

DATED 23rd November 2022

**EDWIN PETER GILES ROBERT GILES ELIZABETH
KATHLEEN REID and ANDREW DAVID GILES and HOME GROUP
DEVELOPMENTS LIMITED**

and

TENDRING DISTRICT COUNCIL

and

ESSEX COUNTY COUNCIL

DEED OF VARIATION

of an Agreement entered into pursuant to Section 106 and S106A
of the Town and Country Planning Act 1990
relating to land situate to the northwest of Sladbury's Lane, Clacton on Sea, Essex

Home Group Limited
Legal Services
2 Gosforth Park Way
Gosforth Business Park
Newcastle upon Tyne
NE12 8ET

THIS DEED OF VARIATION is made the Tenure - Rural day of November 2022

BETWEEN

(1) TENDRING DISTRICT COUNCIL of Town Hall, Station Road, Clacton-on-Sea, Essex CO15 1SE ("the Council"); and

(2) ESSEX COUNTY COUNCIL of County Hall, Chelmsford, Essex CM1 1QH ("the County Council"); and

Innifree, Vicarage lane, Thorpe le Soken, CO16 0EH
(3) EDWIN PETER GILES of ~~Wetheroff, Stadbury's Lane, Clacton-on-Sea CO15 4SS~~ *Innifree, Vicarage lane, Thorpe le Soken, CO16 0EH*

ROBERT GILES of Ryders Barn, Marsh Lane, Great Canfield, Dunmow CM6 1JX

ELIZABETH KATHLEEN REID of Yonder House, Little Clacton Road, Great Holland, Frinton-on-Sea CO13 0ET and ANDREW DAVID GILES of Little House, Stadbury's Lane, Clacton-on-Sea CO15 4SS ("the First Owner") and HOME GROUP DEVELOPMENTS LIMITED (Company No. 04664018) whose registered office is at 2 Gosforth Park Way, Gosforth Business Park, Newcastle Upon Tyne, NE12 8ET (the "Second Owner") (and together referred to herein as "the Owner")

BACKGROUND

- (A) This Deed of Variation (Deed) pertains to the resolution of disputes and the Affordable Housing and Open Space provisions under the Agreement and which are to be provided on the Site whereby the Council is the Local Planning Authority for the purposes of this Deed for the area within which the Affordable Housing and Open Space is to be provided.
- (B) The First Owner owns the freehold interest in the Site which is registered at HM Land Registry under title numbers EX863472 and EX903475.
- (C) The Second Owner is a person interested in the Site as beneficial freehold owner pursuant to a transfer of the whole of the Site dated the 29th October 2021 and

will become the registered proprietors of the Site on the completion of the registration thereof at the Land Registry

(D) The Council and the County Council have requested that the First Owner and the Second Owner both enter into this Deed as Owner pending the completion of the registration of the Site by the Land Registry in the name of the Second Owner whereupon the First Owner will be released from the obligations on the part of the Owner as set out in the Agreement and these obligations will rest solely with the Second Owner and who for the purposes of this Deed and the Agreement will be the Owner

(E) Planning Permission was granted by the Secretary of State on appeal under reference APP/P1560/W/17/3169220 for the Development set out in the Application reference 15/01351/OUT.

(F) The Owner has requested and the Council and the County Council have agreed that the Agreement shall be varied in the manner hereinafter appearing and pursuant to Section 106 and Section 106A of the Town and Country Planning Act 1990 as amended.

1. IN THIS DEED the following expressions shall have the following meanings:-

1.1 "the Agreement" is the unilateral undertaking dated the 24th August 2017 made pursuant to Section 106 of the Town and Country Planning Act 1990 and made by the Owner for the purposes of creating planning obligations enforceable by the Council and the County Council in respect of the Site.

1.2 "the Existing Provisions" are the definitions of "Affordable Housing Dwellings", "Affordable Housing Option", "Affordable Housing Price", "Affordable Housing Plan", "Chargee", "Protected Tenant" and "Specification" comprised within Part One of the Second Schedule of the Agreement together with Paragraphs 1, 2, 3, 4 and 5 to Part One of the Second Schedule to the Agreement and Paragraphs A, B and C to Part Two of the Second Schedule to the Agreement and together with the Third Schedule of the Agreement and which provisions are as more particularly set out in Part 1 of the Schedule hereto

1.3 “the New Provisions” are the insertion of a new clause 10 to the Agreement headed “Disputes”, the revised definitions of “Affordable Housing Dwellings” and

“Protected Tenant” together with the insertion of a new definition of “Shared Ownership Terms” comprised within Part One of the Second Schedule of the Agreement together with the insertion of Paragraphs 1, 2, and 3 to Part One of the Second Schedule to the Agreement (in lieu of and in substitution of Paragraphs 1, 2, 3, 4 and 5 to Part One of the Second Schedule) together with the insertion of revised Paragraphs A, B and C to Part Two of the Second Schedule to the Agreement together with the insertion of a revised Third Schedule to the Agreement and which provisions are intended to be incorporated into the Agreement in substitution of Paragraphs A, B and C to Part Two of the Second Schedule and the Third Schedule respectively and which provisions are as more particularly set out in Part 2 of the Schedule hereto.

1.4 Save where the content otherwise requires words and expressions defined in the Agreement shall have the same meaning when used in this Deed.

2. This Deed is supplemental to the Agreement and is made pursuant to Section 106 and Section 106A of the Act whereby the Agreement was entered into in connection with the Development the subject of the Planning Permission . The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and the County Council in respect of covenants made with them as local planning authorities against the Owner.

3. The Owner, the Council and the County Council have agreed that the Agreement should be varied by the deletion of the Existing Provisions and by the insertion of the New Provisions as set out in the Schedule to this Deed.

4. The Owner, the Council and the County Council hereby agree that the Agreement is varied by the deletion of the Existing Provisions and by the insertion of the New Provisions and that the Agreement shall henceforth take effect and be read and construed accordingly.

5. To give effect to the variation referred to in Clause 4 the Owner, the Council and the County Council releases the Existing Provisions and the Owner and the Council and the Owner confirms that the covenants conditions stipulations and agreements contained in the Agreement (save as varied by this Deed) shall continue in full force and effect and be binding on the respective parties thereto.

5. This Deed is a Local Land Charge and the Council shall register it in its Register of Local Land Charges in accordance with the provisions of the Local Land Charges Act 1975 and Section 106(1) of the Town and Country Planning Act 1990 as amended.

7. The Second Owner agrees that on completion of this Deed they shall pay the Council's legal costs incurred in the negotiation and completion of this Deed in the sum of £1200.00 (exclusive of Value Added Tax).

8. The Second Owner agrees that on completion of this Deed they shall pay the County Council's legal costs incurred in the negotiation and completion of this Deed in the sum of £700.00 (exclusive of Value Added Tax).

N WITNESS whereof this Deed has been executed as a Deed the day and year first before written.

THE SCHEDULE

Part 1

The Existing Provisions

SECOND SCHEDULE – AFFORDABLE HOUSING - Part One

‘Affordable Housing Dwellings’

means (a) the Residential Dwellings to be provided as Affordable Housing pursuant to the Affordable Housing Scheme; or (b) the nine (9) Residential Dwellings to be transferred to the Council pursuant to the Affordable Housing Option

‘Affordable Housing Option’

means the option to accept nine (9) of the Residential Dwellings being transferred to the Council at the Affordable Housing Price in lieu of the delivery of the Affordable Housing Scheme and which Residential Dwellings when transferred to the Council are to be used solely as Social Rented Housing

‘Affordable Housing Price’

means the sum of One Pound (£1.00) for each Affordable Housing Dwelling transferred to the Council pursuant to the Affordable Housing Option

‘Affordable Housing Plan’

means the plan to show the size and the location within the Site of the Affordable Housing Dwellings to be transferred to the Council pursuant to the Affordable Housing Option

‘Charge’

means any mortgage or charge (or any receiver or manager (including an administrative receiver or any other administrator howsoever appointed) appointed by such mortgagee or

chargee) or a Housing Administrator of the whole or any part of the Affordable Housing Dwellings

‘Protected Tenant’

means any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Dwelling;
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Dwelling;
- (c) has been granted a shared ownership lease in exercise of that persons’ statutory right in respect of a particular Affordable Housing Dwelling

‘Specification’

means a specification for the design and construction of the Affordable Housing Dwellings to be transferred to the Council pursuant to the Affordable Housing Option and which specification shall include the fixtures and fittings to be used

SECOND SCHEDULE – Part One – Paragraph 1

Not to Commence the Development unless and until the Council has provided the Owner with notice in writing to confirm that the Council is exercising the Affordable Housing Option (in which case paragraphs 2, 4 and 5 of this Schedule shall apply) or the Council requires the Owner to submit and implement the Affordable Housing Scheme (in which case paragraphs 3, 4 and 5 of this Schedule shall apply) and in the event such notice is not served within 20 Working Days of the date of a request in writing to be served on the Council by the Owner for said notice to be served the Owner shall implement the Affordable Housing scheme

SECOND SCHEDULE – Part One – Paragraph 2

In the event that the Council confirms that it is exercising the Affordable Housing Option pursuant to paragraph 1 of this Schedule

Not to Commence the Development unless and until the Affordable Housing Plan and the specification have been submitted to the Council and the Council has approved the said

Affordable Housing Plan and the Specification in writing PROVIDED THAT each of the said documents shall be deemed to have been approved if no decision thereon has been submitted in writing by the Council to the Council within 12 weeks of the date on which each said document is submitted to the Council (or allow, or cause or permit the Occupation of) more than fifty percent (50%) Market Dwellings unless and until the nine (9) Affordable Housing Dwellings have been constructed in accordance with the Specification and are capable of being Occupied for their intended purpose; and

2.2 transferred (freehold) to the Council for the Affordable Housing Price and for the purposes of this Schedule only the expression "transferred" shall mean a transfer of the freehold interest (of any house or block of flats) or leasehold interest (of any flat in a block that also contains one or more Market Dwellings or an agreement for sale agreed with the Council that has been unconditionally released for completion by the Owner Provided Always that the transfer of the Affordable Housing Dwellings to the Council shall be subject to the provisions contained in Part Two of this Schedule

SECOND SCHEDULE – Part One – Paragraph 3

1. In the event the Council confirms that it is not exercising the Affordable Housing Option pursuant to paragraph 1 of this Schedule or fails to serve the notice in writing required by paragraph 1 of this Schedule

1. Not to Commence the Development unless and until the Affordable Housing Scheme has been submitted to the Council for approval and the Council has approved the said Affordable Housing Scheme in writing PROVIDED THAT the said document shall be deemed to have been approved if no decision thereon has been submitted in writing by the Council to the Council within 12 weeks of the date on which each said document is submitted to the Council (or allow, or cause or permit the Occupation of) more than fifty percent (50%) Market Dwellings unless and until the nine (9) Affordable Housing Dwellings have been constructed in accordance with the Specification and are capable of being Occupied for their intended purpose; and

SECOND SCHEDULE – Part Two – Paragraph A

1. The obligations and restrictions contained in this Schedule shall not bind:
1. a Protected Tenant;
2. any person or body deriving title through of from a Protected Tenant;
3. a Chargee of the Approved Body who has become a mortgagee in possession PROVIDED THAT the mortgagee in possession has first provided the Council with notice in writing that they have taken possession of the Affordable Housing Dwelling (or Affordable Housing Dwellings) and have given the Council eight (8) weeks from the date of that notice to put forward a proposal to purchase the Affordable Housing Dwelling (or Affordable Housing Dwellings) at a fair price which at least covers the financial extent of the mortgagee in possession's charge

SECOND SCHEDULE – Part One – Paragraph 5

Occupied for no other purpose than as Affordable Housing
(Subject always to paragraph 5 of this Schedule) the Affordable Housing Dwellings shall

SECOND SCHEDULE – Part One – Paragraph 4

Approved Body shall be subject to the provisions contained in Part Two of this Schedule
Owner Provided Always that any transfer of the Affordable Housing Dwellings to the
agreed with the Approved Body that has been unconditionally released for completion by the
Dwellings) that comprise the Affordable Housing Dwellings or an agreement for sale or lease
of flats) or leasehold interest (of any flat in a block that also contains one or more Market
expression "transferred" shall mean a transfer of the freehold interest (of any house or block
3.2 transferred to an Approved Body and for the purposes of this Schedule only the
3.1 constructed and are available to be Occupied for their intended purpose: and
Housing Dwellings referred to in the Affordable Housing Scheme have been:
80%) Market Dwellings unless and until one hundred percent (100%) of the Affordable
3 Not to Occupy (or allow, cause or permit the Occupation of) more than eighty percent
Approved Body shall be subject to the provisions contained in Part Two of this Schedule
Owner Provided Always that any transfer of the Affordable Housing Dwellings to the
agreed with the Approved Body that has been unconditionally released for completion by the

A. The transfer of the Affordable Housing Dwellings to the Council or the Approved Body (as appropriate) shall be with vacant possession.

B. The transfer deed for the transfer of the Affordable Housing Dwellings to the Council or the Approved Body shall be prepared by the Owner and the Owner shall pay the Council's or the Approved Body's reasonable costs of transferring the Affordable Housing Dwellings up to a total aggregate limit of £1,500 (One Thousand Five Hundred Pounds) on completion of the transfer deed.

C. The transfer deed shall contain

1. a grant by the Owner of all rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Dwellings;

2. a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development; and

3. such other covenants and reservations as the Owner and/or the Council may reasonably require including but not limited to the maintenance of the Development once it is completed and the preservation of the appearance thereof

THIRD SCHEDULE – OPEN SPACE

. In this Schedule unless the context requires otherwise the following words and expressions shall have the following meaning:

Open Space Specification

the specification and layout plan and timing for the laying out, profiling, clearing, planting, landscaping and decontaminating the Open Space Land and setting out of the Play Area and generally for ensuring that the said land is fit for its intended

purpose as recreational land to be enjoyed by members of the public as such

areas of land not to be less than 4.6 hectares including the Play Area and a sports field as shown on the Open Space Plan to be used for no purposes other than for public open space to provide a recreational facility for members of the public in perpetuity and as sustainable drainage

means a certificate or certificates in writing issued

in the case of the Play Area by a ROSPA certified play inspector and in the case of the remaining areas of Open Space Land by a Chartered Landscape Architect that confirms that the Open Space Land has been laid out in accordance with the Open Space Specification

means a sum calculated in accordance with Annex

A for the purposes of the management and maintenance of the Open Space Land Linked

means a management plan prepared by the Owner to include details of levels of maintenance and details of funding for the maintenance of the Open Space Land and to be approved in writing by the Council for the ongoing management and maintenance of the Open Space Land

a plan identifying the Open Space Land

means a management entity established for inter alia the purpose of managing and maintaining the Open Space Land

Open Space Land

Open Space Completion

Certificate

in the case of the Play Area by a ROSPA certified play inspector and in the case of the remaining areas of Open Space Land by a Chartered Landscape Architect that confirms that the Open Space Land has been laid out in accordance with the Open Space Specification

means a sum calculated in accordance with Annex

A for the purposes of the management and maintenance of the Open Space Land Linked

means a management plan prepared by the Owner to include details of levels of maintenance and details of funding for the maintenance of the Open Space Land and to be approved in writing by the Council for the ongoing management and maintenance of the Open Space Land

a plan identifying the Open Space Land

means a management entity established for inter alia the purpose of managing and maintaining the Open Space Land

Open Space Land

Maintenance Contribution

Open Space Management Plan

Open Space Plan

Management Company

Play Area

an area of land within the Open Space Land that shall be laid out and equipped for childrens play

7. The Owner hereby covenants with the Council:-

7.1 At the time of submission of the first application for reserved matters approval

7.1.1 to submit the Open Space Plan, the Open Space Specification, the Open Space Management Plan and details of the Management Company to the Council for approval and

7.1.2 to offer to transfer the Open Space Land to the Council for One Pound with the Owner paying the Councils reasonable legal fees for such transfer up to a limit of £1500

7.2 Not to Commence the Development unless and until

7.2.1 the Council has approved the Open Space Plan, the Open Space Specification and the Open Space Management Plan in writing PROVIDED THAT each of the said documents shall be deemed to have been approved if no decision thereon has been submitted in writing by the Council to the Owner within 12 weeks of the date on which each said document is submitted to the Council and

7.2.2 the Council has indicated whether or not it will accept a transfer of the Open Space PROVIDED THAT in the event the Council fails to respond to the offer made pursuant to paragraph 2.1.2 above within 12 weeks of the date of the said offer or the Council declines to accept a transfer of the Open Space Land the Owner shall transfer the Open Space Land to a Management Company in accordance with the provisions of this Schedule

7.3.1 To physically set out the Open Space Land in accordance with the Open Space Plan and the Open Space Specification and the timing contained therein

2.3.2 Not to Occupy or allow cause or permit to be Occupied any more than 75% of the Residential Dwellings (rounded up to the nearest whole figure) unless and until all of the Open Space Land has been physically set out on the Site in accordance with the Open Space Specification and the Council has received the relevant Open Space Completion Certificate

2.4 To maintain the Open Space Land in accordance with the Open Space Management Plan 1 for 1 year following the issue of the relevant Open Space Completion Certificate as appropriate or if later until such time as the transfer described in paragraph 2.5 or 2.6 has been completed

2.5 In the event that the Council agrees to accept a transfer of the Open Space Land:

2.5.1 to transfer the Open Space Land to the Council free of encumbrances and with all necessary easements and vacant possession and the Council shall subject to paragraph 2.5.2 below from the date of completion of the said transfer manage and maintain the Open Space Land in perpetuity

2.5.2 on completion of the transfer referred to in paragraph 2.5.1 above to pay the Open Space Land Maintenance Contribution to the Council

2.6 In the event the Council declines to accept a transfer of the Open Space Land or fails to respond to the offer made pursuant to paragraph 2.1.2 above within 12 weeks of receipt of the said offer the Owners shall transfer the Open Space Land to a Management Company free of encumbrances and with all necessary easements and vacant possession who shall from that date manage and maintain the Open Space Land in perpetuity

The Owner shall include in the transfer of the Open Space Land pursuant to paragraph 2.5 or 2.6 above:

1. a covenant only to permit the Open Space Land to be utilised solely as recreation land by the general public;

3.2 a covenant to maintain the Open Space Land in perpetuity in accordance with the Open Space Management Plan;

3.3 a covenant not to transfer the Open Space Land into the individual ownership of the owner or owners of the Dwellings.

4. The Owner shall furnish a copy of the transfers referred to in paragraph 2.6 above to the Council within 2 months of the completion of the transfer.

5. In the event the Open Space Land is transferred to a Management Company the Owner shall include in the transfer or lease to the purchasers or lessees of the whole or any part of the Site (other than the Council in relation to the Affordable Housing Dwellings) an obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees shall be sufficient to enable the Management Company to discharge its obligations under this Schedule

Part 2

The New Provisions

CLAUSE 10 – Disputes

0.1 In the event of any dispute arising between the parties in respect of this Deed the dispute shall be referred:-

- a) in the case of a dispute regarding the interpretation of meaning of any provision in this Deed to leading planning counsel to be agreed between the parties or failing agreement to be appointed by the President for the time being of the Law Society
- b) in the case of a dispute regarding the works or other technical matters referred to in the schedules of this Deed to a member of the Institution of Civil Engineers to be agreed between the parties or failing agreement to be appointed by the President for the time being of such institution

(c) in the case of any other dispute regarding this Deed to a member of the Royal

Town Planning Institute to be agreed between the parties or failing agreement to be appointed by the President for the time being of such institution

10.2 Any referral pursuant to clause 10.1 may be made on the joint application of the parties or on the application of any party and any such referral shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996

SECOND SCHEDULE – AFFORDABLE HOUSING - Part One

‘Affordable Housing Dwellings’

means the Residential Dwellings to be provided as Affordable Housing pursuant to the Affordable Housing Scheme and the expression “Affordable Housing Dwelling” shall mean any one of them

‘Protected Tenant’

means any tenant who:

(a) has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual or voluntary right) or guidance published by Homes England from time to time in respect of any of the Affordable Housing Dwellings;

(b) has exercised the right to buy (or an equivalent contractual or voluntary right) in respect of any of the Affordable Housing Dwellings;

(c) has acquired an Affordable Housing Dwelling from a Registered Provider through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008, or any amendment or replacement thereof;

(d) any tenant of an Affordable Housing Dwelling initially let on Shared Ownership Terms in respect of which the tenant has exercised its rights to acquire 100% of the beneficial interest in the lease of that Affordable Housing Dwelling

‘Shared Ownership Terms’

means a shared ownership lease

(a) which falls within the meaning of the phrase “shared ownership terms” given in Section 70(4) of the Housing and Regeneration Act 2008

- (b) which is granted in accordance with the most recent version of the Affordable Housing Capital Funding Guide published by Homes England; and
- (c) which includes a right of pre-emption or first refusal in the form set out in the model form of shared ownership lease published by Homes England from time to time

SECOND SCHEDULE – Part One – Paragraph 1

The Owner hereby covenants with the Council

1. Not to Commence the Development unless and until the Affordable Housing Scheme has been submitted to the Council for approval and the Council has approved the said Affordable Housing Scheme in writing

2. Not to Occupy (or allow, cause or permit the Occupation of) more than fifty percent (50%) Market Dwellings unless and until fifty percent (50%) of the Affordable Housing Dwellings referred to in the Affordable Housing Scheme have been:

2.1 constructed and are available to be Occupied for their intended purpose; and

2.2 transferred to the Approved Body and for the purposes of this Schedule only the expression “transferred” shall mean a transfer of the freehold interest (of any house or block of flats) or leasehold interest (of any flat in a block that also contains one or more Market Dwellings) that comprise the Affordable Housing Dwellings or an agreement for sale or lease agreed with the Approved Body that has been unconditionally released for completion by the Owner Provided Always that any transfer of the Affordable Housing Dwellings to the approved Body shall be subject to the provisions contained in Part Two of this Schedule

3. Not to Occupy (or allow, cause or permit the Occupation of) more than eighty percent (80%) Market Dwellings unless and until one hundred percent (100%) of the Affordable Housing Dwellings referred to in the Affordable Housing Scheme have been:

3.1 constructed and are available to be Occupied for their intended purpose; and

3.2 transferred to an Approved Body and for the purposes of this Schedule only the expression “transferred” shall mean a transfer of the freehold interest (of any house or block of flats) or leasehold interest (of any flat in a block that also contains one or more Market Dwellings) that comprise the Affordable Housing Dwellings or an agreement for sale or lease agreed with the Approved Body that has been unconditionally released for completion by the Owner Provided Always that any transfer of the Affordable Housing Dwellings to the approved Body shall be subject to the provisions contained in Part Two of this Schedule

SECOND SCHEDULE – Part One – Paragraph 2
Subject always to paragraph 3 of this Schedule) the Affordable Housing Dwellings shall
be Occupied for no other purpose than as Affordable Housing

SECOND SCHEDULE – Part One - Paragraph 3”

The obligations and restrictions contained in this Agreement shall not be binding on:
1. any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any
person deriving title from the Protected Tenant or any successor in title thereto and
their respective mortgagees or chargees;
2. any purchaser from a mortgagee of the individual Affordable Housing Dwelling
pursuant to any default by the individual mortgagee; or
3. a mortgagee or chargee (or any receiver (including an administrative receiver or
administrator) appointed by 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 Dwellings or any
persons or bodies deriving title through such mortgagee, chargee or Receiver
PROVIDED THAT such mortgagee or chargee or Receiver shall first give written
notice to the Council of its intention to dispose of the Affordable Housing Dwellings
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 Dwellings
to another registered social landlord 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. 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
Dwellings free from the provisions in this Agreement which will determine absolutely

SECOND SCHEDULE – Part Two – Paragraph A

The transfer of the Affordable Housing Dwellings to the Approved Body shall be with
vacant possession.

3. The transfer deed for the transfer of the Affordable Housing Dwellings to the Approved Body shall be prepared by the Owner and the Owner shall pay the Approved Body's reasonable costs of transferring the Affordable Housing Dwellings up to a total aggregate limit of £1,500 (One Thousand Five Hundred Pounds) on completion of the transfer deed.

2. The transfer deed shall contain

. a grant by the Owner of all rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Dwellings;

. a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development; and

. such other covenants and reservations as the Owner and/or the Council may reasonably require including but not limited to the maintenance of the Development once it is completed and the preservation of the appearance thereof

THIRD SCHEDULE – OPEN SPACE

. In this Schedule unless the context requires otherwise the following words and expressions shall have the following meaning:

Above Ground Drainage means that part of the SUDS on or above ground level such as but not limited to grass swales, retention ponds and ancillary structures as shown on the Open Space Plan

Below Ground Drainage

means that part of the SUDS situated below ground level such as piped systems (including perforated pipes and surrounding materials), soakaways, catchpits, filter drains and ancillary structures shown on the Open Space Plan

Open Space Specification

the specification and layout plan and timing for the laying out, profiling, clearing, planting, landscaping and decontaminating the Open Space Land and setting out of the Play Area and generally for ensuring that the said land is fit for its intended primary purpose as recreational land to be enjoyed by members of the public as such

Open Space Land

the areas of land not to be less than 4.6 hectares (and which area of land incorporates and is to include the SUDS, together with the Play Area as more particularly shown on the Open Space Plan and which land is to be used for no purposes other than for the drainage of the Site and for public open space to provide a recreational facility for members of the public in perpetuity and as sustainable drainage

Open Space Completion Certificate

means a certificate or certificates in writing issued in the case of the Play Area by a ROSPA certified play inspector and in the case of the remaining areas of Open Space Land by a Chartered Landscape Architect that confirms that the Open Space Land has been laid out in accordance with the Open Space Specification

Open Space Land

means a sum calculated in accordance with Annex A for the purposes of the management and maintenance of the Open Space Land and which payment shall be Index Linked

Maintenance Contribution

means a management plan prepared by the Owner to include details of levels of maintenance and details of funding for the maintenance of the Open Space Land and to be approved in writing by the Council for the ongoing management and maintenance of the Open Space Land and which is to be read in conjunction with the SUDS Maintenance Plan.

Open Space Management Plan

a plan identifying the Open Space Land

Open Space Plan

means either Home Group Limited or Home Group Developments Limited or such other management entity either in existence or to be established for inter alia the purpose of managing and maintaining the Open Space Land

Management Company

an area of land within the Open Space Land that shall be laid out and equipped for childrens play

Play Area

means the sustainable urban drainage to be constructed and implemented to serve the Development and providing for surface water drainage thereto

UDS

the sustainable urban drainage scheme comprising the Above Ground Drainage and the Below Ground Drainage to be constructed within the Open Space Land to serve the Development as approved by the

UDS Scheme

Council as local planning authority in accordance with condition 10 of the Planning Permission.

the document to be submitted to and approved by the Council as local planning authority in accordance with condition 11 contained within the Planning Permission detailing the maintenance arrangements and responsibility for the management and maintenance of the SUDS Scheme.

SUDS Maintenance Agreement

any Agreement that may be required to be entered into between the relevant parties and providing for the management and maintenance of the SUDS Scheme

The Owner hereby covenants with the Council:-

1. Within a period of 26 weeks following the grant of and the issue by the Council of the reserved matters approval pursuant to the Planning Permission

2.1.1 to submit the Open Space Plan, the Open Space Specification, the Open Space Management Plan and the SUDS Maintenance Plan and details of the Management Company to the Council for approval and

2.1.2 to offer to transfer the Open Space Land to the Council for One (£1.00) Pound with the Owner paying the Council's reasonable legal fees for such transfer up to a limit of £1500 (inclusive of VAT and disbursements) and the form of such transfer is as to be agreed between the Council and the Owner (each acting reasonably) and to contain such provisions as shall be required to meet the provisions of this Third Schedule

2. Not to Commence the Development unless and until

2.1 the Council has approved the Open Space Plan, the Open Space Specification the SUDS Maintenance Plan and the Open Space Management Plan in writing

PROVIDED THAT each of the said documents, with the exception of the SUDS Maintenance Plan which is for the approval of the local planning authority in accordance with condition 11 of the Planning Permission and is required by the condition to be approved prior to commencement of the Development, shall be deemed to have been approved if no decision thereon has been submitted in writing by the Council to the Owner within 12 weeks of the date that all of such said documents have been submitted to the Council and

2.2 the Council has indicated whether or not it will accept a transfer of the Open Space Land PROVIDED THAT in the event the Council fails to respond to the offer made pursuant to paragraph 2.1.2 above within 12 weeks of the date of the said offer or the Council declines to accept a transfer of the Open Space Land within the said period of 12 weeks the Owner shall transfer the Open Space Land to the Management Company in accordance with the provisions of this Schedule

3. To physically set out the Open Space Land in accordance with the Open Space Plan and the Open Space Specification and the timing contained therein and to construct and lay out the SUDS in accordance with the SUDS Scheme.

4. Not to Occupy or allow cause or permit to be Occupied any more than 75% of the Residential Dwellings (rounded up to the nearest whole figure) unless and until all of the Open Space Land has been physically set out on the Site in accordance with the Open Space Specification and the Council has received the relevant Open Space Completion Certificate PROVIDED ALWAYS THAT the SUDS scheme must be fully implemented prior to the occupation of any dwelling in accordance with condition 10 of the Planning Permission.

5. To maintain the Open Space Land (in accordance with the Open Space Management Plan for 1 year following the issue of the relevant Open Space Completion Certificate as appropriate or if later until such time as the transfer described in paragraph 2.6 or 2.7 has been completed

6. In the event that the Council agrees to accept a transfer of the Open Space Land:

6.1 to transfer the Open Space Land to the Council free of encumbrances and with the benefit of but subject to all necessary easements and other covenants and conditions in relation to the provision on the Open Space Land such transfer to be agreed between the Council and the Owner (acting reasonably) and to incorporate the provisions set out at paragraph 3 hereof to ensure that there is a clear distinction as to the responsibilities and costs associated with the management and maintenance of the Open Space and the SUDS and with vacant possession and the Council shall subject to paragraph 2.6.2 below and subject to the provisions of the said transfer referred to in this paragraph 2.6.1 from the date of completion of the said transfer manage and maintain the Open Space Land in perpetuity.

6.2 on completion of the transfer referred to in paragraph 2.6.1 above to pay the Open Space Land Maintenance Contribution to the Council

7 In the event the Council declines to accept a transfer of the Open Space Land or fails to respond to the offer made pursuant to paragraph 2.1.2 above within the said period of 12 weeks of receipt of the said offer the Owner shall transfer the Open Space Land to the Management Company free of encumbrances and with the benefit of but subject to all necessary easements and other covenants and conditions in relation to the provision on the Open Space Land such transfer to be agreed between the Management Company and the Owner (acting reasonably) and to incorporate the provisions set out at paragraph 3 hereof to ensure that there is a clear distinction as to the management of the Open Space and the SUDS and with vacant possession and the Management Company shall from the date of such transfer manage and maintain the Open Space Land in perpetuity

The Owner shall include in the transfer of the Open Space Land pursuant to paragraph 2.6 or 2.7 above:

1 subject to paragraph 3.4 below a covenant only to permit the Open Space Land to be utilised solely as recreation land by the general public and for the use of the relevant part or parts thereof as SUDS;

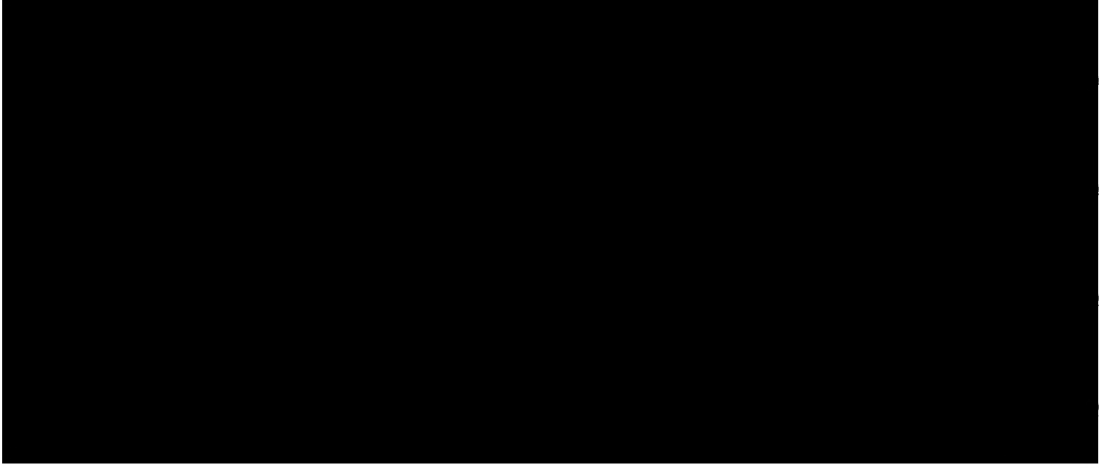
2. a covenant to maintain the Open Space Land in perpetuity in accordance with the Open Space Management Plan;
3. a covenant not to transfer the Open Space Land into the individual ownership of the owner or owners of the Dwellings.
4. such provisions as shall in all the circumstances be reasonable and/or necessary to cater for and accommodate the construction of and subsequent operation and use and maintenance of the SUDS to be constructed upon or within a part of the Open Space Land and to include
 - 4.1 The grant of and reservation of all necessary easements and rights to provide for the access to the SUDS and the Above Ground Drainage and the Below Ground Drainage and all of the pipework serving the same including the provision of such arrangements as shall be required in connection with the adoption of the SUDS or any part or parts thereof to ensure that appropriate access to and from the same is permitted
 - 4.2 The insertion of appropriate covenants on the part of the Transferor to be responsible for the maintenance repair and replacement of the SUDS
 - 4.3 The insertion of appropriate covenants on the part of the Transferor and the Transferee to provide that the relevant parties thereto will enter into and complete a SUDS Maintenance Agreement
4. The Owner shall furnish a copy of the transfers referred to in paragraph 2.7 above to the Council within 2 months of the completion of the transfer.

In the event the Open Space Land is transferred to the Management Company the Owner shall include in the transfer or lease to the purchasers or lessees of the whole or any part of the Site (other than the Council in relation to the Affordable Housing Dwellings) an obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees shall be sufficient to enable the Management Company to discharge its obligations under this Schedule

the presence of

LIZABETH KATHLEEN REID

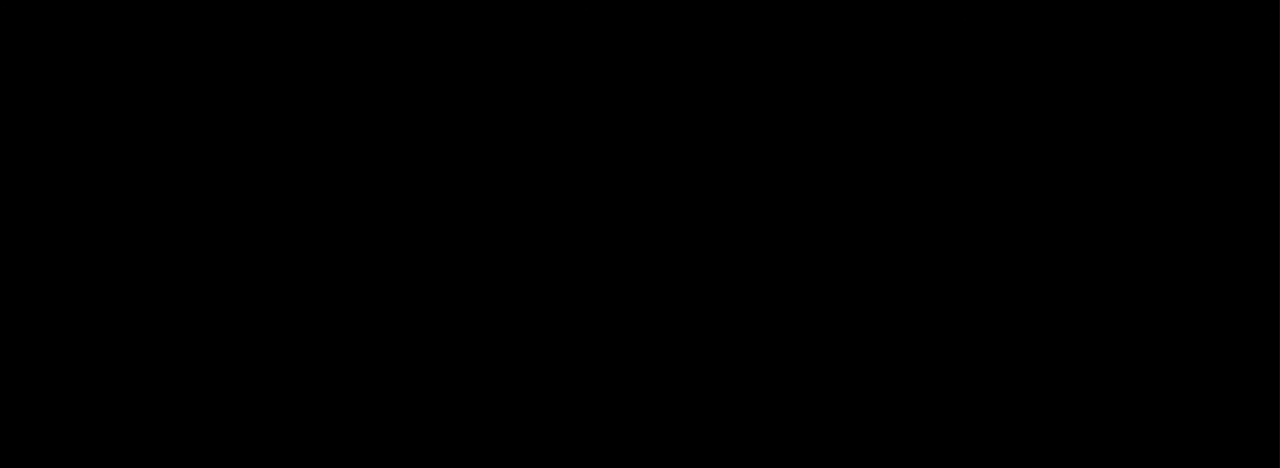
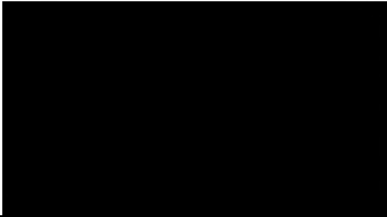
SIGNED as a DEED by



the presence of

ROBERT GILLES

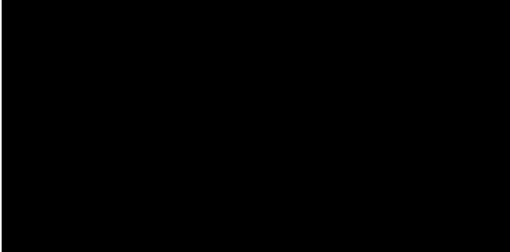
SIGNED as a DEED by



the presence of

DWIN PETER GILLES

SIGNED as a DEED by



RECUTED as a DEED



uthorised Stenator

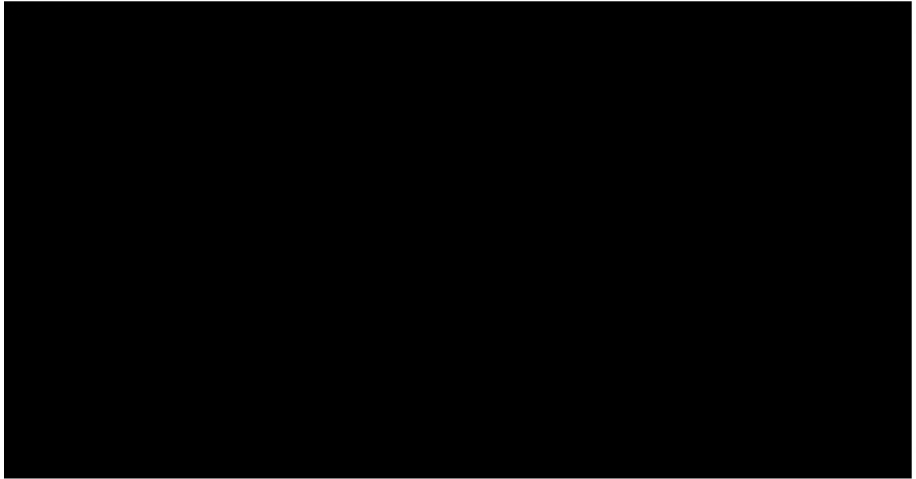
the presence of

ENDING DISTRICT COUNCIL

/ affixing the COMMON SEAL of

RECUTED as a DEED

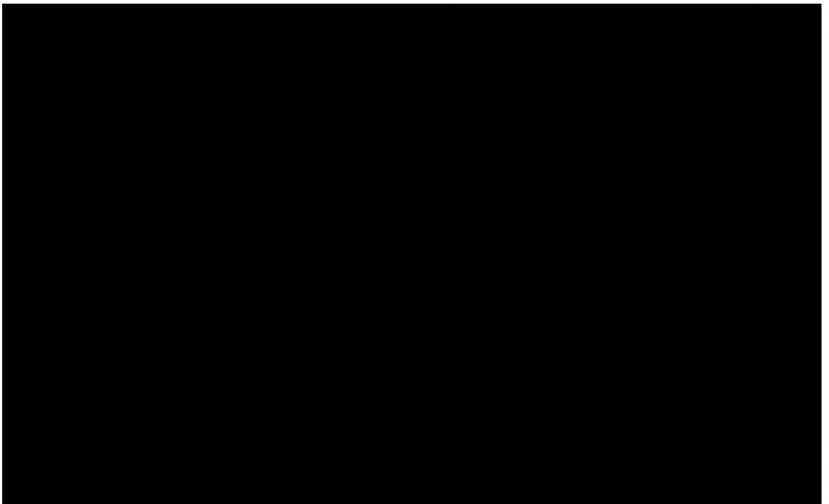
SEAL REGISTER
18970
NUMBER



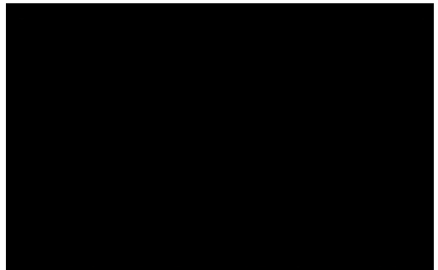
the presence of

NDREW DAVID GILES

IGNED as a DEED by



EXECUTED as a DEED
/ affixing the COMMON SEAL of
HOME GROUP DEVELOPMENTS
LIMITED in the presence of:-



by affixing the COMMON SEAL of
SSEX COUNTY COUNCIL
in the presence of
[Redacted]
Witnessing Officer

