

DATED THIS 8 DAY OF August 2022

(1) LESLIE JAMES LANGMEAD AND
PATRICIA LANGMEAD

And

(2) ARUN DISTRICT COUNCIL

And

(3) WEST SUSSEX COUNTY COUNCIL

Agreement pursuant to Section 106 of
the Town and Country Planning Act 1990
relating to land adjacent to Woodgate
Nurseries, Woodgate

Planning ref: AL/129/21/OUT

Arun District Council
Maltravers Road
Littlehampton
West Sussex
BN17 5LF
DX 57406 LITTLEHAMPTON

Date:

2 Aug 2022

2022

PARTIES:

1. **LESLIE JAMES LANGMEAD** and **PATRICIA LANGMEAD** of Basing Park, Privett, Alton, GU34 3NS ("**the Owner**");
2. **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("**the Council**"); and
3. **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ ("**the County Council**")

WHEREAS

1. The Council is the Local Planning Authority, the Local Housing Authority and the Local Authority responsible for leisure and public open spaces.
2. The County Council is the county planning authority and the Highway Authority for the area in which the Site is situated.
3. The Owner is the registered proprietor of the Site registered under title number WSX354170.
4. Hanbury AM Limited has made the Application and is proposing to carry out the Development pursuant to the Permission.
5. The Owner has agreed to enter into this Agreement with the Council and the County Council in order to covenant to perform the planning obligations set out herein upon the terms and subject to the conditions herein.
6. This Agreement is entered into as a Deed

NOW THIS DEED WITNESSETH as follows:

1. Interpretation

- 1.1 In this Deed unless otherwise stated the following expressions shall where the context so admits have the following meanings:

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

"A27 Junctions Contribution" means the sum of £48,910.10 (forty-eight thousand nine hundred and ten pounds and ten pence) payable to the Council to be made available to National Highways for use towards mitigation works to the A27 between the A27/B2233 Nyton Road

junction and the A27/A280 Patching Dumbbell roundabout.

"ABE CLT"

means Aldingbourne, Barnham and Eastergate Community Land Trust

"Additional First Homes Contribution"

means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 1.19 to 1.23 or 1.29 of the Third Schedule, the lower of the following two amounts:

(a) 30% of the proceeds of sale;

and

(b) the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home.

"Affordable Housing"

means any form of housing identified within legislation national planning policy framework or a ministerial statement as meeting the requirements of affordable housing planning obligation under section 106 of the Act (or any successor legislation) or the provision of which would make such a planning obligation unnecessary and may include but is not limited to

- social rented housing;
- affordable rented housing;
- shared ownership housing
- intermediate housing (including intermediate rent, shared equity and low-cost homes for sale);
- First Homes.

"Affordable Housing Units"

means 30% of the Dwelling Units on the Site (or the nearest full number) to be provided as Affordable Housing in accordance with this Deed comprising a

target tenure split of 67% Affordable Rented Units (a total of 19 Dwelling Units if 95 Dwelling Units are given Reserved Matters Approval) 8% Intermediate Housing Units (a total of 3 Dwelling Units if 95 Dwelling Units are given Reserved Matters Approval) and 25% First Homes (a total of 7 Dwelling Units if 95 Dwelling Units are given Reserved Matters Approval) unless the tenure target is varied in accordance with an Approved Affordable Housing Plan and / or Reserved Matters Approval(s) and "Affordable Housing Unit" shall be construed accordingly

"Affordable Housing Commuted Sum"

means in the event that paragraph 1.7.5 of the Third Schedule is applicable, a sum calculated in accordance with the following formula:

$X \text{ multiplied by } Y = \text{Affordable Housing Commuted Sum}$

Where:

X = £80,000; and

Y – the number of Affordable Housing Units which will not be provided on the Site as part of the Development in accordance with the terms of this Deed such sum to be applied by the Council towards providing and / or improving Affordable Housing within the District of Arun;

"Affordable Housing Disposal"

means in respect of any Affordable Rented Units or Intermediate Housing Units disposal of the Affordable Housing Units and /or land upon which those units are to be constructed to an Affordable Housing Provider whether by transfer of the freehold or the grant of a long lease for a term of at least 125 years;

"Affordable Housing Provider"

means either one or a combination of:

- a a registered provider of Affordable Housing registered under the Housing and Regeneration Act 2008 with Homes England who is on the Council's list of approved Affordable Housing Providers (annexed as Appendix 3); or
- b ABE CLT; or
- c Any other provider of Affordable Housing who is approved by the Council

- d such other body or organisation approved by the Council in writing whose main object is the provision of Affordable Housing

"Affordable Rented Units"

means a form of Affordable Housing, involving homes being available at a rent level of up to 80% of local market rent (inclusive of service charge at the time of each letting which rent may be increased annually by no more than CPI + 1.0% (or such other level as may be agreed in writing with the Council) or in the event of any change to legislation in relation to affordable rent such other rent level or allowed annual increase as may be applicable at the time of first letting. "Affordable Rent Unit" and "Affordable Rent" shall be construed accordingly

"agreed" or "approved"

means agreed or approved in writing and given for the purpose of this Deed.

"Application"

means the outline planning application for the Development on the Site given Council reference AL/129/21/OUT.

"Approved Affordable Housing Scheme"

means a scheme submitted by the Owner and approved in writing by the Council, setting out, in relation to the Affordable Housing Units:

- a. the tenure mix (including which of the Affordable Housing Units are to be provided as First Homes);
- b. the dwelling type; and
- c. their location.

"Armed Service Member"

means a member of the Royal Navy, the Royal Marines, the British Army or the Royal Air Force or a former member who was a member within 5 (five) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member whose death was caused wholly or partly by their service.

"CIL Regulations"

means the Community Infrastructure Regulations 2010 (as amended)

"Commencement"

means the carrying out of a material operation (as defined in section 56(4) of the Act) pursuant to the

Permission in respect of the Development but excluding for the purposes of this Undertaking and for no other purpose) any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof enabling works site clearance archaeological investigations and digs exploratory boreholes operations permitted by the Town and Country Planning General Permitted Development) Order 1995 the erection of hoardings and fencing temporary diversion of services and signage (including the formation of temporary construction accesses) and the terms **"Commencement of Development"** and **"Commence"** shall be construed accordingly;

"Commencement Notice"	means notice in the form annexed to this Deed as the First Schedule;
"Compliance Certificate"	means the certificate issued by the Council confirming that a Dwelling Unit is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 1.15 of the Third Schedule applies the Eligibility Criteria (Local);
"the Development"	means the development of the Site for up to 95 Dwelling Units together with informal and formal public open space, landscaping, drainage and other associated works pursuant to the Permission;
"Discount Market Price"	means a sum which is the Market Value discounted by 30% (thirty percent);
"Disposal"	means in respect of the First Homes a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than: (a) a letting or sub-letting in accordance with paragraph 1.26 or 1.27 of the Third Schedule; (b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner; or (c) an Exempt Disposal;

and references to "**Disposed**" or "**Disposal**" in paragraph 1 of the Third Schedule shall be construed accordingly;

"Dwelling Unit"

means a residential dwelling unit to be constructed on the Site pursuant to the Permission and "**Dwelling Units**" shall be construed accordingly;

"Eligibility Criteria (National)"

means criteria which are met in respect of a purchase of a First Home if:

(a) the purchaser is a First Time Buyer (or in the case of a joint purchase each purchaser is a First Time Buyer); and

(b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National).

"Eligibility Criteria (Local)"

means criteria (if any) published by the Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:

(a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local) (if any); and

(b) any or all of criteria (i) (ii) and (iii) below are met:

(i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria) (if any); and/or

(ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member; and/or

(iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker;

it being acknowledged that at the date of this agreement the Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Home.

"Estate Roads"	means the internal estate roads hammerheads and adjacent footways that are within the Development details of which are to be submitted in accordance with paragraph 1 of the Fourth Schedule;
"Exempt Disposal"	means the Disposal of a First Home in one of the following circumstances: (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner; (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner; (c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order; or (d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling Unit (and for the avoidance of doubt paragraph 1.29 shall apply to such sale); PROVIDED THAT in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 1.26 to 1.28 of the Third Schedule
"First Home"	means a Dwelling Unit which may be disposed of as a freehold or (in the case of flats only) as a leasehold tenancy to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap.
"First Homes Owner"	means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than: (a) the Owner; or (b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made

available and is disposed of for occupation as a First Home; or

(c) the freehold a tenant or sub-tenant of a permitted letting under paragraphs 1.26 to 1.28 of the Third Schedule.

"First Time Buyer"	means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003.
"Homes England"	means Homes England or any bodies undertaking the existing functions of Homes England within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act);
"Income Cap (Local)"	means such local income cap as may be published from time to time by the Council and is in force at the time of the relevant disposal of the First Home it being acknowledged that at the date of this Agreement the Council has not set an Income Cap (Local);
"Income Cap (National)"	means eighty thousand pounds (£80,000) or such other sum as may be published for this purpose for First Homes outside of London from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home;
"Key Worker"	means such categories of employment as may be published by the Council from time to time as the "First Homes Key Worker criteria" and is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "key Worker" criteria which shall apply to that disposal it being acknowledged that at the date of this agreement the Council has not designated any categories of employment as Key Worker;
"Index"	means the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any successor government office, ministry or department;
"Interest Rate"	means the rate 4% above the base rate from time to time of Bank of England applicable at the date the relevant contribution under this Deed is paid;

"Intermediate Housing Units"

means 8% (eight percent) of the Affordable Housing Units, (a total of 3 Dwelling Units if 95 Dwellings are granted Reserved Matters Approval) comprising Affordable Housing for sale and rent provided at a cost above social rent but below market levels which can included shared equity (shared ownership and equity loans) other low cost homes for sale and intermediate rent but not Affordable Rented Units;

"LAP"

means a Local Area for Play to be provided in accordance with Arun District Council Supplementary Planning Guidance on Open Space Playing Pitches, Indoor and Built Sports Facilities (January 2020);

"LEAP"

means a Local Equipped Area for Play to be provided in accordance with Arun District Council Supplementary Planning Guidance on Open Space Playing Pitches, Indoor and Built Sports Facilities (January 2020);

"Local Connection Criteria"

such local connection criteria as may be designated and published by the Council from time to time as its "First Homes Local Connection Criteria" and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such criteria or replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Local Connection Criteria", which shall apply to that disposal it being acknowledged that at the date of this agreement the Council has not designated any criteria as Local Connection Criteria

"Management Company"

means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owner for the purposes of carrying out future maintenance of the Open Space and Play Areas and:

1. which is incorporated in England and Wales or Scotland;
2. which has a registered office in England or Scotland; and
3. whose primary objects permit it to maintain and renew the Open Space and Play Area(s);

"Market Housing Units"

means all those Dwelling Units to be constructed on the Site pursuant to the Permission which are not Affordable Housing Units;

"Monitoring Fee"	means a sum of [PLEASE CONFIRM] payable to the Council in accordance with paragraph 4 of the Third Schedule in accordance with Regulation 122(2A) of CIL in respect of the cost of monitoring (including reporting under CIL) in relation to the delivery of these planning obligations;
"Mortgagee"	means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home
"National Planning Policy Framework"	means the National Planning Policy Framework dated July 2021 (or any future guidance or initiative that replaces or supplements it) and "NPPF" shall be construed accordingly;
"Nominations Agreement"	means a nominations agreement entered into by an Affordable Housing Provider with the Council in respect of the Affordable Housing Units containing provisions substantially in the form set out in the Appendix 4 to this Deed and which shall grant to the Nomination Rights;
"Nomination Rights"	means the right of the Council to nominate occupiers to the Affordable Rented Units and Intermediate Housing Units in accordance with paragraph 1.9 of the Third Schedule to this Deed and which shall (subject to the provisions of the Nominations Agreement) allow the Council the write to nominate occupiers in respect of 100% of initial voids and in respect of 75% of subsequent voids unless otherwise agreed between the Affordable Housing Provider and the Council;
"Occupation"	means occupation of the Development for the purposes of the Permission but not including occupation by personnel engaged in construction fitting out or decoration marketing and display or security purposes and " First Occupation " and " Occupiers " and " Occupy " and " Occupied " shall be construed accordingly;

"Open Space"	means those areas within the Development to be provided as formal and informal public open space (including the Play Areas) which are shown indicatively on Plan 2 but the final details, location and extent of shall be approved by the Council pursuant to the Reserved Matters Approvals and the approved Open Space Scheme;
"Open Space and Play Area Maintenance Commuted Sum"	means a sum to be calculated for the relevant area or areas of Open Space and/or Play Area in accordance with Table A1.2 of Appendix 1 of the Councils "Open Space, Playing Pitches, Indoor and Built Sports Facilities SPD January 2020" to be paid to the Council if the Open Space and Play Areas are transferred to the Council in accordance with paragraph 2.5 of the Third Schedule;
"Open Space Scheme"	means a scheme setting out: a) the final location and boundaries of the Open Space to be delivered at the Development; b) the location of and a specification for the Play Areas; and c) a maintenance and management plan for the Open Space and Play Areas to be provided at the Development, including details of whether the areas in question are to be transferred to a Management Company and details of the circumstances in which the Open Space may be closed to the public for maintenance, management, health and safety, and other reasons ("the Maintenance Scheme");
"Payment Notice"	means a notice in the form annexed to this Undertaking as the Second Schedule;
"Permission"	means a planning permission for the Development granted pursuant to the Application;
"Plan 1"	means the plan annexed at Appendix 1 hereto with drawing reference DLA.2052.L.14.Rev 04;
"Plan 2"	means the plan annexed at Appendix 2 hereto with drawing reference DLA.2052.L.26.S09 which is the illustrative masterplan for the Development;
"Planning Obligations"	means the obligations, conditions and stipulations set out in the Third Schedule and the Fourth

Schedule and "Planning Obligation" shall be construed accordingly;

"Play Areas"

means a LAP and a LEAP to be provided within the Development the details of which shall be set out in the Open Space Scheme;

"Practically Completed"

means the relevant First Homes are at a stage of construction that is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied;

"Price Cap"

means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State for First Homes outside of the City of London or the administrative area of London Borough Councils;

"Provide"

means in the case of Affordable Housing Units to design and construct such in accordance with the Technical Housing Standards – Nationally Described Space Standards published by the Department for Communities and Local Government in March 2015 or any replacement version thereof applicable at the date of the relevant Reserved Matters Approval for the Dwelling Units in question but for the avoidance of doubt excluding any Code for Sustainable Homes requirements which are no longer in force at said date and **"Provided"** shall be construed accordingly;

"Qualifying Occupier"

means a person who qualifies for Affordable Housing including residents of the district of Arun who are unable to resolve their housing needs in the local private sector market because of the relationship between housing costs and income;

"Reasonable Endeavours"

means the party under such obligation shall not thereby be required to take proceedings (including any appeal) in any court, public inquiry or other hearing but subject thereto such party shall be bound to attempt to fulfil the relevant obligation(s) by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances may be reasonable;

"Reserved Matters Approval(s)"	means approval by the Council of one or more matters reserved for approval by the Permission;
"Residents"	means the owners and occupiers of individual Dwelling Units to be constructed on the Site;
"RICS"	means the Royal Institute of Chartered Surveyors;
"SDLT"	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect;
"Secretary of State"	means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function;
"Section 73 Consent"	means any planning permission for a minor material amendment to the Permission granted under s73 of the 1990 Act;
"Shared Ownership Lease"	means a shared ownership lease for a term of years of at least 125 years in the form regulated by the Homes England from time to time and which shall accord with the requirements and be consistent with any model shared ownership lease from time to time established by Homes England;
"Shared Ownership Units"	means any Affordable Housing Units to be Provided as shared ownership units for sale under a Shared Ownership Lease for sale in accordance with this Undertaking;
"Site"	means all those parts of the land known as land on the west side of Lidsey Road, Woodgate, Chichester as are shown edged red on Plan 1 and are registered at the Land Registry under the title number WSX354170;
"Specified Date"	means the date upon which an obligation arising under this Deed is to be carried out or due to be performed;
"Travel Plan"	means Highgate Transportation Travel Plan 2087/TP/01 dated September 2021 submitted in support of the Application or such revised version thereof as may be submitted by the Owner and approved in writing by the County Council
"Travel Plan Co-ordinator"	means the person appointed as the Travel Plan Co-Ordinator in accordance with the Travel Plan

"Travel Plan Monitoring Fee"	means the sum of £3,500 (three thousand five hundred pounds) to be used by the County Council to monitor the implementation of the Travel Plan
"Valuer"	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity;
"Working Day"	means a weekday (Saturdays, Sundays and public holidays days excepted) and "Working Days" shall be construed accordingly;

2. INTERPRETATION

- 2.1 Clause headings shall not affect the interpretation of this Deed.
- 2.2 A **"person"** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- 2.3 A reference to a **"company"** shall include any company, corporation or other body corporate, where and however incorporated or established.
- 2.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.5 Unless the context otherwise requires a reference to one gender shall include a reference to other genders.
- 2.6 A reference to any party shall include that party's representatives, successors and permitted assigns and to any person deriving title through or under the party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 2.7 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.
- 2.8 Unless the context otherwise requires a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 2.9 A reference to **"writing"** and **"written"** does not include fax or email.
- 2.10 References to clauses and Schedules are to the clauses and schedules of this Deed.

- 2.11 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 2.12 Any words following the terms "**including**", "**include**", "**in particular**", "**for example**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.13 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.

3. LEGAL BASIS

- 3.1 This Deed is made under Section 106 of the Act.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations under Section 106 of the Act and are enforceable by the Council and the County Council as appropriate in accordance with Section 106 of the Act as local planning authorities against the Owner.

4 CONDITIONALITY

- 4.1 This Deed shall take effect on the date hereof but the Planning Obligations in the Third and Fourth Schedules are conditional upon and shall not be enforceable until:
- 4.1.1 the grant of the Permission; and
- 4.1.2 the Commencement of the Development,
- save for the provisions of paragraph 1.2 of the Third Schedule which shall come into effect immediately upon completion of this Deed.
- 4.2 On Commencement of Development the Owner will give to the Council and the County Council within 5 Working Days notice in writing of that Commencement in the form of the Commencement Notice addressed to the Council's Group Head of Planning and the County Council's Monitoring and Records Team, Strategic Planning Division of the County Council or equivalent as the case may be.

5 THE OWNER'S COVENANTS

- 5.1 The Owner hereby covenants with the Council so as to bind the Site to perform the obligations as set out in the Third Schedule.
- 5.2 The Owner hereby covenants with the County Council so as to bind the Site to perform the obligations as set out in the Fourth Schedule.

6 CERTIFICATES

- 6.1 The Owner covenants with the Council and the County Council that:
- 6.1.1 where this Deed imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Specified Date the Owner shall give the Council or the County Council notice of the Specified Date not more than seven days after such Specified Date; and
 - 6.1.2 if the Owner fails to give the notice required under this Clause the Council or the County Council shall acting reasonably be entitled in their absolute discretion to determine the Specified Date and give notice to the Owner of that determination

7 MISCELLANEOUS

- 7.1 Nothing in this Deed constitutes an obligation on the Council to grant the Permission.
- 7.2 No provisions of this Deed shall be enforceable by any person or party other than the Council or County Council under the Contracts (Rights of Third Parties) Act 1999.
- 7.3 This Deed may be registered as a local land charge by the Council PROVIDED THAT following the performance and satisfaction of all the obligations contained in this Deed the Council shall at the Owner's request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.4 Where any written notice is required to be served on the Owner the Council or the County Council pursuant to this Deed any notices shall be deemed to have been properly served if delivered to the principal address or registered office (as appropriate) of the relevant party and any notice or other communication to be given under or in connection with this deed shall be in writing and will be:
- (i) delivered by hand; or
 - (ii) sent by pre-paid first-class post or other next working day delivery service.
- 7.5 Insofar as any clause or clauses of this Deed are found (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.

- 7.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or if it expires prior to the Commencement of Development.
- 7.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.8 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council or the County Council under all statutes by laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 7.9 Where pursuant to this Deed any obligations requires the agreement, approval or consent of the Council or County Council said agreement, approval or consent shall not be unreasonably withheld or delayed.

8 LEGAL AND ADMINISTRATIVE COSTS

- 8.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation of this Deed.
- 8.2 The Owner shall pay to the County Council on completion of this Deed the reasonable legal costs of the County Council incurred in the negotiation of this Deed.

9 PAYMENT NOTICE

All payments due under this Deed shall be forwarded to the payee and shall have attached to them a copy of the Payment Notice duly completed.

10 EXCLUSIONS OF LIABILITY

- 10.1 No person shall be liable for any breach of any of the Planning Obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site, or such part of the Site to which the breach relates or if it holds no interest in the part of the Site to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 10.2 Save as provided for in paragraph 10.4 this Deed shall not be enforceable against any Resident or their mortgagees, nor against those deriving title from them.

- 10.3 Save for the obligation at paragraph 1.5 of the Third Schedule which shall (subject to paragraphs 1.11 and 1.12 therein) be enforceable against the Affordable Housing Provider in respect of the Affordable Housing Units this Deed shall not be binding or enforceable against the Affordable Housing Provider who acquires the Affordable Housing Units or their mortgagee, charge, receiver or successors in title.
- 10.4 Save for the obligations at paragraphs 1.14 to 1.17, 1.19 to 1.23 and 1.26 to 1.28 of the Third Schedule the provisions of this Deed shall not be enforceable against any First Homes Owner but and for the avoidance of doubt where a First Home is owned by a First Homes Owner those paragraphs shall apply only in respect of the First Home owned by that First Homes Owner and subject to paragraph 1.29 of the Third Schedule.
- 10.5 The obligations in this Deed shall not bind or be enforceable against any statutory undertaker who has or takes in future an interest in the Site for the purpose of providing apparatus pursuant to its statutory undertaking for the Development or against Network Rail in the event that part of the Site is transferred to Network Rail pursuant to the provisions of this Deed
- 10.6 Any legal charge or mortgage entered into in respect of the Site or any part of the Site after this Deed has been completed shall take effect subject to this Deed PROVIDED THAT the mortgagee under such a legal charge or mortgage shall have no liability under this Deed unless it causes the breach after it becomes a mortgagee in possession of the land comprised in the legal charge and the charge or mortgagee shall not be liable for any breach of this Deed that occurs prior to the charge or mortgagee taking possession of the land

11 WAIVER

No waiver (whether expressed or implied) by the Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

12 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site 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 Site or unit of occupation purchased by reference to a plan PROVIDED THAT the Owner

shall not be required to give notice to the Council of any change of ownership affecting a Dwelling Unit.

13 INDEX LINKED

- 13.1 Unless there is an express provision to the contrary the Owner agree with the Council that any sum payable by the Owner and referred to in the Third Schedule shall be increased by the application of the following formula:

$$A = B \times (C \text{ divided by } D)$$

- Where
- | | |
|-----|---|
| A | is the sum actually payable on the Specified Date |
| B | is the original sum mentioned in this Deed |
| C | is the Index for the month two months before the Specified Date |
| D | is the Index for the month two months before the date that Permission is granted; and |
| C/D | is equal to or greater than 1 |

- 13.2 Unless there is an express provision to the contrary the Owner agrees with the County Council that any sum payable by the Owner and referred to in the Fourth Schedule shall be increased by the application of the following formula:

$$A = B \times (C \text{ divided by } D)$$

- Where
- | | |
|-----|--|
| A | is the sum actually payable on the Specified Date |
| B | is the original sum mentioned in this Deed |
| C | is the Royal Institution of Chartered Surveyors Building Costs Information Service All-In Tender Price Index ("the BCIS Index") for the quarter preceding the Specified Date |
| D | is the BCIS Index for the quarter preceding the date that the Permission is granted; and |
| C/D | is equal to or greater than 1 |

- 13.3 Where reference is made to an index (including the Index and the BCIS Index) and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed).

14 INTEREST

Interest will be paid on sums due to the Council and the County Council under this Undertaking, but not paid on the Specified Date, from the Specified Date until actual payment. The rate of interest shall be 4% above the Bank of England base rate from time to time.

15 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

16 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

17 DELIVERY

The provisions of this Deed shall be of no effect until this Deed has been dated.

18 COUNTERPART DEED

- 18.1 This Deed may be executed and delivered in not more than two counterparts each of which is an original and which together have the same effect as if each party had signed the same document.

19 SECTION 73 CONSENTS

- 19.1 Subject to clauses 19.1.3. to 19.1.5 below, if any Section 73 Consent is granted after the date of this Deed unless agreed otherwise in writing between the Owners and the Council the Owners agree that:

19.1.1 the obligations in this Deed shall relate to and bind such Section 73 Consent; and

19.1.2 the definitions of Application, Development and Permission (other than for the purposes of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself;

PROVIDED THAT

19.1.3 nothing in this clause shall fetter the discretion of the Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;

19.1.4 to the extent that any of the obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent;

19.1.5 the provisions of this clause 19 shall not apply to any Section 73 Consent which necessitates or requires amendments to the substantive terms or obligations of or contained within this Deed or in respect of which the Council requires a further planning obligation prior to issuing the relevant Section 73 Consent.

FIRST SCHEDULE
(Commencement Notice)

Pursuant to Clause [] in the Planning Obligation Described Below

I advise you that the Development described below was commenced on the Start Date stated in this Notice.

Dated: this _____ day of _____ 20

Signed: _____

On Behalf of: _____

To:	(1) Group Head of Planning, Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF (DX: 57406 Littlehampton); (2) Monitoring and Records Team, Strategic Planning Division of County Hall, Chichester, West Sussex P019 1RQ (DX: 157410 Chichester 8)
From:	
Development At:	
Nature of Development:	
Planning Permission Date & Reference:	
Planning Obligation Date & Parties:	
Start Date:	

SECOND SCHEDULE

(Payment Notice)

Payment of Monies due under a Section 106 Planning Obligation / Agreement

Please answer all the questions:

1. Payment to be made by / on behalf of
2. Land at
3. Agreement dated
4. Planning application reference number (where applicable)
5. Obligation in Agreement:

(a)	clause no.	
(b)	contribution towards	
(c)	amount of contribution due	
(d)	Date upon which contribution is due	
(e)	amount of contribution enclosed	
(f)	amount of monitoring sum	

THIRD SCHEDULE

The Owner's Covenants with the Council

The Owner covenants with the Council as follows:

1 AFFORDABLE HOUSING

- 1.1 That thirty percent (30%) of the Dwelling Units shall be Provided as Affordable Housing Units, to be provided in accordance with the Affordable Housing Scheme, including a target tenure split of:
 - 1.1.1 67% Affordable Rented Units, (a total of 19 Dwellings if 95 Dwellings are given Reserved Matters Approval);
 - 1.1.2 8% Intermediate Housing Units (a total of 3 Dwellings if 95 Dwellings are given Reserved Matters Approval); and
 - 1.1.3 25% First Homes (a total of 7 Dwelling Units if 95 Dwelling Units are given Reserved Matters Approval).

unless the tenure target is varied in accordance with an Approved Affordable Housing Plan and / or Reserved Matters Approval(s))
- 1.2 Not to commence the construction of any Dwelling Units until an Affordable Housing Scheme for the Development has been submitted (either as part of an application for Reserved Matters Approval or separately) to and approved in writing by the Council.
- 1.3 Thereafter to Provide the Affordable Housing Units in accordance with the approved Affordable Housing Scheme (subject to any amendments agreed by the Council in writing from time to time).
- 1.4 Subject to paragraph 1.7 below, not to Occupy or cause or permit the Occupation of more than sixty percent (60%) of the Market Housing Units (or such other number of Market Housing Units as may be agreed in writing by the Council) until the Affordable Rented Units and Intermediate Housing Units within the Development have been Provided and disposed of to an Affordable Housing Provider via an Affordable Housing Disposal and the First Homes within the Development have been Practically Completed.

Delivery & Use of the Affordable Rented Units and Intermediate Housing Units

- 1.5 Subject to paragraphs 1.11 and 1.12 of this Schedule, with effect from the date on which they are completed the Affordable Rented Units and Intermediate Housing Units shall not be Occupied other than by a Qualifying Occupier and for the avoidance of doubt this restriction

shall apply not just to the first Occupier of any of the Affordable Rented Units and Intermediate Housing Units but (subject to paragraphs 1.11 and 1.12 below) to all subsequent occupiers.

1.6 The Owner covenants that:

1.6.1 The Owner shall offer the Affordable Rented Units and the Intermediate Housing Units to no less than 2 (two) Affordable Housing Providers (one of which shall be ABE CLT) (the "First Offer") by provision of:

1.6.1.1 A contract for the sale of land; and

1.6.1.2 A draft transfer which shall include the provisions set out in paragraph 1.8 below.

1.6.2 The First Offer shall remain open for acceptance by said Affordable Housing Providers for no less than three (3) months ("First Offer Period") from the date of the First Offer being made.

1.6.3 Second Offer

1.6.3.1 In the event that the First Offer made in accordance with paragraph 1.6.1 above is not accepted by one of the Affordable Housing Providers within the First Offer Period (or the First Offer is accepted but one of the Affordable Housing Providers does not enter into a binding contract within 8 (eight) weeks of said acceptance or within such other period as may be agreed in writing between the Owner and the Council) then the Owner shall make a second offer to transfer the Affordable Rented Units and Intermediate Housing Units to another Affordable Housing Provider ("Second Offer") not later than one (1) month after the expiry of the First Offer Period.

1.6.3.2 The Second Offer shall consist of the same terms as the First Offer subject to revisions necessitated by the lapse of time and shall remain open for acceptance for no less than three (3) months ("Second Offer Period") from the date of the Second Offer being made.

1.7 In the event that the Second Offer is not accepted within the Second Offer Period then the Owner may elect (by service notice in writing in the Council) to dispose of (some or all of at the Owner's discretion) the Affordable Housing Units in relation to which the First and Second

Offers have not been accepted on the open market free from the obligations set out in paragraph 1 of this Schedule which for the avoidance of doubt means that:

1.7.1 the restrictions set out in this paragraph 1 of this Schedule shall cease to apply in respect of those Affordable Housing Units; and

1.7.2 the restrictions on the Occupation of the Market Housing Units in paragraph 1.4 of this Schedule shall cease to apply

PROVIDED THAT

1.7.3 the Owner shall have provided the Council with written evidence of their Reasonable Endeavours to dispose of the Affordable Housing Units in question to an Affordable Housing Provider and the Council; and

1.7.4 the Council shall, acting reasonably, have confirmed in writing that such Reasonable Endeavours were reasonable or an expert shall have determined that such Reasonable Endeavours were reasonable; and

1.7.5 the Owner shall pay to the Council the Affordable Housing Commuted Sum for each of the Affordable Housing Units in relation to which the First and Second Offers have not been accepted within 20 Working Days of receipt of written confirmation from the Council and prior to Occupation of not more than 50% of the Market Housing Units pursuant to paragraph 1.7.4 in respect of the Affordable Housing Units in question

1.8 The Owner covenants with the Council that any transfer of Affordable Rented Units and Intermediate Housing Units to an Affordable Housing Provider will contain the following provisions:

1.8.1 The grant by the Owner of all rights and access and passage of services and other rights reasonably necessary to the beneficial enjoyment of those Affordable Housing Units;

1.8.2 A reservation of all rights and access and passage of services and other rights reasonably necessary for the benefit of the remainder of the Dwelling Units, estate infrastructure, and public areas on the Site; and

1.8.3 The imposition of such covenants as the Owner shall reasonably require and are consistent with the sale of any Market Housing Units; and

1.8.4 A condition that the Affordable Housing Provider shall within 3 months of the legal completion of the transfer, or such other period as may be agreed with the Council in writing, use reasonable endeavours to enter into a Nominations Agreement with the Council

1.9 To seek to procure (through compliance with paragraph 1.8.4 above) that the Affordable Housing Provider grants Nomination Rights to the Council to one hundred (100) percent of initial lets of the Affordable Rented Units and Intermediate Housing Units and seventy-five (75) percent of all lets after the initial lets PROVIDED THAT where ABE CLT is the Affordable Housing Provider who acquires the Affordable Rented Units and/or Intermediate Housing Units then it shall seek to allocate said units in accordance with any agreed allocations policy between ABE CLT at the time or in the absence of any such agreement or if the Council do not accept such offer of nominations rights then the Affordable Housing Provider shall in seeking to allocate the Affordable Housing Units have regard as far as possible to the following criteria:

1.9.1 any family association in the District of Arun in accordance with any relevant housing allocation policy;

1.9.2 Any period of ordinary residence in the District of Arun not immediately before the date on which any Affordable Housing Unit becomes vacant;

1.9.3 Any employment opportunity in the District of Arun;

1.9.4 Any other connection with the District of Arun

but for the avoidance of doubt the satisfaction of such criteria hereof shall be determined by the Affordable Housing Provider.

1.10 Nothing in this Deed shall be construed as imposing or otherwise implying any obligation on the Council to grant or make available any public subsidy or other financial support (or to assist the Owner in obtaining such public subsidy or other financial support) in respect of the Affordable Housing Units nor to require the Owner to dispose of the Affordable Housing Units to any specific Affordable Housing Provider at a price which is lower than the market valuation of said Affordable Housing Units at the time of any offer.

1.11 The provisions of this Third Schedule shall cease to bind any of the Affordable Rented Units or Intermediate Housing Units if in relation to that Affordable Housing Unit:

- 1.11.1 a statutory right to acquire pursuant to the Housing Act 1985 or Housing Act 1996 (or any statutory re-enactment amendment or replacement thereof) has been exercised; or
- 1.11.2 it shall have been sold under a shared ownership lease and the leaseholder (or its mortgagee) has staircased his ownership under the lease to 100%.

1.12 The Affordable Housing provisions in this Deed set out within paragraph 1 above shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver")) of the whole or any part of the Affordable Rented Units or Intermediate Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- 1.12.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- 1.12.2 if such disposal has not completed within the three-month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Undertaking which provisions shall determine absolutely

Delivery and use of the First Homes

- 1.13 The mix of First Homes provided within the Development shall be in accordance with:
 - 1.13.1 the Affordable Housing Mix; and
 - 1.13.2 the distribution in the Approved Affordable Housing Plan

1.14 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

1.14.1 the Eligibility Criteria (National); and

1.14.2 the Eligibility Criteria (Local) (if any).

1.15 If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 1.14.2 shall cease to apply.

1.16 Subject to paragraphs 1.19-1.23, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% (fifty percent) of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee.

1.17 Save as provided for herein no First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

1.17.1 The Council has been provided with evidence that:

1.17.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 1.15 applies meets the Eligibility Criteria (Local) (if any);

1.17.1.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price; and

1.17.1.3 the transfer of the First Home includes:

a) a definition of the "Council" which shall be "*Arun District Council*"

b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in paragraphs 1.14 to 1.29 of the Third Schedule of the S106 Agreement a copy of which is attached hereto as the Annexure."

c) A definition of "S106 Agreement" in the following terms:

"means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between (1) the Council [and] (2) [and (3)]"

- d) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the First Homes Provisions; and
- e) a copy of the First Homes Provisions in an Annexure;

And

17.1.2 The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 1.16 and 1.17.1 have been met

- 1.18 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by [Local Authority] of [address] or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

- 1.19 The owner of a First Home (which for the purposes of this clause shall include the Owner and any First Homes Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

1.19.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 1.14 and 1.15 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 1.16 and 1.17; or

1.19.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 1.15 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship

1.20 Upon receipt of an application served in accordance with paragraph 1.19 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price

1.21 If the Council is satisfied that either of the grounds in paragraph 1.19 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 1.19 that the relevant Dwelling Unit may be Disposed of:

1.21.1 to the Council at the Discount Market Price; or

1.21.2 (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling Unit apart from paragraph 1.23 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home

1.22 If the Council does not wish to acquire the relevant Dwelling Unit itself and is not satisfied that either of the grounds in paragraph 1.19 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 1.19 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 1.19 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home

1.23 Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 1.21 and 1.22 above the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution

1.24 Upon receipt of the Additional First Homes Contribution the Council shall:

1.24.1 within 10 (ten) working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 1.18 where such restriction has previously been registered against the relevant title;

1.24.2 apply all monies received towards the provision of Affordable Housing

- 1.25 Any person who purchases a First Home free of the restrictions set out above or at paragraphs 1.26 to 1.28 below pursuant to the provisions in paragraphs 1.21 or 1.29 shall not be liable to pay the Additional First Homes Contribution to the Council.
- 1.26 Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 1.27 and 1.28 and PROVIDED FURTHER THAT:
- 1.26.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.
- 1.26.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:
- a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
 - b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
 - c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
 - d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
 - e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and

- f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 1.27 A letting or sub-letting permitted pursuant to paragraph 1.26 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 1.28 Nothing in paragraphs 1.26 or 1.27 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.
- 1.29 The obligations in paragraphs 1.14 to 1.17, 1.19 to 1.23 and 1.26 to 1.28 of this Schedule in relation to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:
 - 1.29.1 such Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and
 - 1.29.2 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Council the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 1.29.3; and
 - 1.29.3 following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution; and
 - 1.29.4 following receipt of notification of the Disposal of the relevant First Home the Council shall:
 - 1.29.4.1 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 6.5; and
 - 1.29.4.2 apply all such monies received towards the provision of Affordable Housing.

2 OPEN SPACE & PLAY AREA

- 2.1 Not to Commence the Development until an Open Space Scheme has been submitted (either as part of an application for Reserved Matters

Approval or separately) to and approved in writing by the Council ("the **Approved Open Space Scheme**").

- 2.2 Upon receipt of the Council's approval pursuant to sub-paragraph 2.1 of this Schedule the Owners shall provide the Open Space and Play Areas in accordance with the Permission and the Approved Open Space Scheme (subject to any amendments agreed by the Council in writing from time to time) prior to the Occupation of no more than 80% (eighty percent) of the Dwelling Units in the Development (or such other number of Dwelling Units as may be agreed in writing by the Council).
- 2.3 Upon completion of the Open Space and Play Areas in accordance with the Approved Open Space Scheme the Owner shall notify the Council in writing and invite it to inspect the Open Space and Play Areas as soon as reasonably practicable thereafter and shall request that the Council confirms that the Open Space and Play Areas have been completed in accordance with the Approved Open Space Scheme to the reasonable satisfaction of the Council.
- 2.4 If upon notification by the Owner pursuant to paragraph 2.3 of this Schedule the Council is of the view that the Open Space and Play Areas have not been provided in accordance with the Approved Open Space Scheme to the reasonable satisfaction of the Council and notifies the Owners accordingly, specifying the measures reasonably necessary to satisfactorily complete the Open Space in accordance with the Approved Public Open Space Scheme, the Owner shall within such reasonable period as specified by the Council carry out those works and shall notify the Council pursuant to paragraph 2.3 of this Schedule (such procedure being repeated as often as is necessary until such time as the Council confirms reasonable satisfactory completion thereof PROVIDED THAT in the event that at any time following a notification by the Owner pursuant to paragraph 2.3 the Council refuses or fails to inspect the Open Space and Play Areas and to provide any confirmation or notification pursuant to this paragraph 2.4 within 40 Working Days of any such notice from the Owner pursuant to paragraph 2.3 then the Open Space and Play Areas shall be deemed to have been completed to the Council's reasonable satisfaction for the purposes of this paragraph 2.
- 2.5 On completion of the Open Space and Play Areas in accordance with the Approved Open Space Scheme and upon satisfactory completion of any works identified by the Council in accordance with paragraph 2.4 of this Schedule and no later than 2 months from completion of the Open Space and any works identified by the Council in accordance with paragraph 2.4 the Owner will (at its discretion) either:
 - 2.5.1 Transfer the Open Space and Play Areas to a Management Company (having first supplied to the Council a certified copy of the Memorandum and Articles of Association of the

Management Company) for the purpose of undertaking the future management and maintenance of the Open Space and Play Areas on terms agreed between the Owner and the Management Company and all further management and maintenance shall be thereafter carried out by the Management Company in accordance with the Maintenance Scheme and this sub-paragraph PROVIDED THAT it is agreed that it shall be a term of Management Company's engagement that the Management Company will:

- (a) maintain and manage in perpetuity the Open Space and Play Areas in accordance with the Approved Open Space Scheme or any variations that may be agreed in writing by the Council from time to time IN DEFAULT OF WHICH the Council shall be entitled upon giving reasonable prior written notice of no less than 25 Working Days to the Management Company to carry out any maintenance works reasonably required to the Open Space and Play Area and recover the proper and reasonable costs and expenses involved from the Management Company; and
- (b) only allow the use of the Open Space and Play Areas for public access and recreation and for no other purpose.

OR

- 2.5.2 Subject to an offer being made by the Owner and the Council's acceptance of that offer in writing the Open Space and Play Areas shall be transferred to the Council and on completion of said transfer the Open Space and Play Areas Maintenance Commuted Sum shall be paid to the Council after which time the Owner shall no longer have any responsibility for the Open Space and Play Area PROVIDED THAT it is agreed that if the Council does not accept an offer of transfer within 3 (three) months of the date of the offer of transfer the offer will lapse and the Owner will transfer the Open Space and Play Areas to a Management Company in accordance with the provisions of paragraph 2.5.1 of this Schedule

AND FURTHER PROVIDED THAT it is agreed that the Owner will comply with the provisions set out in sub-paragraph 2.5.1(a) and (b) of this Schedule until such time as a Management Company has been engaged to undertake the future management and maintenance of the Open Space and Play Areas after which point the Management Company shall be responsible for its maintenance and management.

- 2.6 The Owner hereby declares that pursuant to Section 31(6) Highways Act 1980 that the Open Space has not been dedicated to the public

nor is any use by the public of any part of the Open Space to be taken in any way as an intention by the Owner to dedicate the same as highway.

- 2.7 To allow public access to the Open Space and Play Areas but subject to the following provisions:

2.7.1 access shall be subject to such other requirements and regulations as may from time to time be imposed by the Owner having regard to overriding reasons of safety, security and prudent building management PROVIDED THAT such requirements and regulations shall not be imposed without the Council's prior approval;

2.7.2 the Owner may erect notices on the Open Space and/or Play Areas and access to them may be denied by the Owner for one day each year in order to prevent public rights of way or common rights coming into being;

2.7.3 access may be denied by the Owner for the maintenance, repair, cleansing or renewal of the Open Space and/or Play Areas or any building or land abutting it subject to the Council's prior approval.

3 MONITORING FEE

3.1 Prior to the Commencement of the Development to pay to the Council the Monitoring Fee.

3.2 Not to cause or permit the Development to be Commenced until the Monitoring Fee has been paid to the Council.

4. A27 JUNCTIONS CONTRIBUTION

4.1 Prior to the Commencement of Development to pay to the Council the A27 Junctions Contribution.

4.2 Not to cause or permit the Development to be Commenced until the A27 Junctions Contribution has been paid to the Council.

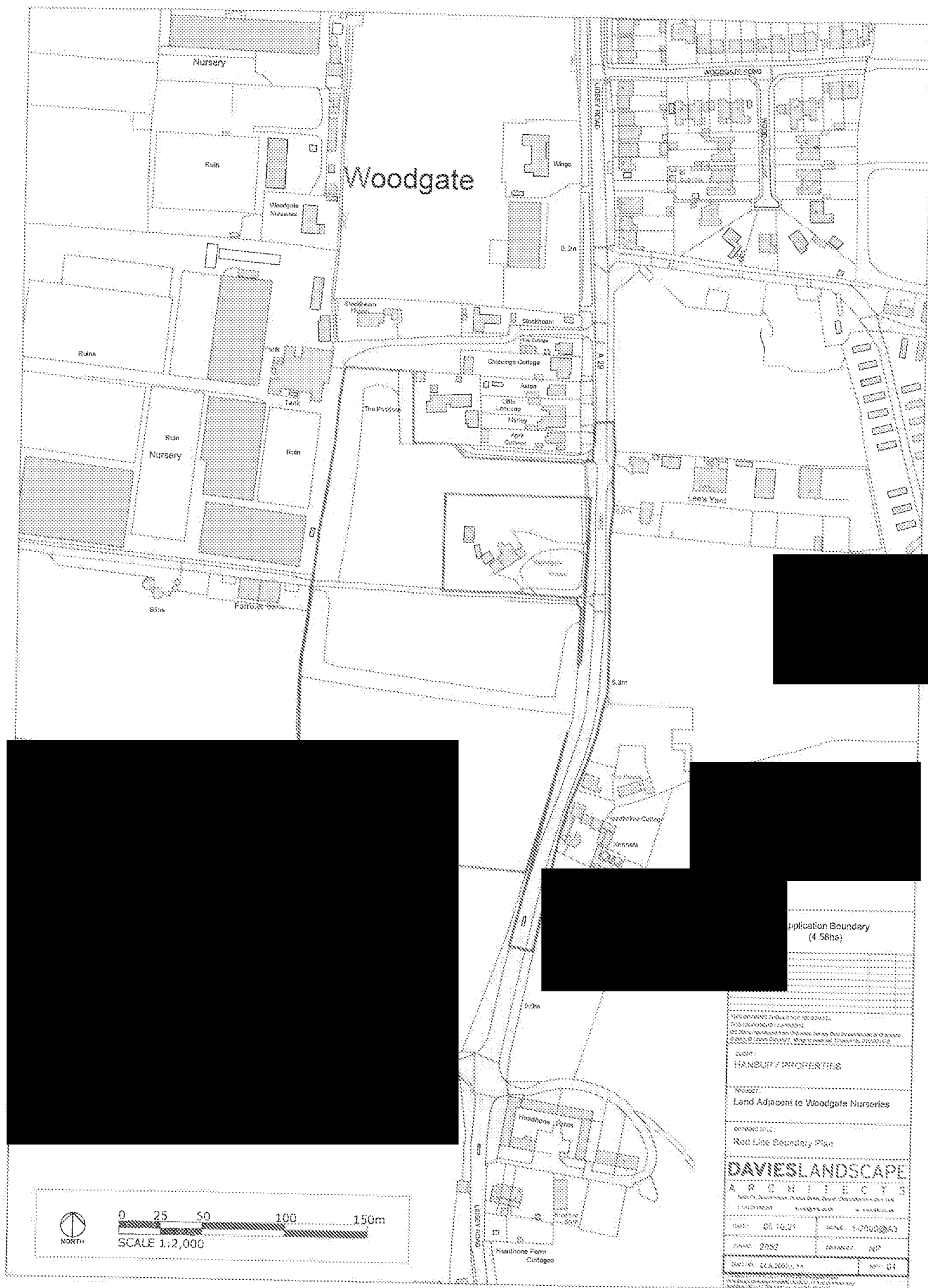
FOURTH SCHEDULE

The Owner's Covenants with the County Council

1. TRAVEL PLAN

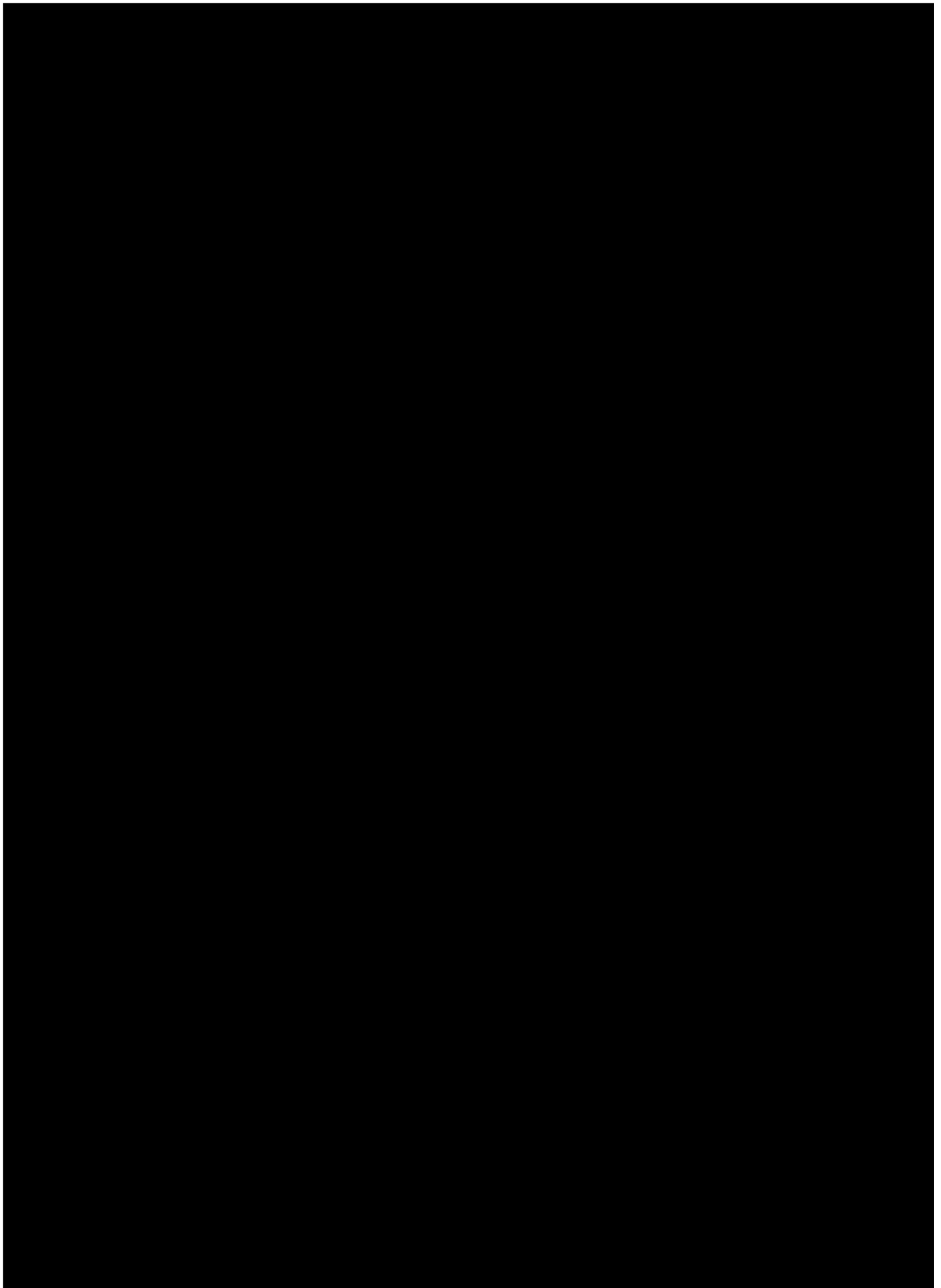
- 1.1 Not to Occupy or permit Occupation until the identity of and contact details for the Travel Plan Co-Ordinator have been provided to the County Council and the Travel Plan Monitoring Fee has been paid to the County Council.
- 1.2 Thereafter, to implement the Travel Plan in accordance with the action plan set at out Table 5.2 therein.

APPENDIX 1
PLAN 1



APPENDIX 2
PLAN 2

11.17





APPENDIX 4

DRAFT NOMINATIONS AGREEMENT

DATED

(1) { } { }

AND

(2) ARUN DISTRICT COUNCIL

AGREEMENT OF NOMINATION

*relating to
rented units at*

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THIS AGREEMENT OF NOMINATION RIGHTS is made on

20{ }

BETWEEN

{ } of { } ; and

ARUN DISTRICT COUNCIL of The Civic Centre, Maltravers Road, Littlehampton
BN15 7LF.

1 DEFINITIONS

In this Agreement :

"Initial Let" means the first tenancy of such newly constructed and previously unoccupied Rented Unit;

"Nominee" means a person named in the Nomination List who is specified by the Council as being suitable for taking a Tenancy Agreement of a Rented Unit;

"Nomination List" means the list to be supplied by the Council pursuant to clauses 3.3 and 3.10 (as may be updated from time to time in accordance with clause 3.16).

"Property" means the land at shown edged red on the attached plan.

"Rented Units" residential units in the form of houses.

"Subsequent Nominee" means a Nominee to be offered a Tenancy Agreement pursuant to clause 3.10.

"Tenancy Agreement" means an assured Tenancy Agreement in a form prepared by the RSL and containing terms which accord with the form of Tenancy Agreement being used by the RSL from time to time for its general lettings.

"Vacancy Notice" means a written notice given by the RSL to the Council (in a form to be agreed between the RSL and the Council within five weeks from the date of this Agreement) the function of such notice being the notification to the Council by the RSL that the construction and fitting out of the Rented Unit is completed.

"Void" means a Rented Unit which is vacant otherwise than as a result of the tenant having:

moved to other accommodation either by transfer or decant provided by the RSL;

moved to other accommodation under a reciprocal arrangement provided by another registered social landlord registered with the Housing Corporation under the Housing Act 1996.

"Void Notice" means a written notice given by the RSL to the Council (in a form to be agreed between the RSL and the Council within five weeks from the

date of this Agreement) the function of such a notice being the notification to the Council of a Void.

2 ENABLING PROVISIONS

This Agreement is made pursuant to s111 of the Local Government Act 1972 s33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other enabling powers.

3 PROCEDURE

The parties agree that the following nomination procedure shall apply to the nomination of persons in respect of the Rented Units.

Initial Lets

- 3.1 *The RSL shall give the Council not less than eight weeks written notice of the date when the Initial Let units will be ready for occupation.*
- 3.2 *The RSL shall serve on the Council a Vacancy Notice in respect of each Rented Unit not less than four weeks prior to such newly constructed and previously unoccupied Rented Unit becoming available for occupation.*
- 3.3 *The Council shall within 10 working days of receipt of a Vacancy Notice serve upon the RSL the Nomination List setting out a list of Nominees.*
- 3.4 *The Nomination List to be served by the Council under clause 3.3 shall:*
 - 3.4.1 *specify the appropriate category of Rented Unit to which it relates; and*
 - 3.4.2 *indicate the priority for the housing of the Nominees.*
- 3.5 *The RSL shall have the right to let the Initial Let in respect of the Rented Units to persons of its own choosing in the event of the Council's failure to serve the Nomination List referred to in clause 3.3 within the period of 10 working days of receipt of the Vacancy Notice.*
- 3.6 *The RSL shall within five working days of the date of receipt of the Nomination List referred to in clause 3.3 select a Nominee from the Nomination List in priority order and shall use its reasonable endeavours to arrange viewing of the relevant Rented Unit and offer a Tenancy Agreement to such selected Nominee.*
- 3.7 *If the selected Nominee fails to enter into a Tenancy Agreement within three working days of receipt of the RSL's offer of a Tenancy Agreement such selected Nominee shall be deemed to have rejected the RSL's offer and the RSL shall select another Nominee whereupon the procedure set out in clause 3.6 and this clause shall be repeated.*

- 3.8 In the event of the second selected Nominee failing to accept the RSL's offer of a Tenancy Agreement within the time prescribed by clause 3.7 then the RSL shall make an offer to a third Nominee and the procedure set out in clauses 3.6 and 3.7 shall apply but in the event of such third selected Nominee failing to accept the RSL's offer of a Tenancy Agreement within the prescribed time limits the RSL shall not be bound to make any further offers of accommodation to Nominees in respect of such vacancy of the Rented Unit but shall be entitled to let the Rented Unit to a tenant of its own choosing.
- 3.9 The RSL's obligations under clauses 3.1 to 3.8 shall cease when all of the Rented Units have been offered to Nominees in accordance with clauses 3.6 to 3.8.

Voids

- 3.10 Should a Rented Unit become a Void after the Initial Let or the RSL has reasonable cause to believe it will become a Void then and in each case:
- 3.10.1 the RSL shall serve a Void Notice in respect of the relevant vacant Rented Unit; and
- 3.10.2 within 10 working days of receipt of the said notice the Council shall serve upon the RSL the Nomination List setting out a list of Subsequent Nominees which shall contain the information referred to in clause 3.4.
- 3.11 The RSL shall have the right to let the relevant vacant Rented Unit to a person of its own choosing in the event of the Council's failure to serve the Nomination List referred to in clause 3.10 within 10 working days of receipt of the Void Notice.
- 3.12 Upon receipt of the Nomination List referred to in clause 3.10 the RSL shall follow the procedure *mutatis mutandis* set out in clauses 3.6 to 3.8.
- 3.13 The RSL shall not be obliged to follow the procedure set out in clauses 3.10 to 3.12 if it would result in the Subsequent Nominees being nominated for more than 75 per cent of the Rented Units available after the Initial Let and shall have the right to let the relevant vacant Rented Unit to a person of its own choosing.

Provision of information and alteration of lists

- 3.14 The RSL shall give notification to the Council of the occurrence of the following events within five working days of their occurrence:
- 3.14.1 a Nominee or Subsequent Nominee failing to view a Rented Unit within 5 working days of an offer being made;
- 3.14.2 a Nominee or Subsequent Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Agreement;

- 3.14.3 a Nominee or Subsequent Nominee accepting an offer of a Tenancy Agreement;
- 3.14.4 a person accepting an offer of a tenancy from the RSL;
- 3.14.5 the RSL rejecting a Nominee or Subsequent Nominee in accordance with clause 3.20.
- 3.15 In the event of a notice being served pursuant to clause 3.14 then the name of such Nominee or Subsequent Nominee shall be removed from the Nomination List.
- 3.16 Within 10 working days of the Council receiving notice served in accordance with clause 3.14 above save for notice under 3.14.4 the Council shall serve upon the RSL the name and address of a Nominee or Subsequent Nominee to add to the Nomination List such notice to include the information set out in clause 3.4.
- 3.17 If the Council shall within the period mentioned in clause 3.16 notify the RSL that the Council then has no suitable Nominee or Subsequent Nominee the Council shall advise the RSL of a suitable replacement Nominee or Subsequent Nominee as soon as reasonably practicable.
- 3.18 The RSL shall have the right to let a Rented Unit to a person of its choosing if the Council's failure to provide a Nominee or Subsequent Nominee creates a Void in respect of that Rented Unit.
- 3.19 On 1 April, 1 July, 1 October and 1 January in each year the RSL shall serve the Council with details of the letting activities of the Rented Units in a format to be agreed between the RSL and the Council.
- 3.20 The RSL shall have the right to interview and make enquiries of each Nominee or Subsequent Nominee and by serving written notice upon the Council to that effect to reject any Nominee or Subsequent Nominee if in the reasonable opinion of the RSL the grant of an Assured Tenancy to such Nominee would be in contravention of the RSL's registered rules or its letting criteria.
- 3.21 The Council shall immediately notify the RSL in writing if any Nominee or Subsequent Nominee is withdrawn from the Nomination List.
- 3.22 When calculating percentage for the purposes of this Agreement percentage equal to or in excess of 0.5 shall be rounded up and percentages less than 0.5 shall also be rounded up.
- 3.23 The Council and the RSL agree that the nomination rights contained in this Agreement may be varied from time to time but only by agreement in writing by the parties.

4 NOTICES

Any notice required to be served hereunder shall be sufficiently served on the parties at the address indicated above or such other address notified by one party to the other and any notice shall have been deemed to have been served two working days after posting.

5 TRANSFERS TO OTHER REGISTERED SOCIAL LANDLORDS

The RSL shall ensure that any registered social landlord to which the Property and Rented Units erected thereon are transferred otherwise than by direction of the Housing corporation under its statutory powers shall enter into a similar agreement mutatis mutandis with the Council.

6 MORTGAGEES IN POSSESSION

The provisions of this Agreement shall not apply to any mortgagee in possession or anyone deriving title therefrom or any individual dwelling in respect of which the right to acquire under the Housing Act 1996 Part 1 Chapter 11 or under any other statutory provisions has been validly exercised.

7 DISPUTES

Where any matters fail to be agreed between the parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the parties or in default of agreement to be nominated by the President for the time being of the chartered Institute of Housing.

8 COSTS

The RSL agrees with the Council to pay the reasonable legal costs which the Council incurs in preparing and entering into this Agreement.

9 AGREEMENTS AND DECLARATIONS

The parties agree:

- 9.1 nothing in this Agreement fetters or restricts the exercise by the Council of any of its powers; and*
- 9.2 the obligations contained in this Agreement are covenants for the purpose of s33 of the Local Government (Miscellaneous Provisions) Act 1982.*

THIS DOCUMENT HAS BEEN EXECUTED AS AN AGREEMENT AND IS DELIVERED and takes effect on the date stated at the beginning of it.

THIS DOCUMENT HAS BEEN EXECUTED AS A DEED AND IS DELIVERED and takes effect on the date stated at the beginning of it.

SIGNED and DELIVERED

by

PATRICIA LANGMEAD

acting through her duly authorised attorney

TIMOTHY MICHAEL OLLIFF-LEE

in the presence of:

Witness Name:

Witness Address:

Witness Occupation:

S.M. FRODSHAM

1 BARNFIELD COTTAGE QU32 1ES

MANAGER

SIGNED and DELIVERED

by

LESLIE JAMES LANGMEAD

acting through his duly authorised attorney

JOHN ROBERT FIELDER

in the

presence of:

Witness Name:

Witness Address:

Witness Occupation:

S.M. FRODSHAM

1 BARNFIELD COTTAGE QU32 1ES

MANAGER

EXECUTED AS A DEED by affixing
the Common Seal of
ARUN DISTRICT COUNCIL

Authorised Signatory

Name: EDWARD O'BRIEN

Job Title: PROPERTY MANAGER

Seal Book Number. 331 / 2022

EXECUTED AS A DEED by affixing
the Common Seal of
WEST SUSSEX COUNTY COUNCIL

in the presence of

Authorised Signatory

Name:

Job Title:

Seal Book Number.