.

18.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19 THIRD PARTY RIGHTS

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

20 VALUE ADDED TAX

20.1 Each amount stated to be payable by the Council, County Council or the Owner to the other under or pursuant to this deed is exclusive of VAT (if any).

20.2 If any VAT is at any time chargeable on any supply made by the Council, the County Council or the Owner under or pursuant to this deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice provided that any such invoice is not presented later than the expiry of the time limit referred to in section 77(1)(a) of the VATA 1994 (Assessment: time limits and supplementary assessments).

21 GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non contractual disputes or claims) shall be governed by and construed in accordance with the law of England and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

22 MORTGAGEE CONSENT

Any future mortgagee or chargee of the Property shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the mortgagee or chargee is in possession or all or any part of the Property.

23 DISPUTES

23.1 Where the parties hereto are in dispute or disagreement as to any part of this deed the parties may refer the matter for determination to an Expert for determination in accordance with clauses 23.2 to 23.5 of this deed.

23.2 The dispute or disagreement shall be referred to a single expert (**"Expert"**) who shall be qualified to deal with the subject matter of the dispute or disagreement and who shall be jointly nominated by the parties within 10 (ten) Working Days of the failure of the parties to resolve the dispute or disagreement. If the parties fail to agree on the nomination of an Expert then the current President of the Law Society shall be requested to appoint an Expert.

23.3 The Expert shall be subject to the requirement that his decision is reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and which shall be no more than 30 (thirty) Working Days.

23.4 Save in the case of manifest error or fraud the decision of the Expert shall be final and binding upon the parties.

23.5 The Expert shall determine responsibility for costs and that decision shall be binding upon the parties.

24 DEVELOPER LIABILITY

The Developer shall have no liability under this deed unless and until it takes possession of the Property as a successor in title of the Owner or the Council in which case the Developer will be bound by the obligations as if it were a person deriving title from the Owner or the Council (as applicable).

25 COUNTERPART

This deed may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same deed.

THIS DOCUMENT HAS BEEN EXECUTED AS A DEED and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1

Covenants to the Council and County Council

Unless otherwise agreed in writing by the Council and the County Council, the Owner covenants with the Council and the County Council as follows:

SUPPLEMENTAL DEED

1 To enter into the Supplemental Deed within ten (10) Working Days of the date of ~~Actual Completion.~~ the Land Transfer.

2 Not to Commence Development until the Supplemental Deed has been completed.

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SCHEDULE 2

Covenants to the Council

Unless otherwise agreed in writing by the Council, the Owner covenants with the Council as follows:

1 **AFFORDABLE HOUSING PROVISIONS**

1.1 To provide the Affordable Housing Units within the Development in accordance with this Schedule 2.

1.2 To submit an Affordable Housing Delivery Plan prior to construction of works above slab level.

1.3 Unless otherwise agreed in writing by the Council, the Affordable Housing Units shall comprise:

1.3.1 twenty-three (23) Intermediate Housing Units;

1.3.2 twenty (20) Affordable Rented Units;

1.4 Not to construct above slab level until the Affordable Housing Delivery Plan has been approved in writing by the Council (**"Approved Affordable Housing Delivery Plan"**).

1.5 To construct and provide the Affordable Housing Units in accordance with the Approved Affordable Housing Delivery Plan (unless otherwise agreed in writing by the Council).

Transfer

1.6 Unless the Owner is a Registered Provider to Transfer the Affordable Housing Units to a Registered Provider.

1.7 Unless otherwise agreed in writing with the Council not to cause or allow the Occupation of more than 80% of the Market Housing Units of the Development unless and until the Affordable Housing Units have been provided in accordance with the Approved Affordable Housing Delivery Plan and those Affordable Housing Units have been transferred to a Registered Provider (unless the Owner is a Registered Provider).

Cascade

1.8 The Owner shall notify the Council in writing within 10 (ten) Working Days of the start date of the Marketing Period and provide a copy of the marketing information provided to any Registered Providers.

1.9 The Owner shall use reasonable endeavours to reach an agreement for the Disposal of all of the Affordable Housing Units to a Registered Provider throughout the Marketing Period.

1.10 In the event that at the end of the Marketing Period the Owner demonstrates to the satisfaction of the Council that it has used reasonable endeavours to Dispose of all of the Affordable Housing Units but that it has not been possible to reach an agreement then the Council shall give written notice to the Owner that is has complied with its obligations under paragraphs 1.8 and 1.9 and the Owner shall be free to dispose of the Affordable Housing Units as Market Housing Units subject to paragraphs 1.12 and 1.13 and the remainder of the obligations at paragraph 1 of Schedule 2 of this deed shall cease to bind the Property.

1.11 In demonstrating its use of reasonable endeavours as required by paragraph 1.9 above the Owner shall, if required by the Council provide:

1.11.1 details of the Registered Providers it has contacted and any marketing activities it has undertaken;

1.11.2 evidence that it has contacted any Registered Providers that may have reasonably been suggested by the Council;

1.11.3 details of any offers it has received;

1.11.4 details of the price, which should be reasonable based on market conditions at the time it has sought to Dispose of the Affordable Housing Units; and

1.11.5 any other information that the Council may reasonably request to determine the efforts it has made to Dispose of the Affordable Housing Units.

1.12 Paragraph 1.13 shall apply if a Registered Provider cannot be found to accept a Disposal of the Affordable Housing Units in accordance with paragraph 1.9 within the Marketing Period.

1.13 The Owner shall pay the Affordable Housing Commuted Sum to the Council as follows:

1.13.1 50% of the Affordable Housing Commuted Sum shall be payable on or prior to Occupation of 50% of the Units;

1.13.2 the remaining 50% of the Affordable Housing Commuted Sum shall be payable on or prior to Occupation of 80% of the Units.

Occupation

1.14 Subject to paragraphs 1.16 to 1.18 of this Schedule 2 not to Occupy or permit Occupation of the Affordable Housing Units other than as Affordable Housing.

1.15 Not to Occupy or permit the Occupation of the Affordable Rented Units unless and until a Nominations Agreement has been entered into with the Council granting the Council Nomination Rights in respect of the Affordable Rented Units to be provided at the Development.

Exclusions

1.16 The Affordable Housing provisions in paragraph 1 of Schedule 2 of this deed shall not be binding on a mortgagee or chargee 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 (each a Receiver) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver provided that:

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

1.16.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this deed which provisions shall determine absolutely.

1.17 The provisions of paragraph 1 of Schedule 2 shall:

1.17.1 cease to apply to any part or parts of the Property which are disposed of in accordance with paragraph 1.16.2;

1.17.2 cease to apply to any completed Affordable Housing Units where the Registered Provider shall be required to dispose of the same pursuant to a right to buy under Part V Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under section 180 Housing and Regeneration Act 2008 or any similar or substitute right applicable;

1.17.3 cease to apply to any completed Affordable Housing Units where a Registered Provider sells to a tenant through Social Homebuy funded pursuant to section 19(3) Housing and Regeneration Act 2008 or any amendment or replacement thereof; and

1.17.4 cease to apply to any Shared Ownership Housing Unit where the tenant has Staircased up to 100% in accordance with the terms of such Shared Ownership Lease.

1.18 For the avoidance of doubt, the provisions of paragraph 1 of Schedule 2 shall not apply to any successors in title purchasing an interest in part of the Property where provisions of this Schedule 2 have ceased to apply pursuant to paragraphs 1.10 or 1.17.

2 **OPEN SPACE**

2.1 To submit the Open Space Scheme to the Council prior to the Commencement of Development.

2.2 Not to Commence Development until the Open Space Scheme has been approved by the Council in writing.

2.3 To complete the Open Space Works in accordance with the approved Open Space Scheme prior to Occupation of the 196th Unit within the Development.

2.4 Not to Occupy more than 195 Units within the Development until the Open Space Works have been completed.

2.5 To pay the Open Space Contribution prior to Occupation of the Development.

2.6 Not to cause, allow or permit Occupation of the Development unless and until the Open Space Contribution has been paid to the Council.

2.7 The Open Space Contribution shall be calculated as follows:

A – B = C

where:

A = £564,036 which is the cost of the Open Space Works as calculated using the Adur and Worthing Open Space Cost Calculator (as amended from time to time)

B = the actual cost of the Open Space Works

C = the Open Space Contribution

PROVIDED THAT in the event that the above calculation results in a negative number, the Open Space Contribution shall be taken as £0.00 and paragraphs 2.5 and 2.6 (above) shall cease to apply.

3 **CAR CLUB**

3.1 To use reasonable endeavours to enter into a contract with a Car Club operator to provide the following for a minimum of five years from the date of first Occupation of a Unit:

3.1.1 1 (one) Car Club vehicle on the Property prior to Occupation of more than 50% of the Units (the "Monitoring Date");

3.1.2 to monitor uptake of the Car Club and submit a written report to the Council and the County Council on an annual basis for a period of 5 years from the Monitoring Date and if following receipt of the annual monitoring report the Council or the County Council so require, to provide an additional three Car Club vehicles in the timeframe agreed in writing with the Council and County Council;

3.2 To offer a Car Club Membership to the first household to Occupy each Unit for a minimum period of one year.

3.3 To offer a Car Club Membership to the first occupier of each Commercial Unit for a minimum period of one year.

3.4 To provide a car parking space within the Development pursuant to the Planning Permission for sole use by members of the Car Club.

3.5 Not to cause, allow or permit Occupation of the Development unless and until a parking space has been provided pursuant to paragraph 3.4 above.

3.6 Unless otherwise agreed in writing by the Council to retain and maintain the car parking space provided pursuant to paragraph 3.4 above for sole use by the Car Club vehicle.

4 **TRAVEL VOUCHER**

4.1 Within one month of first Occupation of a Unit the Owner shall provide the occupier of that Unit with a Travel Voucher.

5 **DISTRICT HEATING CONNECTION**

5.1 Prior to Commencement of Development the Developer or Owner will provide details to the Council to identify potential routes for connecting pipework between the buildings and public highway and plant room space for the future installation of heat interface equipment, and/or other plant, which may be required for future connection to the District Heating Network.

5.2 No later than three months following the appointment by the Council of an operator of the District Heating Network the Developer or Owner shall provide a Heating Supply Options Study. If the Heating Supply Options Study concludes that the whole life cost of connection to the District Heating Network is lower than the cost of alternatives methods of heat supply, including the costs of on-site plant and associated infrastructure, the Developer or Owner will use reasonable endeavours to connect the Development to the District Heating Network provided that:

5.2.1 a suitable connection route can be provided;

5.2.2 the District Heating Network has capacity to supply sufficient heat to the development;

5.2.3 the District Heating Network it is consistent with the technical requirements of the Development;

5.2.4 the District Heating Network can be delivered in a timescale that is appropriate for the Development; and

5.2.5 there are no other reasons why the Development cannot feasibly connect to the District Heating Network.

5.3 If the Developer or Owner (as relevant) is not already proposing to connect to the District Heating Network, no later than three months following receipt of notification by the Council that the District Heating Network has begun operation, the Developer or Owner (as relevant) shall prepare a further Heating Supply Options Study. In preparing the Heating Supply Options Study, the Developer or Owner (as relevant) shall:

5.3.1 consult with the Council; and

5.3.2 use reasonable endeavours to promote any benefits of the connection to residents of the Development and to any Estate Management Company (where applicable).

5.4 Subject to and save in the circumstances referred to in clause 5.5, the Developer or Owner will in its discretion decide whether to connect the Development to the District Heating Network taking into account the findings of the Heating Supply Options Studies produced pursuant to clauses 5.2 and 5.3 above and the views and best interests of residents and of the Estate Management Company (where applicable).

5.5 In the event that the District Heating Network has not begun First Operation within three years of the Commencement of Development and there is no agreement to connect to the District Heating Network in place, the Developer and Owner shall be released from all foregoing obligations in paragraph 5 of this Schedule 2.

SCHEDULE 3

Covenants to the County Council

Unless otherwise agreed in writing by the County Council, the Owner covenants with the County Council as follows:

1 **TRAVEL PLAN**

1.1 To submit a Travel Plan for approval to the County Council prior to Occupation of the first Unit.

1.2 Not to allow, cause or permit Occupation of the first Unit until the Travel Plan has been approved in writing by the County Council.

1.3 Not to allow, cause or permit Occupation of the first Unit until the Travel Plan Coordinator has been appointed.

1.4 To implement the Travel Plan in accordance with the requirements and timetable of approved Travel Plan.

1.5 If notified by the County Council that the Travel Plan is not being complied with or that the targets in the Travel Plan are not being met, the Owner shall within 30 (thirty) Working Days of being so notified use reasonable endeavours to either comply with the Travel Plan or to identify and implement remedial measures agreed with the County Council.

2 **TRAVEL PLAN AUDITING CONTRIBUTION**

2.1 To pay the Travel Plan Auditing Contribution prior to Occupation of the first Unit.

2.2 Not to allow, cause or permit Occupation of the first Unit until the Travel Plan Auditing Contribution has been paid to the County Council.

3 **RESERVED CYCLE ROUTE LAND**

3.1 To safeguard the Reserved Cycle Route Land for the Reserved Cycle Route Land Period.

3.2 An extension of the Reserved Cycle Route Land Period may be agreed in writing between the Owner and the County Council in the event that the County Council confirm in writing that the Reserved Cycle Route Land Works is intended to be implemented after the expiry of the Reserved Cycle Route Land Period PROVIDED THAT any extension must be agreed before the expiry of the Reserved Cycle Route Land Period.

3.3 Upon receipt of the Reserved Cycle Route Land Notice the Owner covenants to enter into the Reserved Cycle Route Highways Agreement as soon as reasonably practicable which for the avoidance of doubt shall not include any financial contributions relating to the future maintenance of the Reserved Cycle Route Land.

3.4 Upon entering into the Reserved Cycle Route Highways Agreement, the Owner covenants to grant an appropriate licence to the County Council to enable the County Council to access the Reserved Cycle Route Land including all officers, contractors, plant, machinery and materials at reasonable times having provided reasonable notice and the County Council shall comply fully with the all site rules and Health and Safety requirements that are in place in connection with the Development in order to allow the Reserved Cycle Route Land Works to be constructed and completed in accordance with the terms of the Reserved Cycle Route Highways Agreement.

3.5 Pursuant to the Planning Permission or any variations pursuant to S96A of the TCPA 1990 the Owner covenants not to build or place any permanent structures on the Reserved Cycle Route Land that may prejudice the delivery of the Reserved Cycle Route Land Works during the Reserved Cycle Route Land Period.

4 HIGHWAYS CONTRIBUTION

4.1 To submit to the County Council on or before Commencement of Development a calculation of the Highways Contribution and details of how the value of the Reserved Cycle Route Land and Infrastructure and Urban Realm Improvements have been calculated.

4.2 Not to cause or allow Commencement of the Development to occur until the calculation of the Highways Contribution and details of how the value of the Reserved Cycle Route Land and Infrastructure and Urban Realm Improvements have been calculated have been submitted to the County Council.

4.3 If the calculation submitted to the County Council pursuant to paragraph 4.1 of this Schedule is agreed by the County Council and shows that a Highways Contribution is payable:

4.3.1 to pay to the County Council the Highways Contribution on or before first Occupation of the Development;

4.3.2 not to cause or allow Occupation of the Development to occur before the Highways Contribution has been paid to the County Council;

4.3.3 if the Highways Contribution is not paid to the County Council on or before the relevant payment date, to pay to the County Council Interest from the due date until the actual date of payment and any such Interest shall be treated as part of the Highways Contribution.

4.4 If the event that the parties are unable to agree the quantum of the Highways Contribution either party may appoint an Expert and the procedure set out in clause 23 shall apply.

SCHEDULE 4

Covenants by the Council

1 If paid, to pay the Open Space Contribution into a separately identified interest-bearing section of the Council's combined accounts as soon as reasonably practicable.

2 Not to spend or apply any part of the Open Space Contribution other than for the purposes for which it was paid (whether by the council or another party) as specified in this deed.

3 From time to time upon reasonable written request by the owners (but not more frequently than once every twelve months) to provide the owners with a breakdown of expenditure from the said contribution including a copy of relevant bank statements.

4 In the event that the Open Space Contribution has not been spent or contracted for expenditure by the Council within 10 years following the date of receipt of the Open Space Contribution the Council shall refund to the owners the Open Space Contribution (or any part of thereof) which has not been spent or contracted for expenditure, together with any accrued interest.

5 If paid, to pay the Affordable Housing Commuted Sum into a separately identified interest-bearing section of the Council's combined accounts as soon as reasonably practicable.

6 Not to spend or apply any part of the Affordable Housing Commuted Sum other than for the purposes for which it was paid (whether by the council or another party) as specified in this deed.

7 From time to time upon reasonable written request by the owners (but not more frequently than once every twelve months for each contribution) to provide the owners with a breakdown of expenditure from the Open Space Contribution and / or Affordable Housing Commuted Sum including a copy of relevant bank statements.

8 Where the approval, satisfaction, agreement, confirmation or consent of the Council or any officer of the Council is required for any purpose under or in connection with the terms of this deed such approval, satisfaction, agreement, confirmation or consent, provided it has been applied for in writing, will be given in writing and will not be unreasonably withheld or delayed.

SCHEDULE 5

Covenants by the County Council

1 To pay the Travel Plan Auditing Contribution into a separately identified interest bearing section of the county council's combined accounts as soon as reasonably practicable.

2 Not to spend or apply any part of the Travel Plan Auditing Contribution other than for the purposes for which it was paid (whether by the County Council or another party) as specified in this deed.

3 If paid to pay the Highways Contribution into a separately identified interest bearing section of the county council's combined accounts as soon as reasonably practicable.

4 Not to spend or apply any part of the Highways Auditing Contribution other than for the purposes for which it was paid (whether by the County Council or another party) as specified in this deed.

5 Where the approval, satisfaction, agreement, confirmation or consent of the County Council or any officer of the County Council is required for any purpose under or in connection with the terms of this deed such approval, satisfaction, agreement, confirmation or consent, provided it has been applied for in writing, will be given in writing and will not be unreasonably withheld or delayed.

SCHEDULE 6

Supplemental Deed

THIS DEED is made on 20[•]

BETWEEN:

(1) **WORTHING BOROUGH COUNCIL** of Town Hall, Chapel Road, Worthing, West Sussex BN11 1HA (**"Council"**);

(2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester PO19 1RQ (**"County Council"**); and

(3) (company number [•][ ]) whose registered office is at [ ] (**"New Owner"**).

BACKGROUND

A The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Council Land is situated.

B On [ ] 2024 the Principal Deed was entered into.

C The New Owner is the freehold proprietor with absolute title of [all / part of] of the Council Land pursuant to the Transfer.

D This Supplemental Deed is required pursuant to Clause 5 of the Principal Deed and is entered into for the purpose of ensuring that the obligations contained in the Principal Deed become planning obligations in respect of the Council Land and each part of it in favour of the Council pursuant to Section 106 of the 1990 Act.

IT IS AGREED that:

1 **DEFINITIONS AND INTERPRETATION**

1.1 Unless such term is expressly defined in this Supplemental Deed (in which case the definition in this Supplemental Deed shall prevail) or some other contrary indication appears, each term used in this Supplemental Deed which is defined in the Principal Deed shall have the same meaning as in the Principal Deed.

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

1.3 **"Principal Deed"** means the deed dated [ ] 2024 between (1) Worthing Borough Council (2) West Sussex County Council (3) London & Continental Railways Limited and (4) ~~Union Gardens LLP~~ entered into pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011

ROFFEY HOMES LIMITED

1.4 **"Council Land Transfer"** means the transfer of the Council Land from the Council to the New Owner dated [ ]

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2 **OPERATIVE PROVISIONS**

2.1 This Supplementary Deed is supplemental to the Principal Deed and a planning obligation made in pursuance of Section 106 of the 1990 Act and to the extent that the covenants in this Supplementary Deed are not made under Section 106 of the 1990 Act they are made under Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other powers so enabling.

2.2 The covenants, restrictions and requirements imposed upon the parties in Schedule 1, Schedule 2 and Schedule 3 of the Principal Deed in respect of the LCR Land now also constitute planning obligations pursuant to section 106 of the Act in respect of the Council Land (as if references to the "LCR Land" and "the Property" shall include the Council's Land) and are enforceable by the Council as Local Planning Authority against the New Owner.

2.3 Clauses 1, 3 and 6 to 24 of the Principal Deed shall be incorporated into this Supplemental Deed and references to this "Deed" shall also mean this Supplemental Deed and references to the "Owner" shall include the New Owner.

3 PLANNING OBLIGATIONS

3.1 The New Owner hereby covenants with the Council and the County Council that the Council Land shall be subject to the restrictions and provisions regulating the Development and use thereof specified in Schedule 1, Schedule 2 and Schedule 3 of the Principal Deed (as if references to the Owner shall now include the New Owner and "LCR Land" and "Property" shall include the Council Land).

3.2 The Council hereby covenants with the New Owner to comply with the obligations contained in Schedule 4 of Principal Deed.

3.3 The County Council hereby covenants with the New Owner to comply with the obligations contained in Schedule 5 of Principal Deed.

4 LEGAL COSTS AND MONITORING FEES

4.1 The New Owner shall pay to the Council its reasonable legal fees prior to completion of this Supplementary Deed excluding VAT.

4.2 The New Owner shall pay to the County Council its reasonable legal fees prior to completion of this Supplementary Deed excluding VAT.

4.3 The New Owner shall pay to the County Council the County Council Monitoring Fee prior to the completion of this Supplementary Deed excluding VAT.

5 REGISTRATION BY THE NEW OWNER

The New Owner covenants with the Council:

5.1 Within 5 (five) Working Days of completion of this Supplementary Deed (if not already done so), to prepare and submit to the Land Registry an application to register the Council Land Transfer;

5.2 To use reasonable endeavours to deal with any and all requisitions raised by the Land Registry in relation to the application submitted pursuant to Clause 5.1 above promptly and diligently; and

5.3 To provide updated copies of the official copy title register for the Council Land within 5 (five) Working Days of receipt of the completed application from the Land Registry to the Council and the County Council at the addresses given at Clause 18 of the Principal Deed.

6 REGISTRATION BY THE COUNCIL

This deed is a local land charge and shall be registered as such by the Council provided that if the Planning Permission expires unimplemented or is revoked or if all obligations under this deed have been discharged then the registered charge shall be treated as having ceased to

have effect under rule 8 of the Local Land Charges Rules 1977 or any statutory re-enactment thereof and the registration shall be cancelled.

7 **OWNERSHIP**

The New Owner covenants with the Council and the County Council:

7.1 That it owns the freehold stated in the Background section of this Supplementary Deed;

7.2 That there are no persons, companies or entities that have an interest whether legal or equitable in the Council Land, including any occupiers or tenants whether under formal or informal arrangements, which are not otherwise a party to this Supplementary Deed;

7.3 To give the Council and the County Council immediate written notice of any change in ownership of any of its interests in the Council Land occurring before all the obligations under this Supplementary 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 Council Land or unit of occupation purchased by reference to a plan **SAVE THAT** this clause 7.3 shall not relate to the sale of any individual Unit or Commercial Unit constructed pursuant to the Planning Permission.

8 **CESSATION OF LIABILITY**

8.1 The New Owner will upon disposing of its interest in the whole of the Council's Land be released from all obligations and covenants under this Supplemental Deed in relation to the Council's Land but without prejudice to the rights of the Council and the County Council in relation to any subsisting breach of those obligations or covenants arising prior to it parting with such interest.

9 **JURISDICTION**

9.1 This Supplementary Deed is governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

9. DELIVERY

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

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS DEED the day and year first above written

10674

EXECUTED as a **DEED** by the parties on the date which first appears in this Deed.

EXECUTED as a **DEED** by affixing .....)
the **COMMON SEAL** of.....)
WORTHING BOROUGH COUNCIL.....)
in the presence of:.....)

.....

Joanne Lee

.....

EXECUTED as a **DEED** by affixing .....)
the **COMMON SEAL** of.....)
WEST SUSSEX COUNTY COUNCIL .....)
in the presence of:.....)

.....

.....

32622/3/HS/2024

SIGNED as a **DEED** by.....)
LONDON & CONTINENTAL RAILWAY LIMITED..)
acting by .....)
a Director in the presence of:.....)

.....
Director

Witness Signature .....

Witness Name LOUISE O'CONNOR

Witness Address 20 CRANBOURN STREET

LONDON

WC2H 7AA

Witness Occupation Team Co-ordinator

SIGNED as a **DEED** by.....)
UNION GARDENS LLP.....)
acting by duly authorised by to sign on its behalf as a
member of Union Gardens LLP.....)
in the presence of:.....)

.....
On behalf of Member

Witness Signature .....

Witness Name SIMON SNOW

Witness Address 17 BUCKINGHAM ROAD

WORTHING

BN11 1TH

Witness Occupation PROJECT MANAGER

Signed as a DEED by
ROFFEY HOMES LIMITED
acting by IAN CHEAL
a Director in the presence of

.....
Director

Witness Signature .....
Witness Name: MAX HARBRON
Witness Address: 121 BAYSIDE APARTMENTS
WORTHING, BN11 2FL
Witness Occupation: Sales Manager

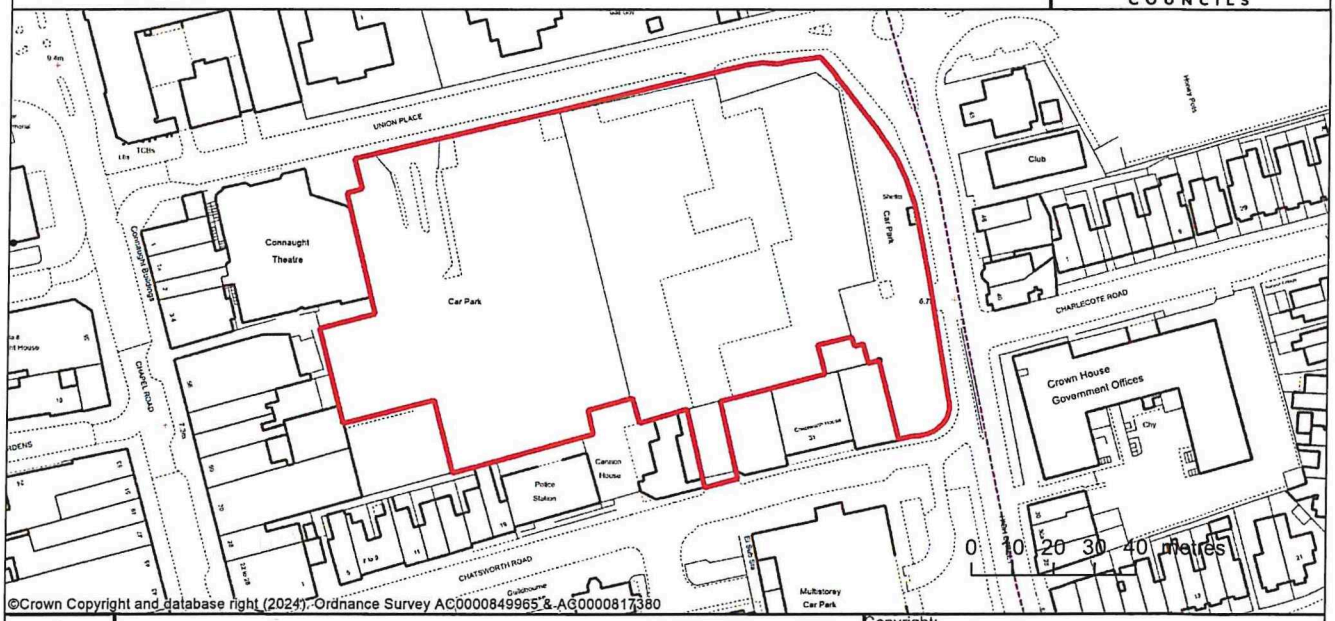
APPENDIX A

Plan 1

Union Place, Worthing
Section 106 Notice

23 February 2024

ADUR & WORTHING
COUNCILS



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Scale 1:1250

A Rice

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Ian R. Chad

Jonathan Bruce

32622/3/4/5/2024

APPENDIX B

Plan 2



32622/3/14/5/2024

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