

DATED _____ 2023

(1) **ROTHER DISTRICT COUNCIL**

and

(2) **SOUTHERN HOUSING**

Supplemental Deed of Agreement Under section 106A of the Town and
Country Planning Act 1990 relating to the development of land at Westfield
Down, Main Road, Westfield, East Sussex

Planning reference: RR/2009/322/P; RR/2007/545/P; 2011/2114/P

THIS AGREEMENT is dated

2023

BETWEEN:-

- (1) **ROTHER DISTRICT COUNCIL** of Town Hall, Bexhill-on-Sea, East Sussex TN39 3JX (“**the Council**”)
- (2) **SOUTHERN HOUSING** of (Registered Society Number RS008983) whose registered office is at Fleet House, 59-61 Clerkenwell Road, London EC1M 5LA (“**the Owner**”)

Parties (1) and (2) shall be hereinafter referred to as (the “**Parties**”).

Introduction

- (A) The Council is the Local Planning Authority for the purposes of the 1990 Act for the area in which the Land is situated and by whom the obligations contained in this Deed are enforceable.
- (B) On 16 June 2014 the Council granted planning permission for the development of a residential development incorporating up to 39 dwellings and formation of new vehicular access under the Council’s reference RR/2009/322/P (“**the 2014 Permission**”)
- (C) The 2014 Permission was subject to a planning agreement under Section 106 of the 1990 Act dated 9 May 2014 between (1) Rother District Council (2) Sylvia Mary Dunkley and Eric Beresford Clarke and Jacqueline Angela Farnham and Carolyn Mary Hopper (3) Westfield Parish Council (4) East Sussex County Council (5) East Sussex County Council under which the parties covenanted among other things to provide affordable housing (“**the 2014 Agreement**”)
- (D) The Owner is the registered proprietor of the Site registered with the Land Registry under Title Number [].
- (E) The Parties have agreed to vary the terms of the 2014 Agreement in the manner hereinafter appearing and the Council is satisfied that such variation is such as may be approved by the Council under the 1990 Act.

- (F) The Council is minded to agree to the variation subject to the Council and the Owner entering into this Agreement.

IT IS AGREED as follows:-

1. Definitions

- 1.1 For the purposes of this Agreement the definitions shall be those used in the 2020 Agreement as if they were set out in this Agreement unless the context requires otherwise.
- 1.2 **“The 2014 Agreement”** means a deed relating to the development of land at Westfield Down, Main Road, Westfield, East Sussex made under Section 106 of the Town and Country Planning Act 1990 dated 9 May 2014 between (1) Rother District Council (2) Sylvia Mary Dunkley and Eric Beresford Clarke and Jacqueline Angela Farnham and Carolyn Mary Hopper (3) Westfield Parish Council (4) East Sussex County Council (5) East Sussex County Council

2. Construction of this Agreement

- 2.1 In this Agreement, unless the context otherwise requires:
- (a) the singular includes the plural, the masculine includes the feminine and vice versa.
 - (b) references to clauses and schedules are to the clauses in and schedules to this Agreement.
 - (c) references to any party having an interest in land affected by this Agreement include any successor in title of that party to that land or to any part of it.
 - (d) reference to any party having a statutory function referred to in this Agreement shall include any successor to that statutory function.
 - (e) reference to any Act or Statutory Instrument shall include any subsequent amendments to or re-enactment of it.
 - (f) where any Obligation applies to more than one person, their liabilities shall be joint and several.

3. Legal basis

3.1 This Agreement is made as a Deed under sections 106 and 106A of the 1990 Act together with all other enabling powers.

3.2 The Planning Obligations imposed upon the Owner under this Agreement create planning obligations under section 106 of the 1990 Act and are enforceable by the Council as local planning authority.

4. Legal costs

4.1 The Owner covenants to pay the Council's reasonable legal costs incurred in the negotiation, preparation and execution of this Agreement upon completion of this Agreement.

5. Contracts (Rights of Third Parties) Act 1999

5.1 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement except that the application of the Act shall not prevent all or any of the future successors in title or to the statutory functions of any of the parties to this Agreement from being able to benefit from or enforce any of the Obligations.

6. Variations to the 2014 Agreement

6.1 The Parties to this Agreement agree that the 2014 Agreement shall be varied as set out in the Schedule of this Agreement.

6.2 Except as provided in this Agreement it is agreed between the Parties that this Agreement is supplemental to and not in substitution for the 2014 Agreement and that the terms of the 2014 Agreement will continue in full force and effect subject only to the provisions of this Agreement.

6.3 This Agreement shall take effect on the date appearing on the front page.

IN WITNESS of which this Agreement has been duly executed as a Deed and has been delivered once dated.

The Schedule
Variations to the 2014 Agreement

1. From the date hereof, the parties agree that the 2014 Agreement shall be modified as follows:
 - 1.1. References in Part 2 and Part 3 of the Third Schedule in the 2014 Agreement to the definition “*Market Dwelling(s)*” shall be replaced by the definition “*Shared Ownership Accommodation*”
 - 1.2. The definition of “*Affordable Housing Units*” shall be amended as follows:

“Affordable Housing Units” means 39 Dwellings of Affordable Housing comprising Affordable Rented Housing and Shared Ownership Accommodation in accordance with the accommodation schedule appended at Annex 1 of this Agreement the tenure of which may be varied by agreement with the Council”
 - 1.3. The definition of “*Planning Application*” shall be amended by inserting the words “*and the Section 73 Application as the context may permit*”
 - 1.4. The definition of “*Planning Permission*” shall be amended by inserting the words “*and the Section 73 Permission as the context may permit*”
 - 1.5. The definition of “*Section 73 Application*” and “*Section 73 Permission*” shall be inserted within the 2014 Agreement as follows:

“Section 73 Application” means application reference no. RR/2023/919/P submitted by the Owner under Section 73 of the 1990 Act seeking a variation of condition 1 of reserved matters planning permission: RR/2017/1293/P (Approval of reserved matters following outline approval RR/2009/322/P – layout scale appearance and hard and soft landscaping.) to amend approved tenure mix

“Section 73 Permission” means the planning permission subject to conditions granted by the Council pursuant to the Section 73 Application
 - 1.6. The definition of “*Nominations Agreement*” shall be deleted and replaced with the follow:

“Nominations Agreement” an Agreement in a form agreed between the Council and the Registered Provider for the allocation of the Affordable Housing Units

1.7. The following definitions shall be deleted from the 2014 Agreement: *“Market Dwelling(s)”, “Payment in Lieu”*

1.8. Clause 10 in the 2014 Agreement shall be deleted in its entirety

1.9. Paragraph 1 in Part 1 of the Third Schedule shall be amended by deleting the words *“ substantially in the form set out in the Fourth Schedule”*

1.10. Paragraph 2 in Part 1 of the Third Schedule shall be deleted in its entirety and replaced with the following wording:

“2. The Affordable Housing Units shall be provided in accordance with the accommodation schedule appended at Annex 1 of this Agreement the tenure of which may be varied by agreement with the Council”

1.11. Paragraph 4 in Part 1 of the Third Schedule shall be deleted in its entirety and replaced with the following wording:

“4. 1 of the Affordable Housing Units shall be provided as fully wheelchair accessible and built in accordance with the Council’s Wheelchair Site Brief (attached to this Agreement) and have flat access front and back”

1.12. Paragraph 8 in Part 1 of the Third Schedule shall be deleted in its entirety

1.13. Paragraph 7 in Part 1 of the Third Schedule shall be deleted in its entirety and replaced with the following wording:

“7. The Affordable Rented Housing Units to be constructed on the Site shall be allocated in accordance with the Nominations Agreement and any agreed Local Lettings Plan”

1.14. Paragraph 10 in Part 1 of the Third Schedule shall be deleted in its entirety

1.15. A new paragraph 11 shall be inserted in Part 1 of the Third Schedule as follows and the clause numbering shall be adjusted accordingly:

“11. *The obligations in Part 1 of the Third Schedule in this Agreement 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:*

(a) 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

(b) 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 obligations in Part 1 of the Third Schedule in this Agreement which provisions shall determine absolutely.”

1.16. A new paragraph 12 shall be inserted in Part 1 of the Third Schedule as follows and the clause numbering shall be adjusted accordingly:

“12. *The obligations in Part 1 of the Third Schedule in this Agreement shall not be binding on:*

(a) Any person who has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force

(or any equivalent right including the preserved right to buy) in respect of a particular Affordable Housing Unit; or

(b) Any person who has exercised any statutory right to buy (or any equivalent contractual right including the preserved right to buy) in respect of a particular Affordable Housing Unit; or

(c) Any tenant within Shared Ownership Accommodation who has subsequently purchased from the Registered Provider all the remaining equity so that the tenant owns the entire Shared Ownership Accommodation; or

(d) Purchasers from or successors in title to any of the parties mentioned in subparagraphs (a) to (c) above; or

(e) A chargee or mortgagee of any persons referred to in subparagraphs (a) to (d) above”

1.17. The Nominations Agreement in the Fourth Schedule of the 2014 Agreement shall be deleted in its entirety

1.18. The Sixth Schedule in the 2014 Agreement shall be deleted in its entirety and the Schedule numbering shall be adjusted accordingly

1.19. Annex 1 as appended to this Deed shall be inserted at the end of the 2014 Agreement

The Common Seal of **ROTHER DISTRICT**

COUNCIL was affixed in the)

presence of)

Authorised Officer

EXECUTED as a **DEED** by)

Affixing the common seal of)

SOUTHERN HOUSING LIMITED)

in the presence of)

.....

Authorised Signatory