

DATED

25 January

2017/8

(1) STORE PROPERTY INVESTMENTS  
LIMITED

AND

(2) CAROLE CRIPPS

AND

(3) HERBERT KRALL

AND

(4) COVENTRY BUILDING SOCIETY

AND

(5) AVIVA COMMERCIAL FINANCE  
LIMITED

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UNILATERAL UNDERTAKING UNDER  
SECTION 106 TOWN & COUNTRY  
PLANNING ACT 1990

Relating to land west of Brook Lane and  
South of A259, Angmering BN16 3JL

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**APPENDIX 1**

Form of Nomination Agreement

THIS UNDERTAKING is made on

25 January

201~~7~~<sup>8</sup>

BY:

- (1) **STORE PROPERTY INVESTMENTS LIMITED** (Company No. 00549704) whose registered office is at Farr House, 4 New Park Road, Chichester, West Sussex, PO19 7XA ("**Applicant**"); and
- (2) **CAROLE CRIPPS** of Brookenbee Cottage, Brook Lane, Rustington, West Sussex, BN16 3JL ("**First Owner**").
- (3) **HERBERT KRALL** of Brookenbee Cottage, Brook Lane, Rustington, West Sussex, BN16 3JL ("**Second Owner**")
- (4) **COVENTRY BUILDING SOCIETY** of Economic House, P.O. Box 9, High Street, Coventry CV1 5QN ("**First Mortgagee**")
- (5) **AVIVA COMMERCIAL FINANCE LIMITED** (Company No. 02559391) of Carrara 0, Surrey Street, Norwich, NR1 3UY ("**Second Mortgagee**")

#### INTRODUCTION

- A The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- B The County Council is the highway authority and authority with responsibility for education fire and library services for the area in which the Site is situated.
- C The Applicant is registered as freehold owner of that part of the Site at HM Land Registry comprised in title numbers WSX180620, WSX161237, WSX368330, WSX37506, WSX372213, WSX196481, ~~WSX382449~~ and WSX203380. 
- D The First Owner is registered as freehold owner of that part of the Site registered at HM Land Registry under title number WSX274934.
- E The Second Owner is registered as freehold owner of that part of the Site registered at HM Land Registry under title numbers WSX372461 and WSX171590.
- F The First Mortgagee has the benefit of a legal charge over title number WSX171590 dated 29 July 2010
- G The Second Mortgagee has the benefit of four legal charges over title number WSX203380 dated 6 March 1996, 15 November 1996, 3 February 2006 and 9 June 2017
- H The Planning Application was made by the Applicant to the Council to develop the Site
- I On 29 August 2017 the Council refused the Planning Application
- J The Applicant has lodged the Planning Appeal
- K During negotiations in connection with the Planning Application the Council's officers asked the Owners to enter into various planning obligations under Section 106 of the Act
- L The Owners believe that those obligations contained in Schedule 1, Paragraphs 1, 2, 3 and 5 and in Schedule 2 are legitimate and comply with the requirements of the CIL Regulations
- M The Owners, for reasons set out more fully in their Statement of Case, believe that the obligations contained in Schedule 1, Paragraph 4 (NHS Contributions) Paragraph 6 (Retention of Travellers' Pitches) and Paragraph 7 (Phasing of Care Home Provision) do not

comply with the CIL Regulations respectively because (i) no justification has been provided for the Residential NHS Contribution or the Care Home NHS Contribution or what they are to be spent on; (ii) there are no travellers' pitches on the Site, and no planning grounds for requiring their safeguarding; and (iii) since there is an urgent need for both housing and care home provision in the Arun district, there is no good reason to restrict the time or sequence in which these come forward

N The Inspector is expressly invited to determine in accordance with Clause 4.2 of this Deed whether these paragraphs should take effect.

## NOW THIS DEED WITNESSES AS FOLLOWS:

### OPERATIVE PART

#### 1 DEFINITIONS

1.1 For the purposes of this Deed the following expressions shall have the following meanings:

**“Act”** means the Town and Country Planning Act 1990 (as amended);

**“ADC Contributions”** means the financial contributions in Schedule 1 to this Deed;

**“Affordable Dwellings”** means the 30% of Dwellings on the Site (or the nearest full number) to be provided as Affordable Housing in accordance with the Affordable Housing Scheme;

**“Affordable Housing”** means housing that meet the definition(s) contained in the National Planning Policy Framework published by the Department for Communities and Local Government dated 27 March 2012 as amended from time to time (including Affordable Rent and Intermediate Housing) which is provided to eligible households whose needs are not met by the market;

**“Affordable Housing Commuted Sum”** means the sum payable in accordance with paragraph 1.9 of Schedule 1;

**“Affordable Housing Provider”** means either one or a combination of:

- (a) a Registered Provider; or
- (b) any other provider of Affordable Housing who is approved by the Council or such other body or organisation approved by the Council whose main object is the provision of Affordable Housing;

**“Affordable Housing Tenure Split”** means a mix of tenure type whereby 80% of the Affordable Dwellings to be provided on the Site (or the nearest full number) shall be provided as Affordable Rent Units and the remainder being 20% of the Affordable Dwellings (or the nearest full number) shall be Intermediate Housing or such other mix of tenures which the Council may approve;

**“Affordable Housing Scheme”** means a scheme for the provision of Affordable Housing for each Residential Phase which specifies:

- (a) the location, layout, mix, size, type and tenure of the Affordable Dwellings in each Residential Phase; and
- (b) whether any variations to the Indicative Mix are sought and, if so, the reasons for those variations,

and which may be amended from time to time with the written approval of the Council or replaced by another scheme for the Affordable Dwellings;

**“Affordable Rent”** means rented housing let by a Affordable Housing Provider or the local housing authority which has the same characteristics as social rented housing save that it is outside the national rent regime but is subject to other rent controls that it is offered to eligible persons at a rent of no more than 80% of the local market rent (including service charges where applicable);

**“Affordable Rent Units”** means those Affordable Dwellings which are to be provided on an Affordable Rent basis;

**“All Requisite Consents”** means all requisite consents, orders, agreements, authorisations, licences and permissions required to implement a scheme;

**“Alternative Location”** means any area of land identified by the Owners in accordance with paragraph 6.2 of Schedule 1 as a suitable alternative location which may be used in place of the land shown for the Pitches in the Pitch Plan which is approved by the Council and in respect of which any necessary planning permission has been obtained.

**“Base Rate”** means the base rate from time to time of Bank of England;

**“BCIS Index”** means the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institution of Chartered Surveyors;

**“Care Home”** means the care home to be built on the Site as part of the Development in accordance with the Planning Permission;

**“Care Home Land”** means that part of the Site identified in a Reserved Matters Approval for the development of the Care Home;

**“Care Home NHS Contribution”** means the sum of ~~£60,611~~ <sup>£64,452.00</sup> towards the cost of providing ~~National Health Service facilities within the locality of the Development;~~ <sup>infrastructure improvements at The Coppice GP Surgery;</sup>

**“Chargee”** means any mortgagee or chargee of the Affordable Housing Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;

**“CIL Regulations”** means the Community Infrastructure Regulations 2010;

**“Commencement of Development”** means the date on which the first material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and **“Commence Development”**, **“Commenced”** and **“Commences”** shall be construed accordingly;

**“Commencement Date”** means the date of Commencement of Development;

**“Commencement Notice”** means the written notice confirming the Commencement Date served in accordance with clause 5.2;

**“Council”** means Arun District Council of Maltravers Road, Littlehampton, West Sussex, BN17 5LF;

**“County Council”** means West Sussex County Council of County Hall, West Street, Chichester, West Sussex PO19 1RQ;

**“Development”** means the development applied for in the Planning Application, comprising the demolition of existing buildings on the Site and the erection of a mixed use development comprising up to 90 residential units and a care home (Use Class C2 and C3) & ancillary facilities, including railway crossing, together with associated access, car parking & landscaping;

**“Dwelling”** means any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission and **“Dwellings”** shall be constructed accordingly;

**“Footpath Improvement Contribution”** means the sum payable in accordance with paragraph 7 of Schedule 2 of this Deed being a contribution towards improvements to PROW 2159 to make it a convenient walking and cycling route to/from the Railway Bridge, including to scrape and grade the existing surface and lay stone, such as DoT1 which will form a robust year round usable surface for all modes.

**“Financial Contribution”** means one or more of the financial contributions referred to in Schedule 1 and Schedule 2 and **“Financial Contributions”** shall be construed accordingly;

**“Fire and Rescue Contribution”** means the sum payable in accordance with paragraph 1.3 of Schedule 2 of this Deed being a contribution towards the cost of community fire link smoke detectors for vulnerable persons homes in the parish of Angmering;

**“Further Education Contribution”** means the sum payable in accordance with paragraph 3 of Schedule 2 of this Deed being a contribution towards the cost of additional facilities for further education at The Angmering School sixth form;

**“Highways Act”** means the Highways Act 1980;

**“Homes and Communities Agency”** means the Homes and Communities Agency or anybody undertaking the existing functions of the Homes and Communities Agency 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);

**“Housing Phase”** means the part of the Development comprising the construction of all the Dwellings at the Development together with all associated development;

**“Intermediate Housing”** means homes for sale and rent provided at a cost above social rent but below market rents which can include shared equity (shared ownership and equity loans) and other low cost homes for sale and intermediate rent but not Affordable Rent;

**“Intermediate Units”** means Affordable Dwellings to be provided as Intermediate Housing;

**“Index Linked”** means index linked in accordance with the provisions of clause 12;

**“Indicative Mix”** means the following mix of housing type and tenure for the Affordable Housing:

|           | Intermediate | Aff Rent  |
|-----------|--------------|-----------|
| 1 bedroom | 15% - 20%    | 35% - 40% |

|           |            |            |
|-----------|------------|------------|
| 2 bedroom | 50% - 55 % | 35% - 40%  |
| 3 bedroom | 25% - 30 % | 15% - 20 % |

**“Inspector”** means the inspector appointed to determine the Planning Appeal;

**“Interest”** means interest at the base lending rate of National Westminster Bank plc applicable at the Specified Date;

**“Land”** means the land at the Site owned by Owners comprised in Title Numbers WSX180620, WSX161237, WSX368330, WSX375060, WSX372213, WSX196481, WSX203380, WSX274934, WSX372461, WSX171590, WSX382499, and WSX171590;

**“LAP”** means a local area of play designed to meet the Fields in Trust Play standards for such areas as at 9 August 2013 (save as otherwise agreed between the Owners and the Council) to be located in the approximate location to be shown on the Phasing Plan or in such other location as the Council may approve from time to time;

**“LEAP”** means a Local Equipped Area of Play designed to meet the Fields in Trust Play standards for such areas as at 9 August 2013 (save as otherwise agreed between the Owners and the Council) to be located in the approximate location to be shown on the Phasing Plan or in such other location as the Council may approve from time to time;

**“Library Contribution”** means the sum to be paid in accordance with paragraph 5 of Schedule 2 being a financial contribution towards a project to enhance library space with improved digital access at Angmering Library;

**“Management Company”** means a company (either controlled by the residents of the Development or such alternative form of management company or body as the Owners may propose and the Council approves in writing) incorporated for the purpose of or capable of collecting an income and/or maintenance fees or similar to be used for the long term maintenance of communal parts of the Development;

**“Market Units”** means the Dwellings within the Development which are not Affordable Housing;

**“Master Plan”** means the indicative master plan attached to this Deed and marked as Plan 2 or such other replacement plan as may be approved by the Council from time to time;

~~**“MUGA Contribution”** means the sum of Forty Thousand Pounds £40,000 towards the cost of improving facilities at the Palmer Road recreation area;~~

**“NPPF”** means the National Planning Policy Framework published by the Department for Communities and Local Government;

**“Occupation”** and **“Occupied”** means first occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;

**“Open Space”** means those areas of open space and amenity space to be provided within the Development the approximate location of which is to be shown on the Phasing Plan or such other areas as the Council may approve to be laid out in accordance with the Open Space Scheme approved by the Council;

**“Open Space Scheme”** means a scheme to be submitted prior to Commencement of the construction of the Dwellings setting out:

- (a) the proposed timetable and programme for delivery of the Open Space to be provided at the Development by reference to the Occupation of a certain number of Dwellings at the Development or such alternative trigger points for delivery as may be approved by the Council when approving the Scheme;
- (b) a maintenance and management plan for any Open Space, to be provided at the Development, including details of whether the areas in question are to be transferred to or managed by an Owner, a Management Company or some other body or organisation; and details of the circumstances in which the Open Space may be closed to the public for maintenance, management, health and safety or other reasons;

**“Owners”** means the Applicant, the First Owner and the Second Owner;

**“Phase”** means a phase of the Development as shown on the Phasing Plan

**“Phasing Plan”** means the phasing plan which is approved in accordance with relevant condition of the Planning Permission and any revised phasing plan approved by the Council from time to time

**“Pitches”** means the pitches authorised by the Traveller Consents for the purposes stated in the Traveller Consents as shown crosshatched in red and in green on the Pitch Plan

**“Pitch Plan”** means the plan attached to this Agreement and marked Pitch Plan

**“Plan 1”** means the plan marked Plan 1 and attached to this Deed titled “Plan 1”;

**“Planning Appeal”** means the appeal made by the Applicant against the refusal of the Planning Application;

**“Planning Application”** means the application for outline planning permission for the Development, with all matters reserved, registered by the Council on 13 March 2017 with reference number A/44/17/OUT and refused by the Council by a decision notice dated 29 August 2017;

**“Planning Condition”** means a condition of the Planning Permission

**“Planning Obligations”** means the obligations, conditions and stipulations set out in Schedule 1 and Schedule 2 to this Deed;

**“Planning Permission”** means the planning permission subject to conditions to be granted by the Inspector pursuant to the Planning Application and Planning Appeal;

**“Play Areas”** means the LAP and the LEAP to be provided as part of the Development;

**“Play Area Scheme”** means a scheme submitted prior to the Commencement of the Dwellings setting out:

- (a) the proposed timetable and programme for delivery of the Play Areas to be provided as part of the Development or by reference to the Occupation of a certain number of Dwellings or such alternative trigger points for delivery as may be approved by the Council when approving the scheme;

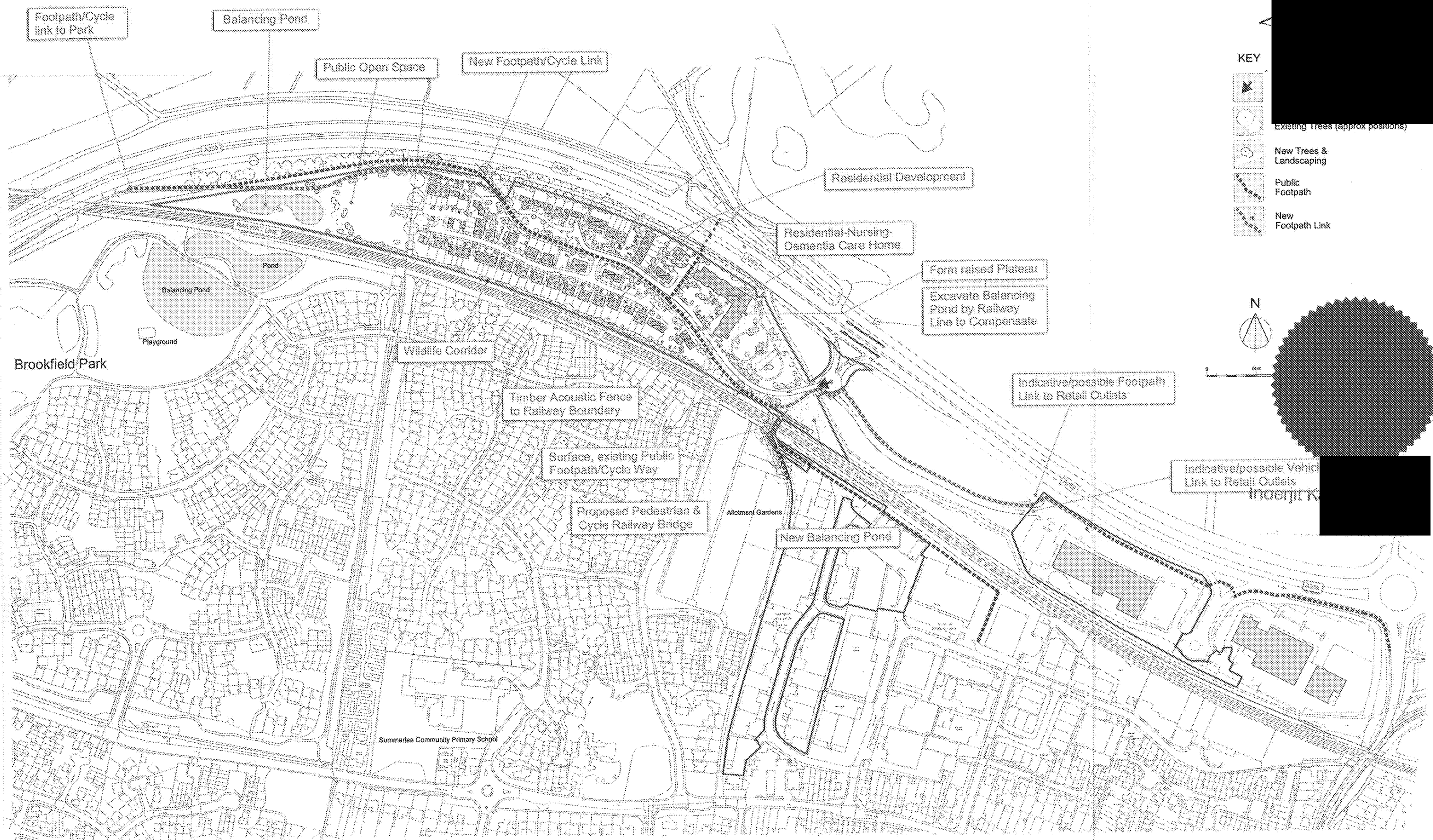
Notes 1. Do not scale from this drawing, except for planning purposes.  
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Land west of Brook Lane and south of A259  
(within the parishes of Brookfield & Angmering & Findon)  
For Store Property Investments Ltd

LOCATION PLAN

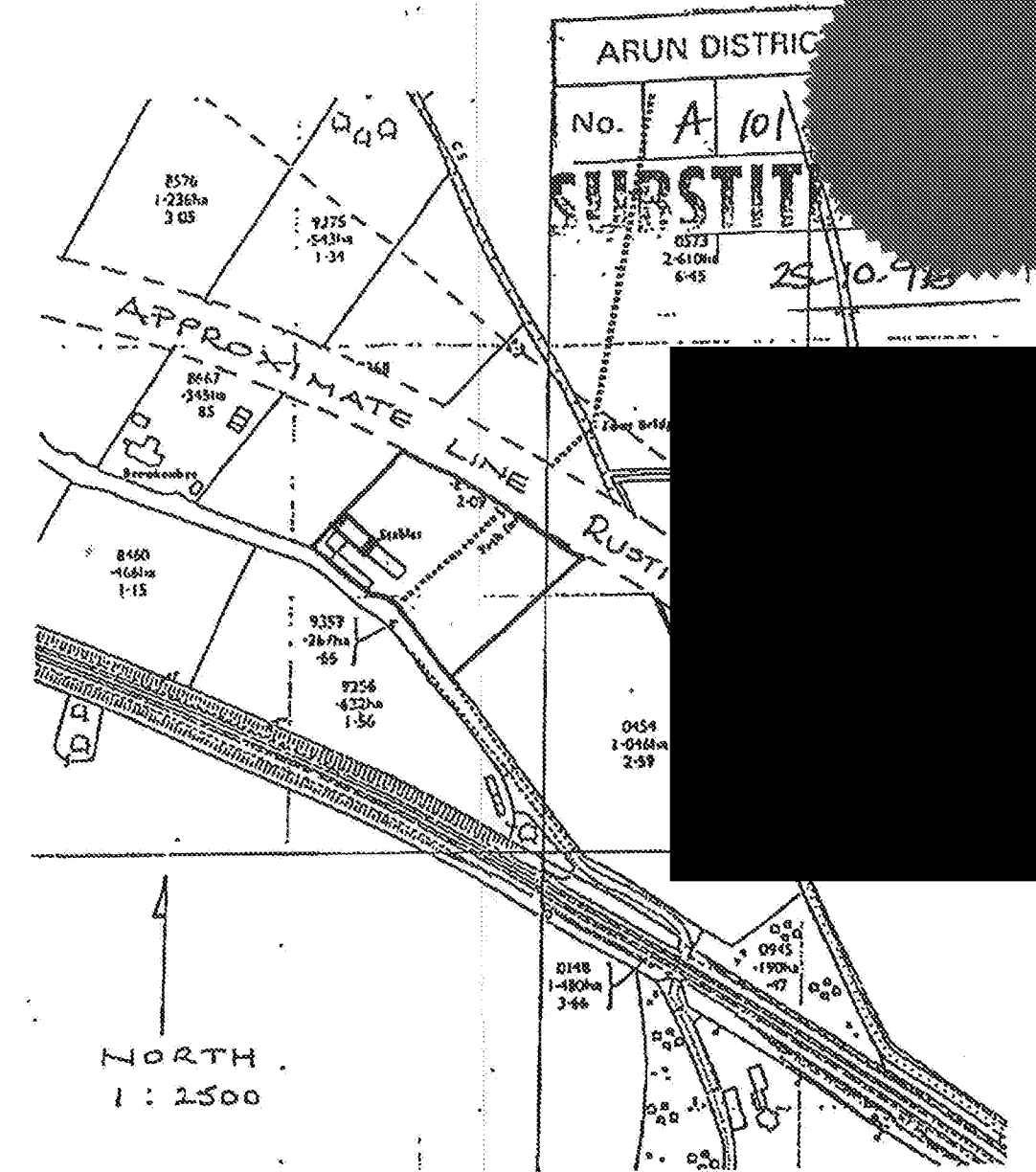
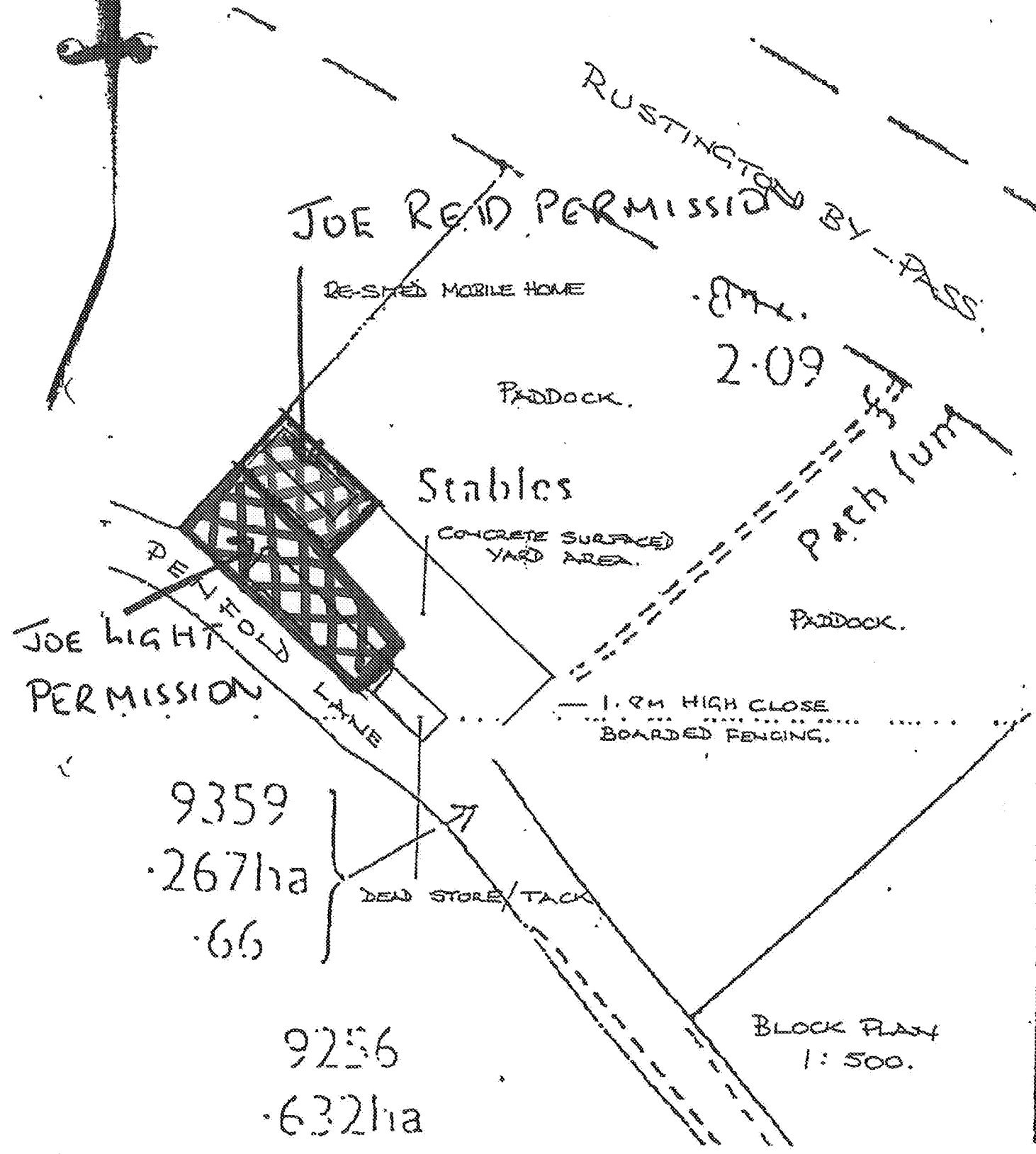
Scale 1/2500 @ A2 Jan 2017 Dwg 1709-01K



Land west of Brook Lane and south of A259  
(within the parishes of Brookfield & Angmering & Findon)  
For Store Property Investments Ltd

MASTER PLAN

Scale 1/1250 @ A0 Jan 2017 Dwg 1709-04D



USE OF LAND FOR THE STATIONING OF  
140 MOBILE HOME  
FOR MR. J. REID  
AT THE OLD STABLES, PENFOLD LANE  
RUSTINGTON  
DRWG NO JR/RI/A.  
SITE LOCATION SCALE 1:2500  
SITE LAYOUT SCALE 1:500  
JULY '96  
A. GREENWOOD M.R.T.P.I.,  
94 THE STREET, RUSTINGTON, W. SX  
01903 859110.

- (b) a maintenance and management plan for each Play Area to be provided as part of the Development, including details of whether the areas in question are to be transferred to or managed by an Owner, a Management Company or some other body or organisation; and details of the circumstances in which the Play Area may be closed to the public for maintenance, management, health and safety or other reasons;

**“Primary Education Contribution”** means the sum calculated in accordance with paragraph 4 of Schedule 2 being a contribution towards the cost of a permanent solution to the temporary accommodation at Georgian Gardens Community Primary School;

**“Protected Occupier”** means any person who:

- (a) has exercised a right to buy or acquire their Affordable Dwelling; or
- (b) has accomplished final staircasing in accordance with the terms of the shared ownership lease relating to an Affordable Dwelling; or
- (c) has purchased a unit of Intermediate Housing;

**“Railway Bridge”** means a new pedestrian/cycle bridge crossing the railway adjacent to the Site to be provided broadly in the location shown on the Master Plan;

**“Registered Provider”** means a provider of social housing registered as a Registered Provider by the Homes and Communities Agency or any successor organisation;

**“Reserved Matters”** means any matters reserved for later approval by virtue of a condition imposed in the Planning Permission;

**“Reserved Matters Application”** means an application for Reserved Matters for any part of the Development and shall include any amendment to it or fresh application for Reserved Matters made in substitution therefore or an alternative application for Reserved Matters Approval;

**“Reserved Matters Approval”** means an approval to Reserved Matters pursuant to a Reserved Matters Application;

**“Residential Land”** means that part of the Site which is to be used for the construction of Dwellings which is to be shown for the purpose of information only on the Phasing Plan or any varied areas at the Site allocated for residential development which the Council approves;

**“Residential NHS Contribution”** means the sum of <sup>£92,861.00</sup> ~~£943.35~~ per Dwelling up to a maximum of <sup>£1,032.00</sup> ~~£84,901~~ towards the cost of providing <sup>infrastructure improvements at The Coppice GP Surgery</sup> ~~National Health Service facilities within the locality of the Development;~~

**“Residential Phase”** means a Phase of the Development which contains Dwellings;

**“RPI Index”** means the Retail Price Index All Items Index Published by the Office for National Statistics or any successor organisation;

**“Secondary Education Contribution”** means the sum payable in accordance with paragraph 2 of Schedule 2 of this Deed being a contribution towards the cost of providing additional facilities at The Angmering School;

**“Secretary of State”** means the Secretary of State for Communities and Local Government or any successor to their functions in respect of the Act;

**“Section 73 Consent”** means a planning permission granted under Section 73 of the Act which varies and/or removes any condition to which the Planning Permission and/or to which such planning permission granted under Section 73 of the Act was granted;

**“Site”** means the land at Brook Lane located to the south of A259 Angmering shown for identification purposes only edged red on Plan 1;

**“Specified Date”** means the date on which a financial contribution is required to be paid pursuant to this Deed;

**“Traveller Consents”** means the planning permissions granted by the Council under permission references A/101/ 96 and A/37/04

**“Traveller Obligation”** means the obligations contained in paragraph 6 of Schedule 1 of this Deed

**“Working Day”** means a day (other than a Saturday, Sunday or public holiday) in England when banks in London are open for business;

**“WSCC Contributions”** means the contributions to be paid in accordance with Schedule 2.

And in relation to any of the above definitions any derivative word or expression shall have a comparable meaning.

## 2 CONSTRUCTION OF THIS DEED

- 2.1 Clause headings shall not affect the interpretation of this Deed.
- 2.2 A **“person”** including a natural person, corporate or unincorporated body (whether or not having 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 that 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”** or **“written”** includes fax but not 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 Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 The covenants, restrictions and requirements imposed upon the Owners 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 Owners.

### 4 CONDITIONALITY

- 4.1 This Deed is conditional upon:
- 4.1.1 the grant of the Planning Permission; and
- 4.1.2 the Commencement of Development,
- save for the provisions of clauses 4, 6, 9, 14, and 15 which shall come into effect immediately upon completion of this Deed.
- 4.2 Each Planning Obligation in this Deed is also conditional upon:
- 4.2.1 The Secretary of State or the Inspector being satisfied that it is:
- 4.2.1.1 necessary to make the Development acceptable in planning terms; and
- 4.2.1.2 directly related to the Development; and
- 4.2.1.3 fairly and reasonably related in scale and kind to the Development; and
- 4.2.1.4 complies in all other respects with Regulation 122 of the CIL Regulations;
- 4.2.2 In the event that the Secretary of State or the planning inspector deciding the appeal expressly states in his Decision Letter that any individual planning obligation within this Deed is not compliant with the CIL Regulations and/or the NPPF or is immaterial to the grant of Planning Permission and that no weight has been given to the same in reaching his decision then that planning obligation or those planning obligations will cease to have effect and shall be void for the purposes of this Deed and shall have no effect and the Owner shall not be obliged to comply with the terms of that obligation and the remaining clauses will remain in full force and effect provided that severance is achievable.

- 4.3 In the event that the Council or the County Council adopt a charging schedule under the CIL Regulations prior to Planning Permission being granted, the Owners shall be released from any of the obligations in this Deed that relate to an item or project included on the Council and/or County Council's regulation 123 list of infrastructure.

## **5 THE OWNERS' COVENANTS**

- 5.1 Subject to the Council first confirming in writing that it will observe and perform the requirements of Schedule 3 of this Deed, the Owners covenant with the Council so as to bind the Land to perform the obligations as set out in Schedule 1.
- 5.2 Subject to the County Council first confirming in writing that it will observe and perform the requirements of Schedule 4 of this Deed, the Owners covenant with the County Council so as to bind the Land to perform the obligations as set out in Schedule 2.

## **6 MISCELLANEOUS**

- 6.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.2 This Deed shall be registrable as a local land charge by the Council.
- 6.3 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.
- 6.4 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 6.5 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 Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 6.6 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 MORTGAGEES' CONSENTS**

- 7.1 The First Mortgagee, as the holder of a charge over land in title number WSX171590, consents to the Second Owner entering into this Deed and acknowledges that this Deed is binding over title number WSX171590. The First Mortgagee shall, in its capacity as the holder of a charge over title number WSX171590, only be liable for any breach of this Deed if:
- 7.1.1 the breach relates to land within title number WSX171590;
- 7.1.2 the First Mortgagee has itself caused the breach whilst in possession of the land comprised in title number WSX171590.
- 7.2 It is accepted and acknowledged by all parties that the First Mortgagee shall not be liable for any breach of this Deed that occurs prior to the First Mortgagee taking possession of the land in title number WSX171590.
- 7.3 The Second Mortgagee, as the holder of the four charges over land in title number WSX203380, consents to the Second Owner entering into this Deed and

acknowledges that this Deed is binding over that part of title number WSX203380 comprised within the Land. The Second Mortgagee shall, in its capacity as the holder of the charges over land within title number WSX203380, only be liable for any breach of this Deed if:

7.3.1 the breach relates to that part of the Land comprised within title number WSX203380;

7.3.2 the Second Mortgagee has itself caused the breach whilst in possession of the land comprised in title number WSX203380.

7.4 It is accepted and acknowledged by all parties that the Second Mortgagee shall not be liable for any breach of this Deed that occurs prior to the Second Mortgagee taking possession of the land in title number WSX203380.

## **8 EXCLUSIONS OF LIABILITY**

8.1 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 Land, or such part of the Land to which the breach relates, but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

8.2 No person shall be liable for any breach of any of the Planning Obligations or other provisions of this Deed which relate to a part of the Land in which it does not have an interest.

8.3 This Deed shall not be enforceable against any owner, occupier or tenant of any Dwelling constructed pursuant to the Planning Permission, or their mortgagees, nor against those deriving title from them.

8.4 This Deed shall not be enforceable against the, occupiers, or residents of the Care Home or any mortgagee, chargee or receiver appointed by the owners of the Care Home.

8.5 Notwithstanding any other provision of this Deed the obligations under this Deed shall not be binding or enforceable against:

8.5.1 Any mortgagee of any tenant or person to whom an Affordable Housing Provider grants a shared ownership lease or any receiver appointed by such mortgagee or any person deriving title through any such mortgagee or receiver.

8.5.2 Any person to whom a shared ownership lease of an Affordable Dwelling is granted.

8.5.3 Any person who has acquired either a reversionary interest or a new lease in an Affordable Dwelling pursuant to the terms of a shared ownership lease.

8.5.4 Any Affordable Housing Provider

8.6 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 Land is transferred to Network Rail pursuant to the provisions of this Deed

8.7 The obligations in this Deed shall not bind or be enforceable against any mortgagee, chargee or receiver of an Affordable Housing Provider or any successor in title to such mortgagee chargee or receiver.

8.8 Any legal charge entered into in respect of the Land or any part of the Land after this Deed has been completed shall take effect subject to this Deed PROVIDED THAT the mortgagee under such a legal charge 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 mortgagee shall not be liable for any breach of this Deed that occurs prior to the mortgagee taking possession of the land

## 9 WAIVER

No waiver (whether expressed or implied) by the Council or Owners 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 Owners from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## 10 CHANGE IN OWNERSHIP

The Owners agree with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan provided that the Owners shall not be required to give notice to the Council of any change of ownership affecting a Dwelling.

## 11 FUTURE SECTION 73 CONSENTS

11.1 Subject to clauses 11.2 to 11.4 below, if any Section 73 Consent is granted after the date of this Deed:

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

11.1.2 the definitions of Planning Application, Development and Planning 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;

11.2 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;

11.3 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;

11.4 the provisions of this clause 11 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.

## 12 INDEX LINKED

12.1 Unless there is an express provision to the contrary the Owners agree with the Council that any sum payable by the Owners and referred to in Schedule 1 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 RPI Index for the month two months before the Specified Date
- D is the RPI Index for the month two months before the date that Planning Permission is granted

12.2 Unless there is an express provision to the contrary the Owners agree with the County Council that any sum payable by the Owners and referred to in Schedule 2 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 BCIS Index for the quarter preceding the Specified Date
  - D is the BCIS Index for the quarter preceding the date that Planning Permission is granted

12.3 Where reference is made to an index (including the RPI Index and the BCIS Index) and that index ceased 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) or in the event the index is not replaced to an alternative reasonably comparable basis or index as the Owners shall advise the Council or the County Council in writing.

### 13 INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

### 14 VAT

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

### 15 NOTICES

15.1 A notice or other communication to be given under or in connection with this deed must be in writing and must be:

- 15.1.1 delivered by hand; or
- 15.1.2 sent by pre-paid first class post or other next working day delivery service.

15.2 Any notice or other communication to be given under this deed must be sent to the relevant party as follows:

- 15.2.1 to the Council at: Arun Civic Centre Maltravers Road, Littlehampton, West Sussex BN17 5LF marked for the attention of the Planning Department and quoting the Planning Application number;
- 15.2.2 to the County Council at Monitoring and Records Team, Strategic Planning Division, County Hall, West Street, Chichester, West Sussex, PO19 1RQ quoting the Planning Application number:

15.2.3 to the First Owner at: Brookenbee Cottage, Brook Lane, Rustington, West Sussex BN16 3JL;

15.2.4 to the Second Owner at: Brookenbee Cottage, Brook Lane, Rustington, West Sussex BN16 3JL;

15.2.5 to the Applicant at: Farr House, 4 New Park Road, Chichester, West Sussex PO19 7XA marked for the attention of the Company Secretary

or at such other address as the relevant party shall specify by notice to the other parties

15.3 Any notice or other communication given in accordance with clause 15.1 and clause 15.2 will be deemed to have been received:

15.3.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address provided that if delivery occurs before 9 am on a Working Day, the notice will be deemed to have been received at 9 am on that day, and if delivery occurs after 5 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9 am on the next Working Day;

15.3.2 if sent by pre-paid first class post or other next working day delivery service at 9 am on the second Working Day after posting.

15.4 A notice or other communication given under this deed shall not be validly given if sent by email.

15.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **16 COUNTERPARTS**

16.1 This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement

16.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart

## **17 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.

## **18 DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

## SCHEDULE 1

### The Owners' Covenants with the Council

The Owners covenant with the Council as follows:

#### 1 AFFORDABLE HOUSING

- 1.1 That not less than 30% of the Dwellings shall be provided as Affordable Dwellings to be provided in accordance with the Affordable Housing Tenure Split.
- 1.2 Not to commence the construction of any Dwellings at the Development until the Affordable Housing Scheme has been submitted to and approved by the Council.
- 1.3 To construct the Affordable Housing at the Development in accordance with the approved Affordable Housing Scheme.
- 1.4 Subject to the provisions of this paragraph 1 the Affordable Dwellings shall only be disposed of by an Owner to an Affordable Housing Provider save by way of mortgage or charge.
- 1.5 Subject to the following provisions of this paragraph 1 the Owners shall not allow Occupation of more than 30 of the Market Units at the Development prior to a contract or contracts for the transfer of the Affordable Housing in the Development to an Affordable Housing Provider or Providers and 15 Affordable Dwellings have been constructed and made available for Occupation.
- 1.6 Subject to the following provisions of this paragraph 1 the Owners shall not allow Occupation of more than 45 of the Market Units at the Development prior to a contract or contracts for the transfer of all the Affordable Housing in the Development to an Affordable Housing Provider or Providers and all the Affordable Dwellings have been constructed and made available for Occupation.
- 1.7 **Mechanics of Transfer**
  - 1.7.1 First Offer
    - 1.7.1.1 The Owners shall offer to transfer the Affordable Dwellings to a Affordable Housing Provider on terms which reflect market value and conditions at the time of the offer ("**First Offer**"), which offer shall include:
      - 1.7.1.1.1 A contract for the sale of land; and
      - 1.7.1.1.2 A draft transfer which shall include the provisions set out in paragraph 1.10 below.
    - 1.7.1.2 The First Offer shall remain open for acceptance for no less than two (2) months ("**First Offer Period**") from the date of the First Offer being made.
  - 1.7.2 Second Offer
    - 1.7.2.1 In the event that the First Offer made in accordance with paragraph 1.7.1 above is not accepted within the First Offer Period then the Owners shall make a second offer to transfer the Affordable Dwellings to an Affordable Housing Provider ("**Second Offer**") not later than one (1) month after the expiry of the First Offer Period.

- 1.7.2.2 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 two (2) months (“Second Offer Period”) from the date of the Second Offer being made.

**Commuted Sum Payable If First And Second Offer Not Implemented**

- 1.8 In the event that the Second Offer is not accepted within the Second Offer Period than the Owners may:

- 1.8.1 pay on or before the occupation of 30 of the Market Units the Affordable Housing Commuted Sum to the Council whereupon once such sum has been paid to the Council the Owners and any successors in title shall be released from the provisions of this paragraph 1 insofar as it relates to the Affordable Dwellings and the Affordable Dwellings may be sold on the open market as Market Units; or

- 1.8.2 Dispose of all or any of the Affordable Dwellings as Intermediate Units to an Affordable Housing Provider; or

- 1.8.3 Dispose of all or any of the Affordable Dwellings to purchasers nominated through Help to Buy South East at a discount of 20% of the open market value (such discount to be secured in perpetuity); or

- ~~1.8.4 Dispose of all or any of the Affordable Dwellings to an Affordable Housing Provider or other investor to be approved by the Council to be let at a market rent; or~~

- ~~1.8.5 Dispose of all or any of the Affordable Dwellings under the starter homes initiative or any other tenure as may be included with the NPPE or its supporting guidance from time to time..~~

- 1.9 The Affordable Housing Commuted Sum shall be calculated in accordance with the following formula:

X multiplied by Y = the Affordable Housing Commuted Sum

Where:

X = £80,000; and

Y= the number of Affordable Dwellings which will not be provided on the Site as part of the Development in accordance with the terms of this Agreement.

**Form of Transfer and Nominations Agreement**

- 1.10 The Owners covenant with the Council that any transfer of Affordable Dwellings to an Affordable Housing Provider will contain the following provisions:

- 1.10.1 The grant by the Owners of all rights and access and passage of services and other rights reasonably necessary to the beneficial enjoyment of those Affordable Dwellings;

- 1.10.2 A reservation of all rights and access and passage of services and other rights reasonably necessary for the benefit of the remainder of the Dwellings on the Site; and

1.10.3 The imposition of such covenants as the Owners shall reasonably require and are consistent with the sale of any Market Unit.

1.11 The Owners covenant with the Council that:

1.11.1 upon the transfer of any Affordable Rent Unit to an Affordable Housing Provider it will procure that the Affordable Housing Provider shall enter into a Nominations Agreement with the Council substantially in the relevant form set out in Appendix 1 of this Agreement or in such other form as may be agreed between the Council and the Owners providing the right for the Council to nominate 100% of first occupiers and a minimum of 75% of subsequent occupiers for any relevant Affordable Rent Units; and

1.11.2 written notification of the Disposal shall be provided to the Council.

1.12 The provisions of this paragraph 1 shall not apply to:

1.12.1 any mortgagee or chargee (a **"Chargee"**) of the Affordable Housing Provider that is the owner of the Affordable Dwellings or any of them (or any receiver including an administrative receiver) appointed by such Chargee of any other person appointed under any security documentation to enable such Chargee realise its security or any administrator (howsoever appointed) including a housing administrator (each referred to in this Deed as a **"Receiver"**) and any persons or bodies deriving title through such Chargee or Receiver.

1.12.2 the owner of an Intermediate Unit who shall have acquired or staircased his interest in that unit such that he owns 100% of the equity in that Unit and any mortgagee chargee or Receiver and all successors and assigns.

1.12.3 the owner of an Affordable Dwelling who shall have exercised a statutory right to acquire that unit and any mortgagee chargee or receiver and all successors and assigns of that owner.

1.13 the Owners covenant with the Council:

1.13.1 to take all reasonable and prudent steps within its power to avert the repossession of the Affordable Dwellings by any Chargee of the Affordable Housing Provider or the exercise by any Chargee of a power of sale and for these purposes in the event of a default under the security or likely default to cooperate fully with the Council to assist in arranging the transfer of the Affordable Dwellings with sitting tenants to another Affordable Housing Provider or, at the Council's option, to the Council;

1.13.2 in the event of the Owners become aware that the Affordable Housing Provider has received notification from any Chargee of any breach or alleged breach by the Affordable Housing Provider of any of its obligations under its security, to notify the Council of this as soon as reasonably practicable; and

1.13.3 in the event of the Owners become aware of any notice, order or direction having been served, made or given under the Housing Act 1996 Schedule 1 Part IV that relates to the Affordable Dwellings, to notify the Council of this as soon as reasonably practicable.

1.14 Additionally:

1.14.1 in the event of a default under any security referred to in paragraph 1.12 or in other circumstances warranting the intervention of the Homes and Communities Agency (whether under the Housing Act 1996 or otherwise) nothing in this paragraph 1 the transfer of the freehold of the Affordable

Dwellings or any part of them to another Affordable Housing Provider will not be prevented;

- 1.14.2 subject to and without prejudice to the powers and requirements of the Homes and Communities Agency under the Housing Act 1996 that in the event of a default under any security referred to in paragraph 1.12 the disposal of any interest in the Affordable Dwellings by the Chargee in the exercise of its power of sale will not be prevented.

## **2 OPEN SPACE**

- 2.1 To submit to the Council an Open Space Scheme for the Open Space within the Development prior to the Commencement of the development of any of the Dwellings at the Development.
- 2.2 Not to Commence the development of any of the Dwellings at the Development until the Council has approved the Open Space Scheme.
- 2.3 To lay out landscape and complete each area of Open Space in accordance with the approved Open Space Scheme prior to occupation of the trigger number of Dwellings specified in the Open Space Scheme.
- 2.4 Not to Occupy or cause or allow to be Occupied more than the relevant number of Dwellings approved as the trigger for provision of any given area in the relevant Open Space Scheme until the Open Space has been provided in accordance with approved relevant Open Space Scheme.
- 2.5 Upon completion of any area of Open Space to maintain the relevant area in accordance with the relevant provisions of the approved Open Space Scheme and to transfer or make the Open Space available to the relevant organisation or body which is to take over responsibility for the Open Space in accordance with the approved Open Space Scheme.

## **3 PLAY AREAS**

- 3.1 To submit to the Council a Play Area Scheme for the Play Areas within the Housing Phase prior to the Commencement of the development of the Dwellings at the Development.
- 3.2 Not to Commence Development of any Dwellings until the Council has approved the Play Area Scheme.
- 3.3 To lay out landscape equip and complete each Play Area in accordance with the approved Play Area Scheme prior to occupation of the trigger number of Dwellings specified in the approved Play Area Scheme.
- 3.4 Not to Occupy or cause or allow to be Occupied more than the relevant number of Dwellings approved as the trigger for provision of any given area in the Play Area Scheme until the Play Area has been provided in accordance with the approved Play Area Scheme.
- 3.5 Upon completion of any Play Area to maintain that Play Area in accordance with the relevant provisions of the approved Play Area Scheme and to transfer or make the Play Area available to the relevant organisation or body which is to take over responsibility for the Play Area in accordance with the approved Play Area Scheme.

#### 4 NHS CONTRIBUTIONS

- 4.1 To pay to the Council the proportion of the Residential NHS Contribution payable for a Residential Phase prior to the Occupation of the first Dwelling in that Residential Phase;
- 4.2 Not to Occupy, or cause or allow the Occupation of any Dwelling within a Residential Phase until the proportion of the Residential NHS Contribution payable for that Residential Phase has been paid to the Council in full;
- 4.3 To pay to the Council the Care Home NHS Contribution prior to the Occupation of the Care Home;
- 4.4 Not to Occupy, or cause or allow the Occupation of the Care Home until the Care Home NHS Contribution has been paid to the Council in full;

#### ~~5 MUGA CONTRIBUTION~~

- ~~5.1 To pay to the Council:~~
  - ~~5.1.1 50% of the MUGA Contribution prior to the Occupation of the 25<sup>th</sup> Dwelling;~~  
~~and~~
  - ~~5.1.2 50% of the MUGA Contribution prior to the Occupation of the 50<sup>th</sup> Dwelling.~~
- ~~5.2 Not to Occupy, or cause or allow the Occupation of:~~
  - ~~5.2.1 more than 25 Dwellings within the Development until 50% of the MUGA Contribution has been paid to the Council;~~
  - ~~5.2.2 more than 50 Dwellings within the Development until the MUGA Contribution has been paid to the Council in full.~~

#### 6 RETENTION OF PITCHES

- 6.1 Subject to paragraph 6.2 not to carry out any development on the land comprising the Pitches but to retain and preserve the land so that it is capable of being used and occupied in accordance with the Traveller Consents for a period of three years from the date of the Planning Permission.
- 6.2 The Owner may at any time within the period of three years referred to in paragraph 6.1, and subject to the prior approval of the Council and obtaining any necessary planning permission, identify a comparable area of land at the Site or at another suitable location within the district of Arun to be reserved for the Pitches in place of the land shown in the Pitch Plan and on securing any necessary planning permission and the approval of the Council to the Alternative Location the obligations on the Owner to retain and preserve the land comprising in the Pitches set out in paragraph 6.1 shall apply to the Alternative Location and the obligations in paragraph 6.1 shall cease to apply to the land shown as the Pitches in the Pitch Plan
- 6.3 The obligations in paragraph 6.1 or (if relevant) paragraph 6.2 shall lapse automatically at the end of the three year period starting with the date of the Planning Permission

#### 7 CARE HOME PROVISION

- 7.1 Not to Occupy or cause or allow to be Occupied more than 50 Dwellings at the Development until an enforceable and binding building contract for the construction of the Care Home has been entered into and a copy produced to the Council or other

evidence is produced to the Council which is sufficient to satisfy the Council acting reasonably that a meaningful start has been made to the construction of the Care Home.

## SCHEDULE 2

### The Owners' Covenants with the County Council

#### 1 FIRE AND RESCUE CONTRIBUTION

- 1.1 To pay to the County Council the Fire and Rescue Contribution on or before the Occupation of the first Dwelling in the Development.
- 1.2 Not to Occupy, or cause or allow the Occupation of the second Dwelling in the Development before the Fire and Rescue Contribution has been paid to the County Council.
- 1.3 The Fire and Rescue Contribution shall be calculated by reference to the following formula:

$$Y \times Z/M = \text{Fire and Rescue Contribution}$$

Where:

Y = The estimated adjusted increase in population generated by the Residential Phase calculated by reference to the total number of Market Units as approved in the Development calculated by reference to the following table:

| Dwelling Size | House | Flat |
|---------------|-------|------|
| 1 bed         | 1.5   | 1.3  |
| 2 bed         | 1.9   | 1.9  |
| 3 bed         | 2.5   | 2.4  |
| 4+ bed        | 3.0   | 2.8  |

Z = £5,530,000 being the estimated cost of providing additional Fire and Rescue Infrastructure in the Southern Service Division of the West Sussex

M = 429,647 being the projected population of the Fire and Rescue Service Southern Service Division of the West Sussex.

#### 2 SECONDARY EDUCATION CONTRIBUTION

- 2.1 To pay to the County Council on or before the Occupation of the first Dwelling in the Development the first fifty per cent (50%) of the Secondary Education Contribution.
- 2.2 Not to Occupy, or cause or allow the Occupation of the second Dwelling in the Development before the first fifty per cent (50%) of the Secondary Education Contribution has been paid to the County Council.
- 2.3 To pay to the County Council on or before the Occupation of twenty five per cent (25%) of the Dwellings in the Development, the remaining fifty per cent (50%) of the Secondary Education Contribution
- 2.4 Not to Occupy, or cause or allow the Occupation of more than twenty five per cent (25%) of the Dwellings in the Development until the Secondary Education Contribution has been paid to the County Council

2.5 The Secondary Education Contribution shall be calculated by reference to the following formula:

$$\text{DfE Figure} \times \text{ACP} = \text{Secondary Education Contribution}$$

Where:

ACP = The estimated additional number of secondary school age children likely to be generated by the Residential Phase, calculated by reference to the total number of Market Units as approved in the Development.

The following criteria are used to calculate the ACP:

| Dwelling Size | House | Flat |
|---------------|-------|------|
| 1 bed         | 1.5   | 1.3  |
| 2 bed         | 1.9   | 1.9  |
| 3 bed         | 2.5   | 2.4  |
| 4+ bed        | 3.0   | 2.8  |

Using the above occupancy rates to determine an overall population increase, the following factors are then applied to determine the ACP. According to 2001 census data, there are 14 persons per 1000 population in each school year group for houses and five persons per 1000 population in each school year group for flats. There are seven year groups for primary (years R to 6), five for secondary (years 7 to 11) and two for further education (years 12 and 13).

DfE Figure = Department of Education Secondary school building costs per pupil place as adjusted for the West Sussex Area applicable at the date when the first instalment of the Secondary Education Contribution is due (which for 2016/17 is £23,442) updated as necessary by reference to the change in the BCIS Index from the date when the cost multiplier was last updated by the County Council to the date when the first instalment of the Secondary Education Contribution falls due.

2.6 The Secondary Education Contribution shall not be subject to Clause 12 of this Agreement because the sum referred to as the DfE Figure in paragraph 2.5 and used in the calculation of the Secondary Education Contribution is regularly revised in line with changes in build costs for secondary school buildings in the West Sussex area.

**3 FURTHER EDUCATION CONTRIBUTION**

- 3.1 To pay to the County Council on or before the Occupation of the first Dwelling the first fifty per cent (50%) of the Further Education Contribution.
- 3.2 Not to Occupy, or cause or allow the Occupation of the second Dwelling until the first fifty per cent (50%) of the Further Education Contribution has been paid to the County Council.
- 3.3 To pay to the County Council on or before the Occupation of twenty five per cent (25%) of the Dwellings the remaining fifty per cent (50%) of the Further Education Contribution
- 3.4 Not to Occupy, or cause or allow the Occupation of more than twenty five per cent (25%) of the Dwellings until the remaining fifty per cent (50%) of the Further Education Contribution has been paid to the County Council.

3.5 The Further Education Contribution shall be calculated by reference to the following formula:

$$\text{DfE Figure} \times \text{ACP} = \text{Further Education Contribution}$$

Where:

ACP = The estimated additional number of secondary school age children likely to be generated by the Residential Phase, calculated by reference to the total number of Market Units approved in the Development.

The following criteria are used to calculate the ACP:

| Dwelling Size | House | Flat |
|---------------|-------|------|
| 1 bed         | 1.5   | 1.3  |
| 2 bed         | 1.9   | 1.9  |
| 3 bed         | 2.5   | 2.4  |
| 4+ bed        | 3.0   | 2.8  |

Using the above occupancy rates to determine an overall population increase, the following factors are then applied to determine the ACP. According to 2001 census data, there are 14 persons per 1000 population in each school year group for houses and five persons per 1000 population in each school year group for flats. There are seven year groups for primary (years R to 6), five for secondary (years 7 to 11) and two for further education (years 12 and 13).

DfE Figure = Department of Education Further Secondary School building costs per pupil place as adjusted for the West Sussex Area applicable at the date when the first instalment of the Further Education Contribution is due (which for 2016/17 is £25,424) updated as necessary by reference to the change in the BCIS Index from the date when the cost multiplier was last updated by the County Council to the date when the first instalment of the Secondary Education Contribution falls due.

3.6 The Further Education Contribution shall not be subject to Clause 12 of this Agreement because the sum referred to as the DfE Figure in paragraph 3.5 and used in the calculation of the Further Education Contribution is regularly revised in line with changes to build costs for further education buildings in the West Sussex area

4 PRIMARY EDUCATION CONTRIBUTION

4.1 To pay to the County Council the Primary Education Contribution as follows:

- 4.1.1 to pay to the County Council the first fifty per cent (50%) of the Primary Education Contribution on or before the Occupation of the first Dwelling in the Development;
- 4.1.2 Not to Occupy, or cause or allow the Occupation of the second Dwelling in the Development until first fifty per cent (50%) of the Primary Education Contribution has been paid to the County Council ;
- 4.1.3 to pay to the County Council the remaining fifty per cent (50%) of the Primary Education Contribution on or before the Occupation of twenty five per cent (25%) of the Dwellings in the Development;

4.1.4 Not to Occupy or cause or allow the Occupation of more than 25% of the Dwellings in the Development until the remaining fifty per cent (50%) of the Primary Education Contribution has been paid to the County Council

4.2 The Primary Education Contribution shall be calculated by reference to the following formula:

$$\text{DfE Figure} \times \text{ACP} = \text{Primary Education Contribution}$$

Where:

ACP = The estimated additional number of primary school age children likely to be generated by the Residential Phase, calculated by reference to the total number of Market Units approved in the Development.

The following criteria are used to calculate the ACP:

| Dwelling Size | House | Flat |
|---------------|-------|------|
| 1 bed         | 1.5   | 1.3  |
| 2 bed         | 1.9   | 1.9  |
| 3 bed         | 2.5   | 2.4  |
| 4+ bed        | 3.0   | 2.8  |

Using the above occupancy rates to determine an overall population increase, the following factors are then applied to determine the ACP. According to 2001 census data, there are 14 persons per 1000 population in each school year group for houses and five persons per 1000 population in each school year group for flats. There are seven year groups for primary (years R to 6), five for secondary (years 7 to 11) and two for further education (years 12 and 13).

DfE Figure = Department of Education primary school building costs per pupil place as adjusted for the West Sussex Area applicable at the date when the first instalment of the Primary Education Contribution is due (which for 2016/17 is £15,558) updated as necessary by reference to the change in the BCIS Index from the date when the cost multiplier was last updated by the County Council to the date when the first instalment of the Primary Education Contribution falls due

4.3 The Primary Education Contribution shall not be subject to Clause 12 of this Agreement because the sum referred to as the DfE Figure in paragraph 4.2 and used in the calculation of the primary Education Contribution is regularly revised in line with changes to build costs for primary education buildings in the West Sussex area

**5 LIBRARY CONTRIBUTION**

- 5.1 To pay to the County Council on or before Occupation of the first Dwelling in the Development the first fifty per cent (50%) of the Library Contribution.
- 5.2 Not to Occupy, or cause or allow the Occupation of the second Dwelling in the Development until the first fifty per cent (50%) of the Library Contribution has been paid to the County Council.
- 5.3 To pay to the County Council on or before Occupation of twenty five per cent (25%) of the Dwellings in the Development the remaining fifty per cent (50%) of the Library Contribution

- 5.4 Not to Occupy, or cause or allow the Occupation of more than twenty five per cent (25%) of the Dwellings in the Development until the remaining fifty per cent (50%) of the Library Contribution has been paid to the County Council.
- 5.5 The Library Contribution for each Residential Phase shall be calculated by reference to the following formula:

$$L/1000 \times AP = \text{Library Contribution}$$

Where:

AP = The estimated number of additional persons likely to be generated by the Residential Phase, calculated by reference to the total number of Market Units approved in the Development calculated from the following table.

| Dwelling Size | House | Flat |
|---------------|-------|------|
| 1 bed         | 1.5   | 1.3  |
| 2 bed         | 1.9   | 1.9  |
| 3 bed         | 2.5   | 2.4  |
| 4+ bed        | 3.0   | 2.8  |

L = Extra library space in square metres per 1,000 population x the library cost multiplier (35 square metres the library cost multiples published by the County Council applicable at the date when the Library Contribution falls due (which is £4,560 per square metre for 2017/18)

- 5.6 The Library Contribution shall not be subject to Clause 12 of this Agreement because the sum referred to as the library cost multiplier in paragraph 5.5 and used in the calculation of the Library Contribution is regularly revised in line with changes to build costs for library buildings in the West Sussex area

**6 FOOTPATH IMPROVEMENT CONTRIBUTION**

- 6.1 To pay to the County Council the Footpath Improvement Contribution on or before the Occupation of the first Dwelling in the Development.
- 6.2 Not to Occupy, or cause or allow the Occupation of the second Dwelling in the Development before the Footpath Improvement Contribution has been paid to the County Council in full
- 6.3 The Footpath Improvement Contribution shall be the sum of Twenty Eight Thousand Pounds (£28,000)

**7 FOOTPATH LINK**

- 7.1 In the event that a footpath crossing the adjoining property to the east of Brook Lane linking the Development to the footpath on Manor Retail Park is not provided within three years of the date of Commencement of the first Residential Phase then the Owners shall construct and provide a footpath to connect the Development with Manor Retail Park in accordance with paragraph 7.2
- 7.2 The footpath to be constructed under paragraph 7.1 shall:

- 7.2.1 follow a route along Brook Lane and the A259 which connects the footpath network on the Development to the footpath installed on Manor Retail Park the approximate route of which footpath is indicated on the drawing number SPRUST(BROOK LANE).1/05 Rev A attached to this Deed or along such other route as the County Council may approve
- 7.2.2 be constructed in accordance with a specification to be approved by the County Council

### SCHEDULE 3

The Owners' covenants with the Council are subject to the Council confirming in writing to the Owners as set out in this Schedule.

#### 1 NHS CONTRIBUTION

- 1.1 Upon receipt of each instalment of the Care Home NHS Contribution and/or the Residential NHS Contribution under paragraph 4 of Schedule 1 it will hold it in a separately identified interest bearing section of the Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Site.
- 1.2 Upon written request on or after ten (10) years of the date of receipt of final instalment of the Care Home NHS Contribution and/ or the Residential NHS Contribution to issue to the party that paid the Care Home NHS Contributions and/or the Residential NHS Contribution an account certified by the Director of Finance for the time being of the Council detailing how the Care Home NHS Contribution and/or the Residential NHS Contribution has been expended by the Council.
- 1.3 If or to the extent that any of the Care Home NHS Contribution and/or the Residential NHS Contribution shall not have been spent by the Council by the end of the period referred to in paragraph 1.2 above the Council shall on such date refund to the party that paid the Care Home NHS Contribution and/or the Residential NHS Contribution any unexpended part of any of Care Home NHS Contribution and/or the Residential NHS Contribution together with compound interest on the unexpended part(s) from the date of receipt by the Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 1.4 If at the end of the period referred to in paragraph 1.2 of this Schedule the Council shall have entered into a contract or other legally binding obligation to expend the Care Home NHS Contribution and/or the Residential NHS Contribution or part thereof for the purposes specified in paragraph 1.1 then the Council shall not be required to refund any part of the Care Home NHS Contribution and/or the Residential NHS Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Care Home NHS Contribution and/or the Residential NHS Contribution in the manner set out in paragraph 1.2 of this Schedule and refund any unexpended part of the Care Home NHS Contribution and/or the Residential NHS Contribution in the manner set out in paragraph 1.3 of this Schedule.

#### ~~2 MUGA CONTRIBUTION~~

- ~~2.1 Upon receipt of each instalment of the MUGA Contribution under paragraph 5 of Schedule 1 it will hold it in a separately identified interest bearing section of the Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Site.~~
- ~~2.2 Upon written request on or after ten (10) years of the date of receipt of final instalment of the MUGA Contribution to issue to the party that paid the MUGA Contribution an account certified by the Director of Finance for the time being of the Council detailing how the MUGA Contribution has been expended by the Council.~~
- ~~2.3 If or to the extent that any of the MUGA Contribution shall not have been spent by the Council by the end of the period referred to in paragraph 2.2 above the Council shall on such date refund to the party that paid the MUGA Contribution any unexpended part of any of MUGA Contribution together with compound interest on the~~

~~unexpended part(s) from the date of receipt by the Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.~~



~~2.4 If at the end of the period referred to in paragraph 2.2 of this Schedule the Council shall have entered into a contract or other legally binding obligation to expend the MUGA Contribution or part thereof for the purposes specified in paragraph 2.1 then the Council shall not be required to refund any part of the MUGA Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the MUGA Contribution in the manner set out in paragraph 2.2 of this Schedule and refund any unexpended part of the MUGA Contribution in the manner set out in paragraph 2.3 of this Schedule.~~

**3 REASONABLENESS**

3.1 Where the agreement, approval consent or expression of satisfaction is required by the Owners from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.

**4 CANCELLATION OF ENTRIES**

4.1 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall at the Owners' request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

## **SCHEDULE 4**

The Owners' covenants with the County Council are subject to the County Council confirming in writing to the Owners as set out in this Schedule.

### **1 FIRE AND RESCUE CONTRIBUTION**

- 1.1 Upon receipt of the Fire and Rescue Contribution under paragraph 1 of Schedule 2 it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Site.
- 1.2 Upon written request on or after ten (10) years of the date of receipt of the Fire and Rescue Contribution to issue to the party that paid the Fire and Rescue Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the Fire and Rescue Contribution has been expended by the County Council.
- 1.3 If or to the extent that any of the Fire and Rescue Contribution shall not have been spent by the County Council by the end of the period referred to in paragraph 1.2 above the County Council shall on such date refund to the party that paid the Fire and Rescue Contribution any unexpended part of any of the Fire and Rescue Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 1.4 If at the end of the period referred to in paragraph 1.2 of this Schedule the County Council shall have entered into a contract or other legally binding obligation to expend the Fire and Rescue Contribution or part thereof for the purposes specified in paragraph 1.1 then the County Council shall not be required to refund any part of the Fire and Rescue Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Fire and Rescue Contribution in the manner set out in paragraph 1.2 of this Schedule and refund any unexpended part of the Fire and Rescue Contribution in the manner set out in paragraph 1.3 of this Schedule.

### **2 LIBRARY CONTRIBUTION**

- 2.1 Upon receipt of each instalment of the Library Contribution under paragraph 5 of Schedule 2 it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Site.
- 2.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Library Contribution to issue to the party that paid the Library Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the Library Contribution has been expended by the County Council.
- 2.3 If or to the extent that any of the Library Contribution shall not have been spent by the County Council by the end of the period referred to in paragraph 2.2 above the County Council shall on such date refund to the party that paid the Library Contribution any unexpended part of any of Library Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.

- 2.4 If at the end of the period referred to in paragraph 2.2 of this Schedule the County Council shall have entered into a contract or other legally binding obligation to expend the Library Contribution or part thereof for the purposes specified in paragraph 2.1 then the County Council shall not be required to refund any part of the Library Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Library Contribution in the manner set out in paragraph 2.2 of this Schedule and refund any unexpended part of the Library Contribution in the manner set out in paragraph 2.3 of this Schedule.

### **3 FURTHER EDUCATION CONTRIBUTION**

- 3.1 Upon receipt of each instalment of the Further Education Contribution under paragraph 3 of Schedule 2 it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Site.
- 3.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Further Education Contribution to issue to the party that paid the Further Education Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the Further Education Contribution has been expended by the County Council.
- 3.3 If or to the extent that any of the Further Education Contribution shall not have been spent by the County Council by the end of the period referred to in paragraph 3.2 above the County Council shall on such date refund to the party that paid the Further Education Contribution any unexpended part of any of Further Education Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 3.4 If at the end of the period referred to in paragraph 3.2 of this Schedule the County Council shall have entered into a contract or other legally binding obligation to expend the Further Education Contribution or part thereof for the purposes specified in paragraph 3.1 then the County Council shall not be required to refund any part of the Further Education Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Further Education Contribution in the manner set out in paragraph 3.2 of this Schedule and refund any unexpended part of the Further Education Contribution in the manner set out in paragraph 3.3 of this Schedule.

### **4 SECONDARY EDUCATION CONTRIBUTION**

- 4.1 Upon receipt of each instalment of the Secondary Education Contribution under paragraph 2 of Schedule 2 it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Site.
- 4.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Secondary Education Contribution to issue to the party that paid the Secondary Education Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the Secondary Education Contribution has been expended by the County Council.
- 4.3 If or to the extent that any of the Secondary Education Contribution shall not have been spent by the County Council by the end of the period referred to in

paragraph 4.2 above the County Council shall on such date refund to the party that paid the Secondary Education Contribution any unexpended part of any of Secondary Education Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.

- 4.4 If at the end of the period referred to in paragraph 4.2 of this Schedule the County Council shall have entered into a contract or other legally binding obligation to expend the Secondary Education Contribution or part thereof for the purposes specified in paragraph 4.1 then the County Council shall not be required to refund any part of the Secondary Education Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Secondary Education Contribution in the manner set out in paragraph 4.2 of this Schedule and refund any unexpended part of the Secondary Education Contribution in the manner set out in paragraph 4.3 of this Schedule.

## **5 PRIMARY EDUCATION CONTRIBUTION**

- 5.1 Upon receipt of each instalment of the Primary Education Contribution under paragraph 4 of Schedule 2 it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Site.
- 5.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Primary Education Contribution to issue to the party that paid the Primary Education Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the Primary Education Contribution has been expended by the County Council.
- 5.3 If or to the extent that any of the Primary Education Contribution shall not have been spent by the County Council by the end of the period referred to in paragraph 5.2 above the County Council shall on such date refund to the party that paid the Primary Education Contribution any unexpended part of any of Primary Education Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 5.4 If at the end of the period referred to in paragraph 5.2 of this Schedule the County Council shall have entered into a contract or other legally binding obligation to expend the Primary Education Contribution or part thereof for the purposes specified in paragraph 5.1 then the County Council shall not be required to refund any part of the Primary Education Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Primary Education Contribution in the manner set out in paragraph 5.2 of this Schedule and refund any unexpended part of the Primary Education Contribution in the manner set out in paragraph 5.3 of this Schedule.

## **6 FOOTPATH IMPROVEMENT CONTRIBUTION**

- 6.1 Upon receipt of the Footpath Improvement Contribution under paragraph 6 of Schedule 2 it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Site.
- 6.2 Upon written request on or after ten (10) years of the date of receipt of the Footpath Improvement Contribution to issue to the party that paid the Footpath Improvement Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the Footpath Improvement Contribution has been expended by the County Council.
- 6.3 If or to the extent that any of the Footpath Improvement Contribution shall not have been spent by the County Council by the end of the period referred to in paragraph 6.2 above the County Council shall on such date refund to the party that paid the Footpath Improvement Contribution any unexpended part of any of the Footpath Improvement Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 6.4 If at the end of the period referred to in paragraph 6.2 of this Schedule the County Council shall have entered into a contract or other legally binding obligation to expend the Footpath Improvement Contribution or part thereof for the purposes specified in paragraph 6.1 then the County Council shall not be required to refund any part of the Footpath Improvement Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Footpath Improvement Contribution in the manner set out in paragraph 6.2 of this Schedule and refund any unexpended part of the Footpath Improvement Contribution in the manner set out in paragraph 6.3 of this Schedule.

## **7 REASONABLENESS**

- 7.1 Where the agreement, approval consent or expression of satisfaction is required by the Owners from the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.

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



Indrajit Kaur Sangha

Indrajit Kaur Sangha

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client  
STORE PROPERTY INVESTMENTS LTD

project  
LAND WEST OF BROOK LANE

title  
PROPOSED FOOTWAY ADJACENT A259

scale 1:1250 @A3 drawn by OAN checked by RDG

date SEPTEMBER 2017 cad file Master 2017-09-20.DWG

drawing number  
SPRUST(BROOKLANE).1/05 rev.  
A

SIGNED as a DEED by .....  
CAROLE CRIPPS .....  
in the presence of: .....

Signature

Witness Signature

Witness Name

Witness Address

Flax 2 C Street  
Woolf Street  
(Solihull)

SIGNED as a DEED by )

HERBERT KRALL .....  
in the presence of: .....

Sig

Witness Signature

Witness Name

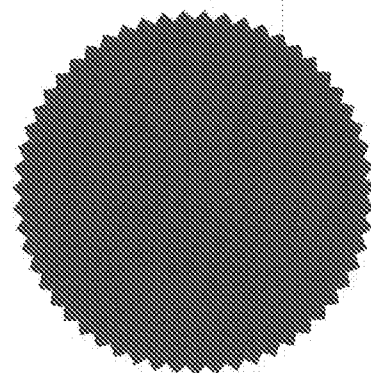
Witness Address

ADRIAN MURPHY  
Flax 2 C Street  
Woolf Street  
Solihull

EXECUTED as a DEED by .....  
STORE PROPERTY INVESTMENTS LIMITED ..  
acting by [ ] a Director and .....  
[ ] [a Director] [the Secretary] .....

Director  
Director/Secretary

The Common Seal of Coventry Building Society  
was hereunto affixed in the presence of



Inderjit Kaur Sangha  
BY AUTHORITY OF THE BOARD OF  
DIRECTORS

EXECUTED as a DEED (but not  
delivered until the date inserted  
above) by AVIVA COMMERCIAL FINANCE  
LIMITED ACTING BY ITS ATTORNEY

in the presence of:

Signature of witness

Name of witness

Address of witness

Carrara 0  
Surrey Street  
Norwich  
NR1 3UY

Occupation of witness Administrative Assistant

**APPENDIX 1**  
**Form of Nomination Agreement**

Pro Forma Deed of Nomination

DATED

20[ ]

(1) [ ] I

AND

(2) [ ]

---

DEED OF NOMINATION

relating to  
[ ]

---

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THIS DEED OF NOMINATION RIGHTS is made on 20[ ]

BETWEEN

(1) [•] of [•]; and

(2) [ ] of [ ].

1 DEFINITIONS

In this Deed :

“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 Deed) 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:

- (a) moved to other accommodation either by transfer or decant provided by the RSL;
- (b) 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 Deed) 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 five 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 10 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 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 Deed 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 Deed 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 deed.

#### **9 AGREEMENTS AND DECLARATIONS**

The parties agree:

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

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