

A/117/11/PO

Dated:

18th February 2006

Between:

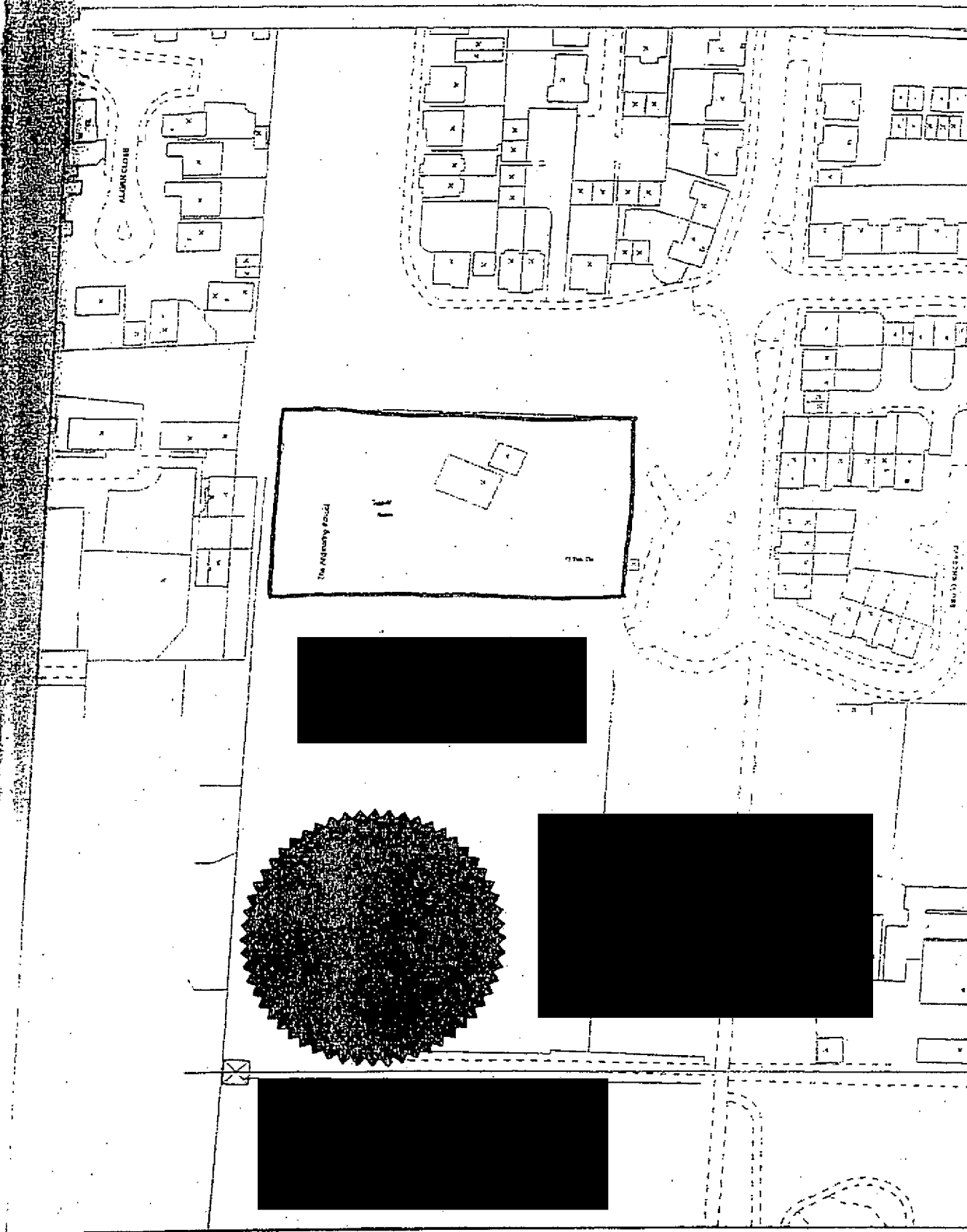
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|-----|----------------------------|-------------|
| [1] | Barry Nicholas Boxall | [The Owner] |
| [2] | Arun District Council | [ADC] |
| [3] | West Sussex County Council | [WSCC] |

AGREEMENT

under Section 106 of the Town & Country Planning Act 1990
and other powers
Land at Lansdowne Nursery, Mayflower Way, Angmering, West Sussex

Delwyn Jones
Planning Solicitor
Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex BN17 5LF
DX 57406 LITTLEHAMPTON

Reference: A/114/04
Committee: Development Control
Date: 22nd December 2004



Head of Planning Services
Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
BN17 5LF

A/114/04
General Location Plan
Not part of the planning application
Plan may not be up to date

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Arun District Council 100018487 2004

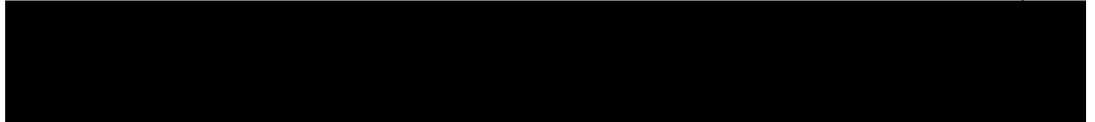
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Thirteenth February

This Agreement is dated 13 2006 and is made between:

[1]



[2] Arun District Council of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex. BN17 5LF ["ADC"]

[3] West Sussex County Council of County Hall, Chichester, West Sussex. PO19 1RQ [WSCC"]

1.0 Background

1.1 The Owner is proprietor of the land at Lansdowne Nursery, Mayflower Way, Angmering, West Sussex shown for identification purposes only edged black on the attached plan [and hereinafter called "the Land"].

1.2 ADC is the local planning authority.

1.3 The WSCC is the Strategic Planning Authority and the local education authority.

1.4 The Owner has by planning application number A/114/04 dated 1st August 2004 and received on 6th September 2004 applied to ADC for planning permission to develop the Land by erecting thereon 15 no. two or three bedroom houses.

2.0 Interpretation

In this Agreement:

2.1 Words importing the masculine include the feminine and vice versa.

2.2 Words importing the singular include the plural and vice versa.

2.3 Words importing persons include companies and corporations and vice versa.

2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.

- 2.5 Any reference to a clause or schedule or plan is to one in to our attached to the Agreement.
- 2.6 Any reference to a colour or letter is to be on the plans attached to this Agreement.
- 2.7 In the absence of contrary provision any reference to a statute includes any statute modification or re-enactment of it and every statutory instrument, direction or specification made or issued under the statute or deriving validity from it.
- 2.8 Subject to Clause 14.10 references to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the WSCC and ADC the successors to their respective functions.
- 2.9 "the Act" means the Town & Country Planning Act 1990
- 2.10 "agreed" or "approved" means agreed or approved in writing and given for the purpose of this Agreement.
- 2.11 "the Application" means the planning application number A/114/04 made by the Owner to develop the Land
- 2.12 "the Development" means the development of the Land proposed by the Applicant or permitted by planning permission granted pursuant to the Application or carried out substantially in accordance with such planning permission and the phrase "planning permission" shall be interpreted accordingly.
- 2.13 "Education Contribution" means the education contribution referred to in Clause 14.10 being a financial contribution towards the cost of providing the additional educational infrastructure required to accommodate the extra demands for education services that would be generated by the Development.
- 2.14 "First Occupation" means beneficial occupation for any use for which the Development was designed other than occupation for the purposes of construction or fitting out
- 2.15 "the Public Open Space" means that referred to in Clause 5 and the phrase has the same meaning as in Section 336 of the Act.

2.16 "Specified Date" means the date upon which an obligation arising under the Agreement is due to be performed.

3. Enabling Provisions

This Agreement is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, and all other enabling powers.

4. Commencement

- 4.1 This Agreement shall come into effect upon the date of grant of the Application but the obligations in Clauses 5 and 6 and shall become effective only on the commencement of the Development by the carrying out of any material operation as defined in Section 56(4) of the Act ("Commencement of the Development"), but excluding archaeological investigations, soil investigations, demolition works, site clearance, site preparations, site filling, and the erection of fences and hoardings.
- 4.2 On Commencement of the Development the Owner will give to ADC and WSCC notice in writing of that commencement in the form of The Commencement Notice annexed to this Deed as Schedule 1 addressed to ADC's Head of Planning Services and WSCC's County Planning Officer.
- 4.3 Without prejudice to liability for any subsisting breach the Owner shall not be liable for breach of any obligation, restriction or condition contained in this Deed after the Owner has parted with all interest in the Land.

Covenants in Favour of ADC

5. Provision of Public Open Space

The Owner agrees with ADC

- 5.1 to provide and lay out an area of open space in accordance with a specification approved by ADC and to ADC's satisfaction. Such specification to include details of the layout of the Public Open Space on the development and its dimensions and Play Area Equipment as a minimum.
- 5.2 to ensure that there is reasonable public access to the Public Open Space.

5.3 to complete the works of provision and laying out in accordance with Clause 5.1 and to make the Public Open Space available for use by the public no later than the First Occupation of the 5th dwelling forming part of the Development on the Land.

5.4 within two months of the completion of the works referred to in Clause 5.3 to transfer the Public Open Space to:-

- (i) ADC; or
- (ii) Such body as it may direct; or
- (iii) A residents' management Company, and full and satisfactory proof of the existence of the Company and a legal structure containing obligations on the part of the Residents of the Development to contribute towards the costs of maintaining the Public Open Space through a service charge shall be supplied to ADC prior to any transfer of the Public Open Space to it.

(Such transfer to be in a form agreed between the parties acting reasonably)

PROVIDED that the Public Open Space may by agreement with ADC be transferred to ADC or its nominees or a residents' management company for public use and for maintenance purposes in advance of the transfer and provided always that any transfer to a residents' management company shall be without prejudice to the provision of Clause 5.2 herein.

5.5 upon the handover or transfer to ADC or its nominee as referred to in Clause 5-4 (whichever is the earlier) to pay to ADC or its nominee a sum equivalent to the annual maintenance costs of the open public space multiplied by sixteen and for the avoidance of doubt no such sum will need to be paid over to the ADC in the event of the Public Open Space being transferred to and managed by a private residents' management company.

6. Education Sum

6.1 To pay to the WSCC on or before the First Occupation of any dwelling forming part of the Development of the Land the Education Contribution of Seventy Nine Thousand Four Hundred and Twenty Pounds (£79,420)

6.2 Not to occupy or cause to be occupied any dwelling forming part of the Development before the Education Contribution shall have been paid.

6.3 The Education Contribution shall be increased by the higher of the following:

- (i) an amount equal to the proportionate increase of the primary and secondary build costs multipliers published and revised periodically by the Department for Education and Skills (and the event and date of a revision of the costs multipliers shall henceforth be referred to as the "date of revision") AND an amount equal to the proportionate increase in the All In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors between the month preceding the date of revision and the month preceding the date of payment of the Education Contribution OR
- (ii) If the primary and secondary build costs multipliers published by the Department for Education and Skills are not reviewed between the date of this Agreement and the date of payment of the Education Contribution an amount equal to the proportionate increase in the All In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors between the month preceding the date of payment of the Education Contribution.

Fire Hydrant Provisions

- 6.4 Prior to the date of Commencement of the Development to submit to the WSCC for the WSCC's approval (such approval not to be unreasonably withheld or delayed) a proposal for the location and installation of a fire hydrant in accordance with the West Sussex Fire Brigade Guidance Notes attached to this Agreement and prior to the occupation of any dwelling forming part of the Development that the Owner will at its own expense install the fire hydrant in the approved location and arrange for its connection to a water supply which is appropriate in terms of both pressure and volume for the purposes of fire fighting.
- 6.5 That the Development will include the provision of suitable access (to the reasonable satisfaction of the WSCC) for fire brigade vehicles and equipment.

7. WSCC Covenants

- 7.1 Upon receipt of the Education Contribution as paid to the WSCC under Clause 6.1 above, it will hold it in a separately identified interest bearing section of the WSCC's combined accounts and apply the same together with any interest accruing thereon only for the provision of additional pupil places at a school serving the area in which the Development is situated.

- 7.2 To issue to the Owner the Education Contribution within 10 years of the date of receipt of the Education Contribution as provided for in Clause 6.1 above an account certified by the County Treasurer for the time being of the WSCC detailing how the said Education Contribution has been expended by the WSCC.
- 7.3 If or to the extent that said Education Contribution shall not have been spent by the WSCC at the date of the account referred to in Clause 7.2 the WSCC shall on such date refund to the Owner any unexpended sum together with compound interest thereon from the date of receipt of the Education Contribution by the WSCC to the date of repayment at the base lending rate of the HSBC Bank Plc application at the date of repayment calculated on a day to day basis.
- 7.4 If at the date of the account referred to in Clause 7.2 the WSCC shall have entered into a contract or other legally binding obligation to expend the Education Contribution or part thereof for the purposes specified in Clause 7.1 then the WSCC shall not be required to refund any part of the Education Contribution required for that purpose but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the Owner such contributions in the manner set out in Clause 7.2 hereof and refund any unexpended part of the said contribution in the manner set out in Clause 7.3 hereof.

8. Certificates

The Owner agrees with the WSCC and the ADC:

- 8.1 where this Agreement 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 to ADC and/or WSCC notice of the Specified Date not more than seven days after such Specified Date
- 8.2 if the Owner fails to give the notice required under this clause the ADC and/or WSCC shall be entitled in its absolute discretion to determine the Specified Date and shall give notice to the Owner of that determination

9. Interest

The Owner agrees with the ADC and WSCC to pay interest on sums due to them under this Agreement but not paid on the Specified Date from the Specified Date until actual payment. The rate of interest shall be 4% above the HSBC Bank base rate from time to time.

10. Costs

The Owner agrees with ADC and WSCC:

- 10.1 to pay to the ADC and the WSCC their respective legal costs incurred in preparing and entering into this Agreement.
- 10.2 to pay to the ADC its reasonable and proper legal costs incurred in connection with the transfers of land referred to in this Agreement.

11. Payment Notice and Service of Notices

- 11.1 The parties to this Agreement hereby agree that all payments due under this Agreement shall be forwarded to the payee and shall have attached to them a copy of the Payment Notice contained in Schedule 2 to this Agreement duly completed.
- 11.2 Any notice required by this Agreement to be serviced on WSCC ("the Notice") shall be in writing and addressed to the County Secretary of the County Council at the address herein.

The Notice may be sent by one of the following means and shall be deemed to be served as described unless the actual time of receipt is proved:

- 1. by first class post deemed served two working days after posting
- 2. by second class post deemed served three working days after posting
- 3. 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
- 4. by facsimile at the time of successful transmission

12 Discharge of Previous Obligation

- 12.1 For the avoidance of doubt the planning agreement made 9th November 1982 pursuant to Section 52 Town and Country Planning Act 1971 between Arun District Council (1) and The Owner (2) (called "the Section 52 Agreement") does not relate to the Application or any planning permission related thereto or the Development
- 12.2 On Commencement of the Development the Section 52 Agreement shall become null and void and unenforceable.

12.3 On the date referred to in Clause 12.1 above a memorandum to that effect shall be endorsed on the Section 52 Agreement and on the Local Land Charges Register.

13. Owner's Warranty

13.1 The Owner warrants to ADC and WSCC that at the date hereof the Land is free from mortgages charges and other encumbrances and that no person or body other than the Owner has any interest legal or equitable in the Land

14. General

The parties agree that:

14.1 nothing in this Agreement constitutes an obligation to grant planning permission

14.2 nothing in this Agreement grants planning permission or any other approval consent or permission required from the WSCC or ADC in the exercise of any other statutory function

14.3 nothing in this Agreement fetters or restricts the exercise by the WSCC and ADC of any of their powers

14.4 the obligations contained in Clauses 5 and 6 are planning obligations for the purpose of Section 106 of the Act

14.5 this Agreement constitutes a deed

14.6 this Agreement is enforceable by ADC and by the WSCC

14.7 nothing in this Agreement confers or is intended to confer a benefit on a third party under the Contracts [Rights of Third Parties] Act 1999

14.8 This Agreement shall apply to the Development as authorised by the planning permission issued pursuant to the Application or to the Development after variation or renewal of the planning permission from time to time

14.9 This Agreement is a Local Land Charge and shall be registered as such.

14.10 Save for the provisions of clause 6.2 the obligations of the Owner in this Agreement shall not be binding upon an individual purchaser of any completed individual dwelling forming part of the Development or on any mortgagee or chargee of such purchaser or any person deriving title from such purchaser.

IN WITNESS whereof the parties hereto have caused this document to be executed as a Deed the day and year first before written



THIS AGREEMENT is made the 20 day of November One thousand nine hundred and eighty-two BETWEEN ARUN DISTRICT COUNCIL of Council Offices Littlehampton in the County of West Sussex (hereinafter called "the Council") of the one part and BARRY NICHOLAS BOXALL of 1 Fincham Close East Preston in the said County (hereinafter called "the Owner") of the other part _____

W H E R E A S:

(1) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1971 for the area within which the property the subject of this agreement is situated _____

(2) The Owner is the owner in fee simple in possession free from incumbrances of the property situate and known as Lansdowne Nursery Mayflower Way Off Roundstone Lane Angmering in the County of West Sussex (hereinafter referred to as "the Property") _____

(3) An application (Reference No. A/55/82) dated 15th April 1982 has been made to the Council for permission to develop the Property and the Council is satisfied that the development disclosed by the said application is such as may be approved under the said Act subject to the covenants hereinafter contained _____

NOW THIS DEED WITNESSETH as follows:-

1. THIS agreement is made in pursuance of Section 52 of the Town and Country Planning Act 1971 and Section 126 of the Housing Act 1974 and in consideration of the covenants by the Owner hereinafter contained _____

2. THE Council hereby approve the said development (Reference No. A/55/82) subject to the conditions set out in the Notice of Approval of even date _____

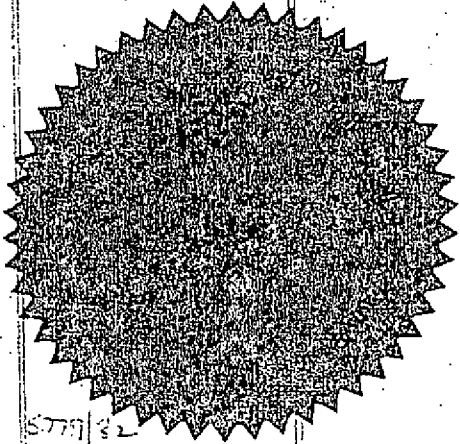
3. THE Owner hereby covenants with the Council as follows:-

(i) that the Owner will not permit the property or any part thereof to be occupied by any person who is not solely or mainly employed in agriculture or having ceased employment was last employed in the locality in agriculture or forestry PROVIDED that it shall not be deemed to be a breach of Covenant for the property to be occupied by the widow or widower of such a person or any dependents _____

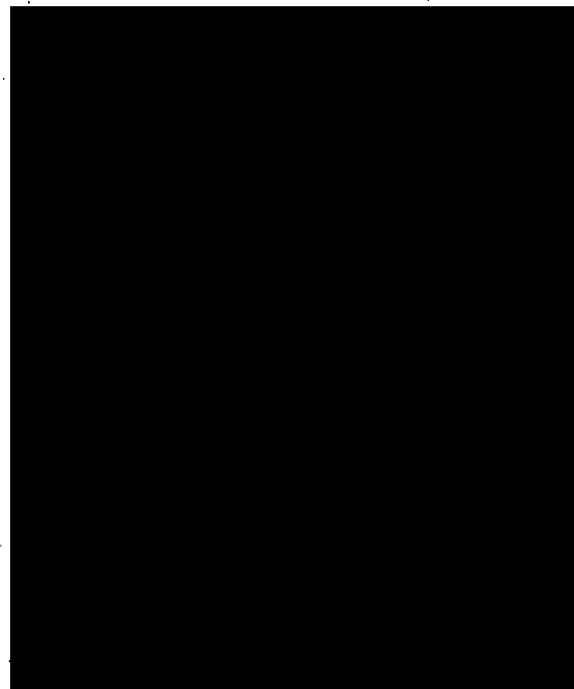
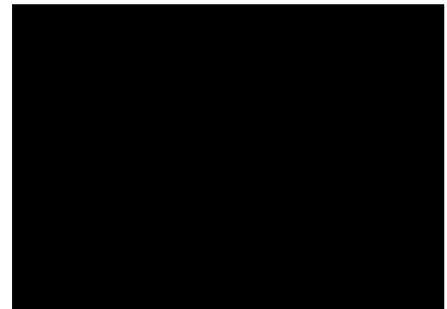
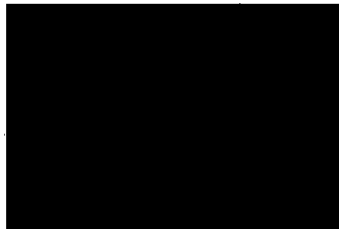
(ii) to comply with the conditions set out in the Notice of Approval of even date herewith _____

4. THE expressions "the Council" and "the Owner" shall include their respective successors in title and assigns
IN WITNESS whereof the Council has set its Common Seal and the Owner has set his hand and seal the day and year first hereinbefore written

(THE COMMON SEAL of the ARUN
DISTRICT COUNCIL was hereunto
affixed in the presence of:-



5779/32



SCHEDULE ONE

Commencement Notice

Pursuant to Clause 4.2 in 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 ____ 2005

Signed _____

On Behalf Of: _____

To:	[1] Head of Planning Services, Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF [DX: 57406] Littlehampton [2] County Planning Officer, West Sussex County Council, County Hall, Chichester, West Sussex, PO19 1RQ [DX: 30330] Chichester
FROM:	
DEVELOPMENT AT:	
NATURE OF DEVELOPMENT:	
PLANNING PERMISSION DATE & REFERENCE	
PLANNING OBLIGATION DATE & PARTIES	
START DATE:	

SCHEDULE TWO

Payment Notice

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

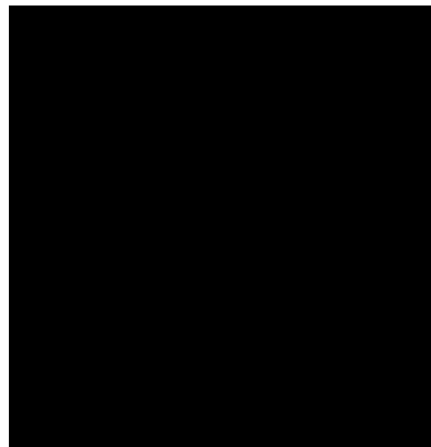
Please answer all the questions.

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	

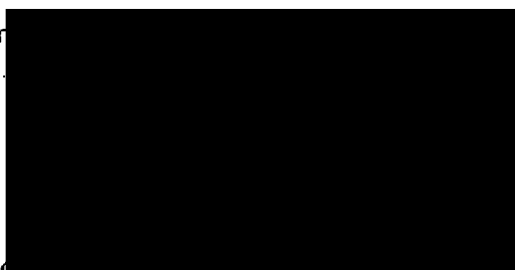
SIGNED and DELIVERED

by BARRY NICHOLAS BOXALL as his Deed
in the presence of:

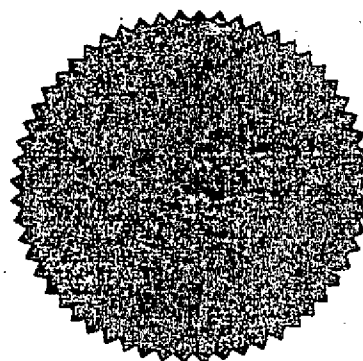


SEALED with the COMMON SEAL
of ARUN DISTRICT COUNCIL.

in the pr



Seal Box



Authorised Signatory

SEALED with the COMMON SEAL
of WEST SUSSEX COUNTY
COUNCIL in the presence of:

