

DATED

2022

MID SUSSEX DISTRICT COUNCIL (1)

AND

WEST SUSSEX COUNTY COUNCIL (2)

AND

RAINIER DEVELOPMENTS (COPTHORNE) LIMITED (3)

AND

ERIC GROVE (4)

PLANNING OBLIGATION

BY WAY OF AGREEMENT

pursuant to Section 106 of the

Town and Country Planning Act 1990 (as amended)

relating to land adjacent to Rowan, East of Turners Hill Road, Crawley Down, West Sussex

Tom Clark
Solicitor and Head of Regulatory Services
Mid Sussex District Council
'Oaklands' Oaklands Road
Haywards Heath
West Sussex
RH16 1SS

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CONTENTS

1. INTERPRETATION AND DEFINITIONS	1
2. LEGAL BASIS	5
3. CONDITIONALITY	5
4. COVENANTS TO THE DISTRICT COUNCIL.....	5
5. COVENANTS TO THE COUNTY COUNCIL.....	6
6. COVENANTS BY THE COUNTY COUNCIL.....	6
7. CHARGEЕ'S CONSENT	6
8. RELEASE	6
9. LOCAL LAND CHARGE	6
10. THE DISTRICT COUNCIL AND COUNTY COUNCIL'S COSTS	6
11. INTEREST ON LATE PAYMENT.....	7
12. OWNERSHIP	7
13. NO FETTER OF DISCRETION.....	7
14. WAIVER.....	7
15. AGREEMENTS AND DECLARATIONS.....	7
16. NOTICES	9
17. THIRD PARTY RIGHTS	10
18. GOVERNING LAW.....	10
FIRST SCHEDULE.....	11
SECOND SCHEDULE	12
APPENDIX 1	13
APPENDIX 2	14

THIS DEED is dated the

day of

2022

BETWEEN

- (1) **MID SUSSEX DISTRICT COUNCIL** of Oaklands, Oaklands Road, Haywards Heath, West Sussex, RH16 1SS (“**the District Council**”)
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, Chichester, West Sussex, PO19 1RQ (“**the County Council**”)
- (3) **RAINIER DEVELOPMENTS (COPTHORNE) LIMITED** (Co Regn No 12091192) of Rainier House, 62 High Street, Henley-In-Arden B95 5AN. (“**the Owner**”)
- (4) **ERIC GROVE** OF 62 High Street, Henley-In-Arden B95 5AN (“**the Chargee**”)

BACKGROUND

- (A) The Owner is the registered freehold proprietor of the Land known as land adjacent to Rowan, East of Turners Hill Road, Crawley Down, West Sussex registered at the Land Registry with title absolute under title number WSX9468
- (B) The Chargee has a charge dated 16 April 2020 registered against the Land.
- (C) The District Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- (D) The County Council is the local authority responsible for libraries and highways infrastructure in the area in which the Land is situated.
- (E) The Owner has made the Application to carry out the Development.
- (F) The District Council refused to grant planning permission for the Development on 7 July 2021 and the Owner has submitted the Appeal.
- (G) The District Council and the County Council having regard to the Supplementary Planning Document determine the obligations contained in this Deed are necessitated by virtue of this Application and the Appeal.
- (H) The Owner and the Chargee have agreed to enter into this Deed to give the following obligations in the manner hereinafter appearing.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. INTERPRETATION AND DEFINITIONS

- 1.1. In this Deed the following expressions shall unless the context otherwise requires have the following meanings:

Act means the Town and Country Planning Act 1990 as amended;

All Requisite Consents	means all requisite consents orders agreements authorisations licences and permissions required to implement a scheme/the Scheme;
Appeal	means a planning appeal submitted by the Owner in respect of the District Council's refusal of planning permission for the Development which has been given the reference: APP/D3830/W/21/3281350 by the Planning Inspectorate;
Application	means the application for full planning permission for the Development which was validated by the District Council on 19 th August 2020 and allocated reference DM/20/3081;
BCIS Index	means the All-in Tender Price Index published by the Building Costs Information Service of the Royal Institution of Chartered Surveyors or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the County Council may specify;
Commencement Date	means the date on which the Commencement of the Development begins;
Commencement of the Development	means the carrying out of a material operation pursuant to the Planning Permission as defined in section 56(4) of the Act PROVIDED THAT any works of or associated with demolition, site clearance, remediation works, environmental or archaeological investigations, site and soil surveys, erection of contractors work compound, erection of site office, erection of fencing to site boundaries, marking of site boundaries shall for the purposes of this Deed and for no other purpose be deemed not to be material operations and all references to Commence , Commenced and Commencement shall be construed accordingly;
Commencement Notice	means the written notice confirming the Commencement Date referred to in clauses 4.1 and 5.1 and served in accordance with clause 166;

County Council Contributions means the Library Contribution and the Total Access Demand Contribution;

County Council Monitoring Contribution means the total sum of £600 payable to the County Council for monitoring the delivery and performance of a Qualifying Trigger contained in this Deed over the lifetime of the Development;

Default Interest Rate means 4% per annum above the Base Rate of the Bank of England and **Interest** shall be construed accordingly;

Development means the development of the Land by the development of a 64 bed care home (Class C2) and associated infrastructure, including a new access road, car park and landscaped gardens as set out in the Application and authorised by the Planning Permission;

District Plan means the Mid Sussex District Plan 2014-2031 adopted on 28th March 2018;

Index Linked in relation to the County Council Contributions, that the County Council Contributions payable by the Owner under this Deed shall be increased by the application of the following formula:

$$A = B \times C/D \text{ where } C/D \text{ is equal to or greater than } 1$$

where

A is the sum actually payable on the date of payment

B is the original sum mentioned in this Deed

C is the BCIS Index for the quarter preceding the date of payment

D is the BCIS Index for the quarter preceding the date of this Deed and **Indexation** shall be construed accordingly;

Land means the land against which this Deed may be enforced and comprising the land known as Land adjacent to Rowan, East of Turners Hill Road, Crawley Down registered at the Land Registry as land on the south east side of Chapel Lane, Copthorne, Worth, West

Sussex under title number WSX9468 which Land is shown for identification purposes only edged red on the Plan;

Library Contribution means the financial contribution of Five Thousand Six Hundred and Sixty pounds (£5,660) subject to adjustment in accordance with the provision of paragraph 2.1 of the First Schedule;

Payment Notice means a payment notice in the form attached at APPENDIX 2;

Plan means the plan annexed to this Deed at APPENDIX

Planning Permission means the planning permission if granted on Appeal by or on behalf of the Secretary of State pursuant to the Application and the Appeal

Qualifying Trigger means in relation to this Deed any trigger in relation to payment of the County Council Contributions

Scheme means a scheme to manage traffic speeds on the B2028 Turners Hill Road and improving pedestrian and cycle infrastructure and or the Turners Hill Road Cycle Path;

Secretary of State means the Secretary of State for Levelling Up, Housing and Communities or other minister or other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State for Levelling Up, Housing and Communities by the Act

Total Access Demand Contribution means the financial contribution of Forty Nine Thousand Three Hundred Pounds (£49,300) subject to adjustment in accordance with the provision of paragraph 1.1 of the First Schedule;

Working Day means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 1.2. Clause and schedule headings shall not affect the interpretation of this Deed.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4. A reference to a company shall include any company, corporation or other body corporate, whether and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8. References to clauses and Schedules are the clauses and Schedules of this Deed.
- 1.9. Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 1.10. References to the District Council, the County Council , the Chargee and the Owner shall include the successors in title and assigns of each party including any local authority successor.
- 1.11. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. LEGAL BASIS

- 2.1. This Deed is made pursuant to section 106 of the Act, section 1 of the Localism Act 2011, section 111 of the Local Government Act 1972 and all other enabling powers.
- 2.2. The obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owner and the Chargee with the intention that they bind the interests held by those persons in the Land and their respective successors and assigns.
- 2.3. The obligations contained in this Deed are enforceable by the District Council and the County Council in accordance with section 106 of the Act.

3. CONDITIONALITY

This Deed shall come into effect immediately upon completion of this Deed save for the provisions of clauses 4 *Covenants to the District Council*, 5 *Covenants to the County Council*, 6 *Covenants by the County Council* and 11 *Interest on late payment* which are conditional upon the grant of Planning Permission.

4. COVENANTS TO THE DISTRICT COUNCIL

The Owner covenants with the District Council:

- 4.1. to give the Commencement Notice to the District Council not less than 10 Working Days before the Commencement Date; and
- 4.2. to observe and perform the covenants, restrictions and obligations contained in this Deed including the Schedules hereto.

5. COVENANTS TO THE COUNTY COUNCIL

The Owner covenants with the County Council:

- 5.1. to give the Commencement Notice to the County Council not less than 10 Working Days before the Commencement Date; and
- 5.2. to observe and perform the covenants, restrictions and obligations contained in this Deed including the First Schedule.

6. COVENANTS BY THE COUNTY COUNCIL

The County Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in the Second Schedule.

7. CHARGEES CONSENT

- 7.1. The Chargee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the charge over the Land shall take effect subject to this Deed PROVIDED THAT the Chargee its assignees transferees and/or successors in title shall otherwise have no liability under this Deed unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner PROVIDED ALWAYS that the Chargee's liability under this Deed shall be limited to the part of the Land in which it takes possession and Provided further THAT THE Chargee (or any person deriving title from the Chargee) will not be liable for any breach of the obligations contained in the Deed unless committed at a time when the Chargee is in possession of the Land (or any part thereof) to which such obligation(s) relate.

8. RELEASE

No person shall be liable for any breach of any of this Deed after parting with all of its interest in the Land, except in respect of any breach subsisting prior to parting with such interest.

9. LOCAL LAND CHARGE

This Deed is a local land charge and shall be registered as such by the District Council

10. THE DCT COUNCIL AND COUNTY COUNCIL'S COSTS

- 10.1. The Owner shall pay to the District Council and County Council on or before the date of this Deed the District Council and County Council's reasonable legal costs together with all disbursements incurred in connection with the preparation, negotiation and completion of this Deed

10.2. The Owner shall pay to the District Council the monitoring fee of £150 and to the County Council the County Council Monitoring Contribution within 10 Working Days of the Planning Permission being granted and for the avoidance of any doubt the costs referred to in this clause 100 do not constitute or purport to constitute planning obligations for the purposes of Section 106 of the Act and are payable pursuant to the other statutory provisions referred to in clause 2.

11. INTEREST ON LATE PAYMENT

If any sum or amount has not been paid to the District Council and / or County Council by the date it is due, the Owner shall pay the District Council and / or County Council interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

12. OWNERSHIP

12.1. The Owner warrants that no person other than the Owner and the Chargee has any legal or equitable interest in the Land.

12.2. The Owner agrees to give the District Council and the County Council as soon as reasonably practicable written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged, such notice to give details of the transferee's full name and registered office (if a company, or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan.

13. NO FETTER OF DISCRETION

Nothing (contained or implied) in this Deed shall fetter or restrict the District Council or the County Council's statutory rights, powers, discretions and responsibilities.

14. WAIVER

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

15. AGREEMENTS AND DECLARATIONS

The parties agree that:

15.1. nothing in this Deed constitutes a planning permission or an obligation to grant planning permission;

- 15.2. insofar as any clause or clauses of this Deed are held (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed;
- 15.3. this Deed shall cease to have effect (insofar only as it has not already been complied with) if:
- 15.3.1. the Appeal is dismissed by the Secretary of State or his appointed inspector;
 - 15.3.2. the Secretary of State or his appointed inspector makes a finding and expressly states within the Appeal decision notice that this Deed is an immaterial planning consideration or that no weight can be attached to this Deed in determining the Appeal;
 - 15.3.3. the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of the Development;
 - 15.3.4. the Planning Permission lapses and so expires ceasing to have legal effect
- 15.4 Where this Deed comes to an end under clause 15.3 then the District Council shall, upon the receipt of a written request of the Owner, vacate or cancel the entry made in the Local Land Charges register in relation to this Deed,
- 15.5 in the event that the Secretary of State or his appointed inspector makes a finding and expressly states within the Appeal decision notice that any of the individual planning obligations in this Deed (or part of said planning obligations) are not in accordance with the statutory requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) then such obligation(s) (or part of such obligation) herein as is so identified by the Secretary of State or his appointed inspector shall not be enforceable and shall cease to have effect notwithstanding the remaining provisions of this Deed which (for the avoidance of doubt) shall take effect and remain in effect and enforceable;
- 15.6 nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) before or after the date of this Deed;
- 15.7 if the Owner fails to give the notice required by clauses 4.1 and 5.1 above then the District Council shall be entitled in its absolute discretion to determine the Commencement Date and shall give notice to the Owner of the District Council's determination;
- 15.8 Subject to the proviso to this clause, in the event that any new planning permission(s) are granted by the District Council after the date of this Deed in relation to an application to remove and/or vary condition(s) attached to the Planning Permission pursuant to Section 73 of the Act ("Section 73 Consent"):
- 15.8.1 the obligations in this Deed (including the Schedule(s) hereto) shall relate to and bind any subsequent Section 73 Consent and the Land without the automatic need to enter into any

subsequent deed of variation/supplemental deed to this Deed or new obligation pursuant to Section 106 of the Act; and

15.8.2 the definitions of Application, Planning Permission and Development (other than for the purposes of the Background) in this Deed shall be construed to include reference to (respectively) any application(s) under Section 73 of the Act, any Section 73 Consent granted thereunder and any development permitted by such subsequent Section 73 Consent; and

15.8.3 any Section 73 Consent shall include a condition/informative substantially in the following form:

“The obligations under the planning obligation by way of Agreement dated [] pursuant to the previous application [] will be equally applied to and satisfy the requirements necessitated under this application []”.

15.8.4 it is hereby agreed and declared by the parties hereto that nothing in this clause shall fetter the discretion of the District Council in determining any applications under Section 73 of the Act and the appropriate planning obligations required in connection with the determination of the same and the District Council reserves the right to insist upon the completion of any subsequent deed of variation / supplemental deed to this Deed or new obligation pursuant to Section 106 of the Act in connection with any Section 73 applications if the District Council considers it desirable to do so.

15.9 All financial contributions due under the terms of this Deed shall be accompanied by a fully completed Payment Notice.

15.10 The obligations contained in this Deed shall not be binding on any statutory undertaker which has acquired part of the Land for purposes connected to their statutory functions necessary for the Development provided always that such statutory undertaker shall not themselves carry out any part of the Development.

15.11 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council or the County Council, or any combination of them under the terms of this Deed, such agreement, approval, consent or expression of satisfaction must be in writing and shall not be unreasonably withheld or delayed

16. NOTICES

16.1. Any notice required by this Deed shall be in writing and addressed to the Section 106 Monitoring Team of the District Council at the address of the District Council given herein and to the Planning Services Monitoring and Records Team of the County Council at the address of the County Council given herein.

16.2. Any notice may be given by one of the following means and shall be deemed to be served as described unless the actual time of receipt is proved:

(a) by first class post deemed served two Working Days after posting;

- (b) by hand deemed served on signature of a delivery receipt provided that if delivery occurs before 9.00am on a Working Day, the notice will be deemed to have been received at 9.00am on that day, and if delivery occurs after 5.00pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00am on the next Working Day;
- (c) through a document exchange deemed served on the first Working Day after the day on which it would normally be available for collection by the addressee.

17. THIRD PARTY RIGHTS

It is agreed that nothing in this Deed shall be construed as expressly providing a right for any third party within the meaning of the Contract (Rights of Third Parties) Act 1999 and nothing in this Deed is intended to confer on any third party (whether referred to herein by name class description or otherwise) any benefit or any right to enforce any provision of this Deed.

18. GOVERNING LAW

This Deed shall be governed by and interpreted in accordance with the law of England and Wales.

IN WITNESS whereof the parties hereto have duly executed this Deed on the day and year first before written.

FIRST SCHEDULE

COVENANTS BY THE OWNER TO THE COUNTY COUNCIL

1. Total Access Demand Contribution

- 1.1. To pay to the County Council prior to the Commencement Date the Total Access Demand Contribution Index Linked to be used towards the Scheme.
- 1.2. Not to cause or allow the Commencement of the Development to occur until the Total Access Demand Contribution has been paid to the County Council.
- 1.3. If the Total Access Demand Contribution is not paid to the County Council on or before the relevant payment date, to pay to the County Council in addition Interest from the relevant payment date until the actual date of payment pursuant to Clause 11 and any such Interest shall be treated as part of the Total Access Demand Contribution.

2. Library Contribution

- 2.1. To pay to the County Council prior to the Commencement Date the Library Contribution Index Linked
- 2.2. Not to cause or allow the Commencement of the Development to occur until the Library Contribution and any Indexation and Interest payable under this Deed has been paid to the County Council.
- 2.3. If the Library Contribution is not paid to the County Council on or before the relevant payment date, to pay to the County Council in addition Interest from the relevant payment date until the actual date of payment pursuant to Clause 11 and any such Interest shall be treated as part of the Library Contribution.

SECOND SCHEDULE
COVENANTS BY THE COUNTY COUNCIL

1. Total Access Demand Contribution

- 1.1. To expend the Total Access Demand Contribution together with any interest accruing thereon only on the Scheme and it is hereby acknowledged for the avoidance of doubt and without prejudice to the above that the County Council is authorised (at its discretion) to apply the Total Access Demand Contribution (or any part thereof) to compensate the County Council for all work done by the County Council's employees servants agents or contractors (in all cases at fair and proper rates) to include without limitation the processing and obtaining of All Requisite Consents and the supervision and design of the implementation of the Scheme and any necessary advertisements.

2. Library Contribution

To expend the Library Contribution together with any interest accruing thereon only on additional stock at East Grinstead Library.

3. Expenditure

- 3.1. If or to the extent the Total Access Demand Contribution and/or the Library Contribution shall not have been spent within 10 (ten) years of receipt of the respective contributions the County Council shall on such date refund to the party that paid the contributions any unexpended sum together with interest thereon from the date of receipt of the relevant contribution to the date of repayment at the base rate of the Bank of England applicable from time to time calculated on a day to day basis.
- 3.2. If at the date referred to in paragraph 3.1 the County Council shall have entered into a contract or other legally binding obligation to expend the Total Access Demand Contribution and/or the Library Contribution or part thereof for the purposes specified in paragraphs 1 and 2 of this Second Schedule then the County Council shall not be required to refund as the case may be any part of the Total Access Demand Contribution and/or the Library Contribution required for that purpose but shall as soon as possible following the completion of the said contract or other legally binding commitment refund any unexpended part of the said contribution in the manner set out in paragraph 3.1 hereof.

APPENDIX 1
THE PLAN

**APPENDIX 2
PAYMENT NOTICE**

Payment of monies due under a Section 106 Planning Obligation

Payment to be made by/on behalf of:

Development at:

Agreement dated:

Planning application reference number:

Obligation in Agreement (Please continue on a separate sheet if necessary):

(a) Description of Contribution(s) and clause no(s):	
(b) Amount of Contribution(s) due:	
(c) Amount of interest due on Contribution(s) :	
(d) If applicable, the amount of interest due on Contribution(s):	
(e) Date upon which the Contribution(s) became due:	
(f) Method of Payment:	

Executed as a Deed by
affixing the Common Seal of
MID SUSSEX DISTRICT COUNCIL
in the presence of:-

Authorised Officer

Executed as a Deed by
affixing the Common Seal of
WEST SUSSEX COUNTY COUNCIL
in the presence of:-

Authorised Officer

Executed as a Deed by
RAINIER DEVELOPMENTS (COPTHORNE) LIMITED
acting by

Director

in the presence of:

Signature of witness

Name (in BLOCK CAPITALS)

Address

.....

Occupation

Executed as a Deed by
ERIC GROVE

in the presence of:-

Signature of witness

Name (in BLOCK CAPITALS)

Address

.....

Occupation