

Deed Dated

Rother District Council

and

[Company Name]

Shareholders' Agreement

in respect of [Company Name]

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Shareholders' Agreement

Deed dated

Parties

- (1) **Rother District Council** of Town Hall, London Road, Bexhill-on-Sea, East Sussex, TN39 3JX (the **Council**)
- (2) **[company name]** (company no [company number]) whose registered office is at [registered address] (the **Company**).

Introduction

- (A) The Company was incorporated in England under the Companies Act 2006 on [date of incorporation] and, at the date of this Agreement, [number of shares on incorporation] Shares are in issue and are registered in the name of and are beneficially owned by the Council.
- (B) The Company has been established for the commercial purpose of increasing the supply of housing across a range of tenures including for sale (on market or shared ownership or shared equity terms) and rent (at a market or at sub-market rent).
- (C) This Agreement sets out the terms upon which the Council will participate in the Company as its shareholder.

Agreed Terms

1 Definitions and Interpretation

1.1 In this Agreement:

Agreed Form means a form agreed between the Shareholder from time to time, a copy of which has been initialled for the purpose of identification by or on behalf of the Shareholder;

Articles means the articles of association of the Company;

Business means the business of the Company as set out in clause 2;

Business Day means a day (other than a Saturday or Sunday) on which the banks in the City of London are open for business;

Business Plan means the operational business plan and budget of the Company as adopted and amended in accordance with clause 2.

CA2006 means the Companies Act 2006;

Director means a director of the Company;

Dwelling means any dwelling owned by the Company from time to time;

Environmental Information Regulations means the Environmental Information Regulations 2004;

Finance Documents means a development facility agreement to be entered into by the Company and the Council on or about the date of this Agreement, a loan note instrument to be entered into by the Company on or about the date of this Agreement, and any other funding and security documentation which is entered into by the Company relating to the provision of funding for the Business from the Council;

FOIA means the Freedom of Information Act 2000;

Group means the Company and its subsidiary undertakings from time to time, or any of them as the context requires and **Group Company** shall be construed accordingly;

Information has the meaning given to it under section 84 of the FOIA;

Remuneration Policy means a policy adopted by the Company (following receipt of Shareholder Consent) in relation to the provision of remuneration (including salary, bonus, the provision of benefits-in-kind or otherwise) for its employees, officers and consultants;

Request for Information has the meaning set out in the FOIA or any apparent request for information made under the FOIA or the Environment Information Regulations;

Shareholder means any holder of any Share(s) from time to time, being the Council at the date of this Agreement;

Shareholder Consent means consent of the Shareholder in accordance with clause 3.6;

Shareholder Consent Matters means those matters listed in schedule 1;

Shares means the ordinary shares of £[value] each in the issued share capital of the Company;

Subsidiary has the meaning given in the CA2006; and

United Kingdom means the geographical area of the United Kingdom of Great Britain and Northern Ireland as at the date of this Agreement.

Rother District means the Council's administrative area as at the date of this Agreement;

1.2 A reference to a statutory provision includes a reference to:

1.2.1 a statutory amendment, consolidation or re-enactment (whether before or after the date of this Agreement),

1.2.2 statutory instruments or subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) or orders made under the statutory provision (whether made before or after the date of this Agreement), and

1.2.3 statutory provisions of which the statutory provision is an amendment, consolidation or re-enactment.

1.3 Reference to:

1.3.1 a person includes a legal or natural person, partnership, trust, company, government or local authority department or other body (whether corporate or unincorporate),

1.3.2 a statutory or regulatory body shall include its successors and any substituted body,

1.3.3 an individual includes, where appropriate, his personal representatives,

1.3.4 the singular includes the plural and vice versa, and

1.3.5 one gender includes all genders.

1.4 Unless otherwise stated, a reference to a clause or schedule is a reference to a clause or schedule to this Agreement and a reference to this Agreement includes its schedules.

1.5 Clause headings in this Agreement are for ease of reference only and do not affect its construction.

1.6 In construing this Agreement the so-called ejusdem generis rule does not apply and accordingly the interpretation of general words shall not be restricted by words indicating a particular class or particular examples.

1.7 For the purposes of this Agreement **Party** means a party to this Agreement and reference to **Parties** shall be to all or more than one of them as applicable.

1.8 Where a provision of this agreement imposes an obligation, cost or liability on two or more Parties, that obligation, costs or liability shall be construed as being against those Parties jointly and severally, and where a provision of this Agreement gives a claim, benefit or right to two or more Parties, that claim, benefit or right attaches to those Parties jointly.

1.9 Where a consent and/or permission is required under this Agreement from one Party to the other that consent and/or permission should not be unreasonably withheld or delayed.

2 **Business**

2.1 The Business of the Company shall be:

2.1.1 to operate as a commercial company;

2.1.2 to purchase land and property within the Rother District from either the Council or on the open market; and

2.1.3 to acquire, develop, construct and/or refurbish residential homes or mixed use developments within the Rother District which it will sell at market or shared equity or shared ownership terms or rent (either on the open market or at a sub-market rent).

together with any activities reasonably incidental to the above.

- 2.2 The Company shall conduct the Business with a view to generating sufficient profits from the Business to invest in the future provision of new homes within the Rother District.
- 2.3 The Company shall circulate the Business Plan to the Shareholder by the end of November in each year and invite the Shareholder to provide comments on the proposed Business Plan or to provide Shareholder Consent. The Shareholder will use reasonable endeavours to respond by the end of the following February. Subject to the receipt of Shareholder Consent, before the end of each Accounting Period the Directors shall (in accordance with this Agreement) consider and, if appropriate, adopt an updated and revised Business Plan. No adoption, variation or replacement of any Business Plan shall take effect unless such adoption, variation or replacement has received Shareholder Consent.
- 2.4 Each Business Plan shall be substantially in the format of the first Business Plan and shall be for a three year period, unless the Shareholder consents otherwise.
- 2.5 Notwithstanding any other provision of this clause 2, following the requisite approval by the Directors of a new proposed Business Plan or an amended or updated and revised Business Plan, such draft Business Plan shall become, or such amended or updated Business Plan shall become, the Business Plan for the relevant Accounting Periods. For any period when a proposed Business Plan presented under clause 2.3 has not been approved and adopted by the Directors in accordance with this Agreement the relevant existing Business Plan shall continue to be the Business Plan of the Company.

3 Conduct of the Company's Affairs

- 3.1 Meetings of the Directors shall be held no less than four times in every year and at not more than three monthly intervals.
- 3.2 With the exception of those matters requiring Shareholder Consent pursuant to clause 3.6, the management of the Company shall be vested in the Directors. The Directors may appoint a chief operating officer on such terms as they may think fit who shall be responsible for the day to day management of the Business within the terms of the Business Plan and this Agreement and perform such duties as may be delegated to them by the Directors. The Directors may also remove such chief operating officer and appoint a replacement, on such terms as it may think fit providing that no appointment to the post of chief operating officer shall be made without Shareholder Consent.
- 3.3 Without prejudice to the generality of the foregoing, the Directors will determine the general policies of the Company and the manner in which the Business is to be carried out, subject to the Business Plan, to those matters requiring Shareholder Consent pursuant to clause 3.6 and to any other express provisions of this Agreement. In particular, but without limitation to the generality of the foregoing, the Directors shall exercise all voting rights and other powers of control available to them in relation to the Company so as to procure (in so far as they are able in the exercise of such rights and power) that, at all times during the term of this Agreement, the Company shall:

- 3.3.1 carry on and conduct its business and affairs in a proper and efficient manner, for its own benefit and in accordance with the Business Plan and with good business practices, and
- 3.3.2 transact all its business on arm's length terms.
- 3.4 The Company shall not carry out any activity which would render the holding of Shares by any Shareholder unlawful provided that where a proposed change of law would render such shareholding unlawful such Shareholder will use its reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its Shares.
- 3.5 The Company will if it requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, obtain and maintain the same in full force and effect.
- 3.6 The Company shall ensure that none of the Shareholder Consent Matters shall be carried out without the prior consent in writing of Shareholder holding in aggregate between them a majority of the Shares then in issue.
- 3.7 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company and its subsidiaries with any Shareholder's designated officers and executives at any time. All books, records, accounts and documents relating to the business and the affairs of the Company and its subsidiaries shall be open to the inspection of any such person, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the relevant Shareholder properly informed about the business and affairs of the Company or to protect its interests as a Shareholder. Any information secured as a consequence of such discussions and examinations shall be kept confidential by the requesting Shareholder and its designated officers and executives in accordance with the terms of clause 7.
- 3.8 The Company agrees with the Shareholder that it will maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Group and will generally keep the Shareholder informed of the progress of each Group Company's business and affairs and in particular will procure that each Shareholder is given such information and such access to the officers, employees and premises of the Group as it may reasonably require for the purposes of enabling it to monitor its investment in the Group.
- 3.9 The Company shall not breach nor cause the Council to be in breach of the Local Authorities (Companies) Order 1995.

4 **Board**

- 4.1 Subject to the Articles, there shall be a minimum of three Directors and a maximum of not more than eight Directors.
- 4.2 The board shall be comprised of such number of executive or non-executive Directors as are required to ensure that the board of the Company has the appropriate skills and experience to deliver the objectives set out in clause 2.1.
- 4.3 No more than half of the Directors appointed at any one time may be appointed by the Council.
- 4.4 For the avoidance of doubt, no Directors shall be:

4.4.1 an elected member of the Council who is the Council Leader, the Chairman of the Audit and Standards Committee, has responsibility for planning or is appointed to the Council's Cabinet; or

4.4.2 an officer of the Council who has responsibility for undertaking a statutory monitoring officer role or an executive director.

4.5 Subject to the Articles, any appointment(s) or termination(s) of a Director made under this clause 4 shall be effected by the Council by giving notice in writing to the Company, on the date on which the notice from the Council is received by the Company, or if a later date is specified in the notice, on that date.

5 **Finance**

5.1 The Board shall procure that:

5.1.1 all payments due to the Council pursuant to Finance Documents entered into by the Company prior to the date of this Agreement are made on standard market terms and on the basis of standard market rates; and

5.1.2 all Finance Documents entered into by the Company on or after the date of this Agreement are entered into on standard market-terms.

6 **Covenants**

The Company covenants to the Council in accordance with the terms of Schedule 2.

7 **Termination**

7.1 This Agreement shall terminate upon

7.1.1 the written agreement of the Parties in accordance with the terms agreed; or

7.1.2 when a resolution is passed by the Shareholder or creditors of the Company, or any order made by a court or other competent body or person instituting a process that shall lead to the Company being wound up and its assets being distributed among the creditors, Shareholder or other contributors,

but shall cease and determine in respect of a Shareholder (without prejudice to that Shareholder's accrued rights, obligations or liabilities) upon that Shareholder ceasing to hold Shares in the Company.

8 **Confidentiality**

8.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other Party belongs, except as permitted by clause 7.2.

8.2 Each Party may disclose the other Party's confidential information:

8.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's obligations under this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply

with this clause 7; or

8.2.2 as may be required by law, court order or any governmental or regulatory authority.

8.3 Each Party acknowledges that the other Party is subject to the requirements of the FOIA and the Environmental Information Regulations, and shall facilitate the other Party's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 7.4 and 7.7.

8.4 If either Party (the **Recipient**) receives a Request for Information in relation to Information that the other Party is holding and which the Recipient does not hold itself, the Recipient shall refer to the other Party such Request for Information as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information, and the other Party shall:

8.4.1 provide the Recipient with a copy of all such Information in the form that the Recipient requires as soon as practicable and in any event within 10 Business Days (or such other period as the Recipient acting reasonably may specify) of the Recipient's request; and

8.4.2 Provide all necessary assistance as reasonably requested by the Recipient to enable the Recipient to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

8.5 Following notification under 7.4, and up until such time as the other Party has provided the Recipient with all the Information specified in clause 7.4, the other Party may make representations to the Recipient as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Recipient shall be responsible for determining, at its absolute discretion:

8.5.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

8.5.2 whether Information is to be disclosed in response to a Request for Information, and in no event shall the other Party respond directly to a Request for Information unless the Request for Information is addressed to it.

8.6 The Parties acknowledge that (notwithstanding the provisions of clause 7.1) the Recipient may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the other Party:

8.6.1 in certain circumstances without consulting with the other Party; or

8.6.2 following consultation with the other Party and having taken their views into account.

8.7 Each Party shall transfer to the other Party any Request for Information which it receives but is addressed to the other Party as soon as practicable and in any event within 3 Business Days of receiving it.

8.8 The Parties acknowledge that any lists provided which list or outline Confidential Information are of indicative value only and that a Recipient may nevertheless be obliged to disclose

Confidential Information in accordance with clause 7.6.

9 **No Partnership**

Nothing in this Agreement gives rise to a partnership between the Parties or constitutes one Party the agent of another.

10 **Contracts (Rights of Third Parties) Act 1999**

10.1 Unless the right of enforcement is expressly granted, it is not intended that a third party, other than a lawful successor in title or a lawful assignee, should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

10.2 The Parties may rescind or vary this Agreement without the consent of a third party to whom an express right to enforce any of its terms has been provided.

11 **Costs of this Agreement**

Each party shall pay its own costs in connection with the negotiation, preparation, execution and performance of this Agreement and of each department referred to in it.

12 **Waiver**

12.1 The rights of each of the Parties in respect of a breach of this Agreement shall not be affected by completion, by its rescinding, or failing to rescind, this Agreement, or failing to exercise, or delaying in exercising, a right or remedy, or by anything else, except a specific authorised written waiver or release. A single or partial exercise of a right or remedy provided by this Agreement or by law does not prevent its further exercise or the exercise of another right or remedy.

12.2 Waiver of a breach of a term of this Agreement, or of a default under it, does not constitute a waiver of another breach or default nor affect the other terms of this Agreement.

12.3 The rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies.

13 **Variation**

A purported variation of this Agreement is not effective unless in writing and signed by or on behalf of each of the Parties.

14 **Invalidity**

If a provision of this Agreement is held to be illegal or unenforceable, in whole or in part, under an enactment or rule of law, it shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected. The Parties agree to negotiate in good faith to agree the terms of a mutually satisfactory provision to be substituted for the provision found to be illegal or unenforceable.

15 **Entire Agreement**

15.1 This Agreement (together with any documents entered into under it or at the same time as it) supersedes all prior understandings and agreements between the Parties (whether written or oral) relating to its subject matter and contains the entire agreement between the Parties relating to its subject matter.

15.2 Each Party acknowledges that it does not enter into this Agreement on the basis of, and does not rely on, warranties or representations made, or agreed to, by any person (whether a party to this Agreement or not).

15.3 Each Party waives its rights against the others in respect of warranties and representations (whether written or oral) not expressly set out or referred to in this Agreement.

15.4 Nothing in this clause 14 limits or excludes liability for fraud.

15.5 The Parties acknowledge that they have had the benefit of legal advice on the effects of this clause 14 and confirm that they consider this clause 14 to be reasonable in all circumstances of this Agreement.

16 **Status of this Agreement**

16.1 In the event of any ambiguity or discrepancy between the provisions of this Agreement and the Articles, then it is the intention of the Shareholder that the provisions of this Agreement shall prevail. Accordingly, each Shareholder (so far as each is able) shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to give effect to the provisions of this Agreement and shall further if necessary procure (insofar as it is able to do so by the exercise of those rights and powers) any required amendment to the Articles.

17 **Consents**

17.1 Consents, notices, approvals or agreements to be given by the Shareholder under this Agreement shall be given in writing.

17.2 Where this Agreement provides that a matter is subject to the consent, approval or Agreement of any Party then (except as expressly provided otherwise), it shall be in the absolute discretion of the Party concerned as to whether (and if so, on what terms and conditions) the consent, approval or agreement is made.

18 **Communications**

18.1 Any notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first-class post (and by air mail if overseas) or by facsimile or by email as follows:

18.1.1 if to the Council, to:

Address: Town Hall, London Road, Bexhill-on-Sea, East Sussex, TN39 3JX

Email: [name]@rother.gov.uk

marked for the attention of: [name] [position]

18.1.2 if to the Company, to:

Address: [name and address]

Email: [email address]

marked for the attention of: The Chief Operating Officer;

or to such other person, address, or fax number or email as any Party may specify by notice in writing to the other.

18.2 In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:

18.2.1 if delivered personally, when left at the address referred to in clause 17.1;

18.2.2 if sent by mail, other than airmail, two Business Days after posting it;

18.2.3 if sent by fax, on completion of its legible transmission; and

18.2.4 if sent by email, when sent and there has been no communication by the recipient to the senders that the email has not been received,

provided always that a notice given in accordance with the above but received on a day which is not a Business Day or after business hours on a Business Day will only be deemed to be given on the next Business Day.

18.3 The original of any notice or other communication by fax shall be forwarded to the recipient(s) but the non-arrival of that original shall not affect the validity of the notice or other communication by fax.

19 **Counterparts**

19.1 This Agreement may be executed in a number of counterparts and by the Parties on different counterparts, but shall not be effective until each Party has executed at least one counterpart.

19.2 Each counterpart, when executed, shall be an original, but all the counterparts together constitute the same document.

20 **Governing Law and Jurisdiction**

20.1 This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of England and Wales.

20.2 The Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales in respect of any dispute or claim arising out of or in connection with this Agreement or any of the documents to be executed pursuant to this Agreement or their subject matter or formation (including non-contractual disputes or claims). This Deed has been executed as a deed and delivered on the date stated at the beginning of this Deed.

Schedule 1

Shareholder Consent Matters – Part A (Corporate Matters)

The Company and any Group Company shall not, unless it has Shareholder Consent:

1. vary in any respect its articles of association or the rights attaching to any of its shares; or
2. permit the registration (upon subscription or transfer) of any person as a member of the Company other than the Shareholder in accordance with the terms of this Agreement and/or any permitted transferees, or permit the registration (upon subscription or transfer) of any person as a member of any other Group Company save for the Company; or
3. increase the amount of its issued share capital except as provided in this agreement, grant any option or other interest (in the form of convertible securities or in any other form) over or in its share capital, redeem or purchase any of its own shares or effect any other reorganisation of its share capital; or
4. issue any loan capital or enter into any commitment with any person with respect to the issue of any loan capital; or
5. make any borrowing other than under the Finance Documents; or
6. apply for the listing or trading of any shares or debt securities on any stock exchange or market; or
7. pass any resolution for its winding up or present any petition for its administration (unless it has become insolvent); or
8. amalgamate or merge with any other company or business undertaking; or
9. alter its name or registered office; or
10. enter into any transaction or arrangement of any nature whatsoever (including, for the avoidance of doubt, a service contract) with any of its directors or any person who is connected (within the meaning of sections 1122 and 1123 of the Corporation Tax Act 2010) to any of its directors whether or not any other person shall be party to such transaction or arrangement; or

11. create or permit to be created any mortgage, charge, encumbrance or other security interest whatsoever on any material asset or its business in whole or in part or any of its shares other than:
 - (a) the Finance Documents;
 - (b) liens arising in the ordinary course of business; or
 - (c) any charge arising by the operation or purported operation of title retention clauses and in the ordinary course of business; or

12. change either:
 - (a) its statutory auditors; or
 - (b) its financial year end; or

13. make or permit to be made any material change in the accounting policies and principles adopted by the Company in the preparation of its accounts except as may be required to ensure compliance with relevant accounting standards under the Companies Act 2006 or any other generally accepted accounting principles in the United Kingdom; or

14. make any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or grant any credit (other than in the normal course of trading) or give any guarantee (other than in the normal course of trading) or indemnity (other than in the normal course of trading); or

- 15.

Schedule 2

Company Covenants

The Company covenants to the Shareholder as follows:

1. To appoint the Council's auditors as its statutory auditors and to maintain the Council's financial year and as its financial year end.

In witness whereof the parties have executed this Agreement as a deed.

Executed as a deed by
affixing the common seal of
Rother District Council
in the presence of:



.....
Director

.....
Member

executed as a deed by)

[Company Name])

)

acting by:)

a director in the presence of:

Director

Witness signature

Name

Address