

DATED

31 May

2022

**DOVER DISTRICT COUNCIL**

and

**CHARTWAY GROUP LIMITED**

and

**TOWN AND COUNTRY HOUSING**

**DEED OF VARIATION RELATING TO THE DEVELOPMENT OF  
LAND AT FORMER KUMOR NURSERY AND 121 DOVER ROAD , SANDWICH, KENT**

**PLANNING PERMISSION REF DOV/18/00681**

**pursuant to**

**Section 106 Town and Country Planning Act 1990 and  
Section 111 Local Government Act 1972 and  
Section 1 of the Localism Act 2011**

**TABLE OF CONTENTS**

**Page**

**PARTIES**

**RECITAL**

<b>1</b>	<b>CONSTRUCTION OF THIS DEED</b>	<b>2</b>
<b>2</b>	<b>LEGAL BASIS</b>	<b>3</b>
<b>3</b>	<b>VARIATIONS TO THE ORIGINAL AGREEMENT</b>	<b>4</b>
<b>4</b>	<b>AGREEMENT</b>	<b>6</b>
<b>5</b>	<b>COVENANTS OF THE OWNER</b>	<b>6</b>
<b>6</b>	<b>MISCELLANEOUS</b>	<b>7</b>
<b>7</b>	<b>COUNCILS COSTS</b>	<b>7</b>
<b>8</b>	<b>JURISDICTION</b>	<b>7</b>

DATED

31 May

2022

**PARTIES**

- 1) **DOVER DISTRICT COUNCIL** of White Cliffs Business Park, Dover, Kent CT16 3PJ (the "Council")
- 2) **CHARTWAY GROUP LIMITED** of (company registered number 06896161) whose registered address is Orchard House, Westerhill Road, Coxheath, Maidstone, ME17 4DR (the "Owner")
- 3) **TOWN AND COUNTRY HOUSING** (Registered Society No. 30167R) whose registered office is at Monson House, Monson Way, Tunbridge Wells TN1 1LQ ("TCH")

**RECITALS**

- A This Deed is supplemental to and varies an Agreement completed pursuant to Section 106 of the Town and Country Planning Act 1990 dated 14 September 2020 and entered into by (1) Dennis Stuart Friend and Pamela Joan Friend (2) Jennifer Carol Willis (3) Chartway Group Limited (4) Sandwich Bay Bird Observatory Trust (5) Dover District Council and (6) Kent County Council ("the Original Agreement")
- B The Council is the local planning authority for the purposes of this Deed under the Act and for the area in which the Site is situated and by whom the obligations within this Deed are enforceable.
- C The Owner was the Developer under the Original Agreement but is now also the owner of the freehold interest in part of the Site registered at the Land Registry under title number K349849.
- D TCH is the owner of the freehold interest in part of the Site registered at the Land Registry under title number TT122891.
- E The Council, the Owner and TCH have agreed to vary the terms of the Original Agreement as set out in this Deed in so far as it relates to the Affordable Housing Land and without prejudice to the terms of the other covenants contained in the Original Agreement, the Council pursuant to delegated powers in its scheme of officer delegation has decided to agree with the Owner and TCH to vary the terms of Original Agreement as set out in this Deed.

**1. CONSTRUCTION OF THIS DEED**

- 1.1 The provisions of the Original Agreement relating to its interpretation apply to this Deed except to the extent that they are expressly varied by this Deed.

- 1.2 The Original Agreement shall be varied in the manner set out in clause 3 of this Deed.
- 1.3 The definitions, clauses, obligations and provisions of the Original Agreement shall remain in full force and effect except as varied or added to by this Deed and shall continue to be applicable to the Site in respect of the Site as defined in the Original Agreement and remain to be performed to the extent that they have not already been performed.
- 1.4 Save where the context otherwise requires the expressions used in this Deed shall have the same meaning or meanings as those stated in the Original Agreement.
- 1.5 Headings contained in this Deed are for reference purposes only and are not incorporated into the Deed and shall not be deemed to be an indication of the meaning of the parts of this Deed to which they relate
- 1.6 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

## **2. LEGAL BASIS**

- 2.1 This Deed is supplemental to the Original Agreement and is made pursuant to Section 106 and 106A of the Act, Section 111 of the Local Government Act 1972, Section 16 of the Greater London Council (General Powers) Act 1974, Section 1 of the Localism Act 2011 and all other powers so enabling.
- 2.2 The covenants obligations restrictions and requirements imposed upon the parties by this Deed
  - 2.2.1 are planning obligations for the purposes of section 106 and S106 A of the 1990 Act
  - 2.2.2 relate to the Site
  - 2.2.3 are entered into with intent to bind the Owner's interest in the Affordable Housing Land each and every part thereof into whosoever hands the same may come
  - 2.2.4 are enforceable by the Council as local planning authority
  - 2.2.5 are executed by the respective parties as a deed
- 2.3 To the extent that any obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into by the Council pursuant to the powers contained in section 111 of Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 Section 1 of the Localism Act 2011 and all other powers so enabling
- 2.4 This Deed shall take effect upon the date hereof

### **3. VARIATIONS TO THE ORIGINAL AGREEMENT**

- 3.1 The Owner, TCH and the Council agree that the Original Agreement shall be varied as set out within this clause.
- 3.2 Clause 1.1.8 and the definition of “**Chargee**” shall be amended to include the words “or any persons or bodies deriving title through such mortgagee or chargee or Receiver” at the end of the clause.
- 3.3 Clause 1.1.9 and the definition of “**Chargee’s Duty**” shall be amended so that the reference to paragraph 3.5 shall be replaced with reference to paragraph 3.6.
- 3.4 Clause 1.1.2 and the definition of “**Affordable Housing**” shall be deleted and replaced with:
- 1.1.2 “**Affordable Housing**” means Affordable Rented Housing and/or Affordable Social Housing, and Shared Ownership Housing provided to eligible households whose needs are not met by the market, where eligibility is determined with regard to local incomes and local house prices and which remains at an affordable price for future eligible households (including for the avoidance of doubt one Wheelchair Accessible Unit);
- 3.5 Clause 1.1.5 and the definition of “**the Affordable Housing Units**” shall be deleted and replaced with :
- “1.1.5 “**the Affordable Housing Units**” means that part of the Development comprising 17 Dwellings which shall be constructed for Affordable Housing in accordance with the approved Affordable Housing Scheme, 70% (12 Dwellings) of which shall be Affordable Rented Housing and/or Affordable Social Housing and 30% (5 Dwellings) of which shall be Shared Ownership Housing and “an Affordable Housing Unit” shall be construed accordingly;”
- 3.6 Clause 1.1.6 and the definition of “**Affordable Rented Housing**” shall be deleted and replaced with:
- “1.1.6 “**Affordable Rented Housing**” means the Affordable Housing Units that will be let to persons in Housing Need at an Affordable Rent in accordance with the HCA’s Tenancy Standard (April 2012) as may be amended updated or replaced from time to time”
- 3.7 Clause 1.1.18 and the definition of “HCA” shall be amended to include the words “and shall include the Social Housing Regulator where appropriate” at the end of the definition
- 3.8 Clause 1.1.38 and the definition of “**Shared Ownership Housing**” shall be deleted and replaced with:

**“1.1.38 “Shared Ownership Housing”** means the Affordable Housing Units to be Occupied by persons who are in Housing Need whereby a person granted a Shared Ownership Lease can purchase an initial equity share in a Shared Ownership Housing of not less than 25% and not more than 75% and pay rent on the unsold equity with flexibility for such a person to purchase further equity shares in the Shared Ownership Housing up to 100% or such other equity sharing or retention terms as may from time to time be approved by the Council”

- 3.9 A new definition of **“Affordable Rent”** shall be included as a new clause 1.1.5A as follows:

**“1.1.5A “Affordable Rent”** means chargeable rent that is subject to the HCA’s Rent Standard (April 2020) as expanded on by the Rent Standard Guidance (April 2020) as such document and/or associated guidance may be amended updated or replaced from time to time and is required is required to be offered to eligible householders in Housing Need at an open market rental level which does not exceed 80% of gross local market rent (inclusive of service charges) for an equivalent property of that size and location or the applicable Local Housing Allowance rate for the Borough Council (whichever is the lower)”

- 3.10 A new definition of **“Affordable Social Housing”** shall be included as a new clause 1.1.6A as follows:

**“1.1.6A “Affordable Social Housing”** means an Affordable Housing Unit owned and managed by the Registered Provider and let to a person in Housing Need for which guideline target rents are determined through the HCA’s Rent Standard (April 2020) as expanded on by the Rent Standard Guidance (April 2020) (as such document and/or associated guidance may be amended updated or replaced from time to time) and is required to be offered to eligible householders in Housing Need PROVIDED THAT in all cases the rent levels shall not exceed the maximum amount of Local Housing Allowance applicable for the size of the relevant Dwelling.”

- 3.11 A new definition of **“Assured Shorthold Tenancy”** shall be included as a new clause 1.1.7A as follows:

**“ 1.1.7A “Assured Shorthold Tenancy”** means a tenancy granted by the Registered Provider under section 19A of the Housing Act 1988 (as amended by the Housing Act 1996).”

- 3.12 A new definition of **“Help to Buy Agent”** shall be included as a new clause 1.1.17A as follows:

**“1.1.17A “Help to Buy Agent”** means an agent commissioned by the HCA to provide a one stop shop service to qualifying applicants enquiring about and applying for the low cost home ownership schemes including shared ownership schemes.”

- 3.13 A new definition of “**Housing Need**” shall be included as a new clause 1.1.19A as follows:

“1.1.19A “**Housing Need**” means

- a) in relation to the Affordable Rented Housing and/or the Affordable Social Housing (as the case may be) a person in need of social housing allocation in accordance with the Council’s allocations scheme and
- b) in relation to the Shared Ownership Housing a person registered with the Help to Buy Agent and who is to be granted a Shared Ownership Lease or an Assured Shorthold Tenancy because the person’s income is insufficient to enable them to rent or buy housing available locally on the open market determined with regard to local incomes and local house prices.”

- 3.14 A new definition of “**Local Housing Allowance**” shall be included as a new clause 1.1.22A as follows:

“1.1.22A “**Local Housing Allowance**” means the flat rate rental allowance providing financial assistance towards the housing costs of low income households for different rental market areas and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department of Works and Pensions or such similar framework that may replace it”

- 3.15 A new definition of “**Shared Ownership Lease**” shall be included as a new clause 1.1.38A as follows:

“1.1.38A “**Shared Ownership Lease**” means a lease which accords with the HCA’s model form of lease issued from time to time.”

- 3.16 Clause 3.4.1 shall be deleted and replaced with:

“3.4.1 This deed shall not be enforceable against the Registered Provider or the owner-occupiers, occupiers or tenants of Dwellings constructed pursuant to the Planning Permission, nor against those deriving title from such owner-occupiers or tenants or their mortgagees nor against any mortgagee of a tenant of an Affordable Housing Unit or any receiver appointed by such mortgagee and any person or persons deriving title from them. Schedule 2 paragraph 3.5 shall remain enforceable against the Registered Provider and the owner-occupiers and/or tenants of Affordable Housing Units and those deriving title from them to the extent permitted by the terms of this deed”

#### **4. AGREEMENT**

It is agreed that the Original Agreement (as varied by this Deed) shall remain in full force and effect.

**5. COVENANTS OF THE OWNER**

The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this Deed

**6. MISCELLANEOUS**

- 6.1 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants, undertakings, obligations or restrictions contained in this Deed or the Original Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said covenants, undertakings, obligations or restrictions from acting upon any subsequent breach of default in respect thereof by the Owner.
- 6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Deed.
- 6.3 This Deed shall be registered as a local land charge by the Council.

**7. COUNCIL'S COSTS**

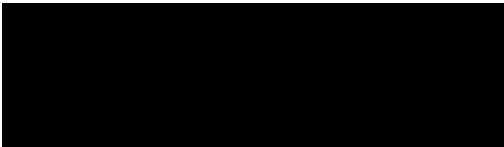
The Owner shall pay to the Council on or before the date of completion of this deed, the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

**8. JURISDICTION**

- 8.1 This Deed including its construction, validity, performance and enforcement and any dispute arising or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes and claims) shall be governed by and interpreted in accordance with English law.
- 8.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes and claims).

**IN WITNESS** whereof these presents have been executed by the parties hereto as a Deed and delivered on the day and year first before written

EXECUTED AS A DEED by )  
 the Common Seal of the )  
**DOVER DISTRICT COUNCIL** )  
 was hereunto affixed in the presence of: )

Authorised Signatory 

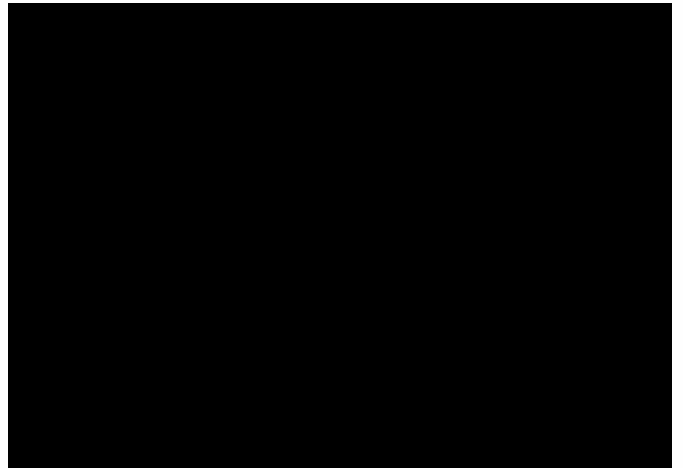
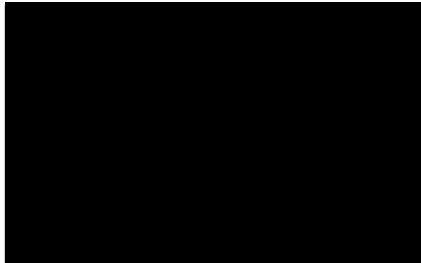




**EXECUTED AS A DEED** by )  
**CHARTWAY GROUP LIMITED** )  
in the presence of: )

Director

Director/



**EXECUTED AS A DEED** by **CRIPPS LLP** as  
attorney for **TOWN AND COUNTRY**  
**HOUSING** acting by a member in the  
presence of:

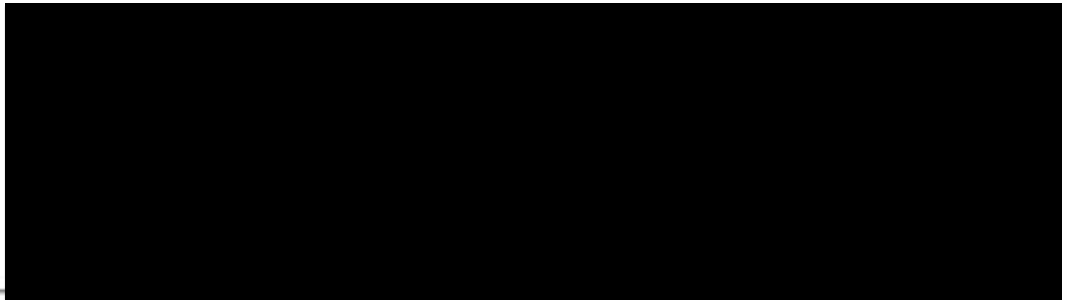
*Signature of member*



Signature of

Name (in BLO

Address



---