

DATED THIS 9th DAY OF October 2019

- (1) ARUN DISTRICT COUNCIL
- (2) WEST SUSSEX COUNTY COUNCIL
- (3) LINDEN LIMITED

Agreement pursuant to Section 106 and
Section 106A of the Town and Country
Planning Act 1990 relating to land west
of New Barn Lane, Bersted, Bognor
Regis, West Sussex.
Planning ref: BE/29/19/PL

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

Date:

9ⁿ day of October

2019

PARTIES:

1. **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("the Council")
2. **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ ("the County Council")
3. **LINDEN LIMITED** (Company number 1108676) whose registered office is situate at Cowley Business Park, Cowley, Uxbridge, Middlesex UB8 2AL ("the Owner")

WHEREAS

1. The Council is the local planning authority, and the local authority responsible for housing, public open space, equipped play space and sport and recreation facilities for the area in which the Land is situated.
2. The County Council is the local highway authority and the local authority responsible for providing education, libraries and fire rescue services for the area in which the Land is situated.
3. The Owner is registered as freehold proprietor of the Land registered at the Land Registry under title number WSX1725.
4. The Owner has made the Application and is proposing to carry out the Development.
5. The Owner having entered into an agreement under section 106 of the Town and Country planning Act 1990 in relation to Planning Application BE/18/17/PL and agreeing that the Planning Contributions in this Deed shall be in addition to those included in that Deed.
6. This Agreement is made as a Deed.

NOW THIS DEED WITNESSETH as follows:

1. **Interpretation**

In this Agreement:

1.1 Clause headings shall not affect the interpretation of this Deed.

1.2 A reference to a "person" includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

1.3 A reference to a "company" shall include any company, corporation

or other body corporate, where and however incorporated or established.

- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
 - 1.5 Unless the context otherwise requires a reference to one gender shall include a reference to other genders.
 - 1.6 A reference to any party shall include that party's representatives, successors and permitted assigns and to any person deriving title through or under the party and in the case of the Council and the County Council the successors to their respective statutory functions.
 - 1.7 Unless the context otherwise requires a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
 - 1.8 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.
 - 1.9 A reference to "writing" and "written" does not include fax or email.
 - 1.10 References to clauses and Schedules are to the clauses and schedules of this Agreement.
 - 1.11 Any reference to a colour of letter is to be on the plans attached to this Agreement.
 - 1.12 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
 - 1.13 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.
 - 1.14 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.
2. In this Agreement unless otherwise stated the following expressions shall where the context so admits have the following meanings:
- 2.1 **"the Act"** means the Town and Country Planning Act 1990 as amended
 - 2.2 **"Affordable Housing"** means any form of housing identified within legislation national planning policy framework or

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

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

But does not include Starter Homes as specified in Sections 2 and 3 of the Housing and Planning Act 2016 as they will not meet the needs of persons on the local housing register

2.3 **"Affordable Housing Provider"**

means either one or a combination of:

- a a registered provider of Affordable Housing registered under the Housing and Regeneration Act 2008 with Homes England who is on the Council's list of Approved Affordable Providers (annexed as Appendix 3) or such expanded list as may be provided by the Council from time to time; or
- b any other provider of Affordable Housing who is approved by the Council in writing; or
- c such other body or organisation approved by the Council in writing whose main object is the provision of Affordable Housing

2.4 **"Affordable Housing Scheme"**

means a plan and accommodation schedule showing the location dwelling type and tenure mix of the Affordable Housing Units within the Development to be submitted to and approved in writing by the Council pursuant to paragraph 1.1 of the First Schedule

2.5 **"Affordable Housing Units"**

means 30% (thirty percent) of the Dwellings within the Development to be provided (subject to the terms of this Agreement) as Affordable Housing with a tenure split of:

- Affordable Rented Housing Units 50% (fifty

percent)

- Intermediate Housing Units 50% (fifty percent)

in accordance with the terms of this Agreement unless otherwise agreed between the Council and the Owner, or unless required by law pursuant to any legislation enacted subsequent to the date hereof in which case the tenure mix of the remaining Affordable Housing Units shall be agreed between the Owner and the Council

- 2.6 **"Affordable Rented Housing"** means a form of Affordable Housing, involving homes being available at a rent level of up to 80% of local market rent (inclusive of service charge at the time of each letting) which rent may be increased annually by no more than CPI + 1.0% or in the event of any change to legislation in relation to affordable rent such other rent level which may be applicable at the time if each letting. **"Affordable Rent Unit"** and **"Affordable Rent"** shall be construed accordingly
- 2.7 **"Affordable Housing Standard"** means the Homes England Design and Quality Standards applicable at the date of the relevant reserved matters approval for the Dwellings in question but for the avoidance of doubt excluding any Code for Sustainable Homes requirements which are no longer in force at the date of this Agreement
- 2.8 **"agreed" or "approved"** means agreed or approved in writing and given for the purpose of this Agreement
- 2.9 **"the Application"** means planning application numbers BE/29/19/PL and/or BE/37/19/PL made for the Development on the Land and other land
- 2.10 **"CCG"** means the NHS Coastal West Sussex Clinical Commissioning Group of 1 The Causeway Goring-By-Sea Worthing BN12 6BT or any successor thereof
- 2.11 **"Chargee"** means a mortgagee or chargee (or any receiver (including an administrative receiver)) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any

administrator (howsoever appointed) including a housing administrator (each a Receiver) of the whole or any part of the Affordable Housing Units)

- 2.12 **"CIL Regulations"** means the Community Infrastructure Levy Regulations 2010 (as amended)
- 2.13 **"Commencement of Development"** means the date that the Development is begun by the carrying out of a material operation on the Land pursuant to the Planning Permission within the meaning of section 56 of the Act and the terms **"Commence"**, **"Commencement"** and **"Commenced"** shall be construed accordingly save that for the purposes of this Agreement the Development shall not be considered to have been Commenced by virtue of operations consisting of site levelling stripping or clearance, demolition work, archaeological investigations, investigations for the purposes of assessing ground conditions, remedial works in respect of any contamination or other adverse ground conditions, the diversion and laying of services, the erection of any temporary means of enclosure the construction of highways and/or access works to serve the Development pursuant to any Highways Agreement or the temporary display of site notices or advertisements
- 2.14 **"County Linked" Index** means adjusted in accordance with clause 9.3 hereof
- 2.15 **"CPI"** means the Consumer Price Index published from time to time by the Office of National Statistics
- 2.16 **"the Development"** means the development authorised by the Planning Permission for the erection of 99 dwellings, together with landscaping, open space and associated works. Access to be taken from the New Barn Lane and has commenced under outline approval BE/18/17/PL. Retrospective permission for access is not sought.
- 2.17 **"Disposal"** means a disposal of the Affordable Housing Units and /or the land upon which those units are to be constructed to an Affordable Housing Provider whether by transfer of the freehold or the grant of a long lease for a term of at least 125 years and **"Dispose"** and **"Disposed"** shall

be construed accordingly

- 2.18 **"Dwelling"** means a residential unit provided as part of the Development
- 2.19 **"Fire and Rescue Services Contribution"** means a financial contribution of £235.00 (two hundred and thirty five pounds) County Index Linked payable to the County Council for the supply and installation of additional fire safety equipment to vulnerable persons homes in West Sussex Fire Rescue Services Northern Area serving Bersted.
- 2.20 **"Highways Contribution"** means a financial contribution of £77,987.25 (seventy-seven thousand nine hundred and eighty-seven pounds) County Index Linked payable to the County Council to be used towards the A29 realignment.
- 2.21 **"Index"** means the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any successor government office, ministry or department
- 2.22 **"Index Linked"** means adjusted in accordance with clause 10 hereof
- 2.23 **"Intermediate Housing Units"** means homes for sale and rent provided at a cost above social rented housing but below open market levels and that fall within the definition of Affordable Housing the form of which is to be Shared Ownership Units or such other products as may be agreed with the Council and which may include shared equity loans and discount market sale housing
- 2.24 **"Land"** means the land shown for identification purposes only edged red on the Plan
- 2.25 **"Leisure Pool Contribution"** means a financial contribution of £42,252.00 (forty-two thousand two hundred and fifty two pounds) Index Linked payable to the Council to be used towards the provision or improvement of wet side changing rooms including conversion to changing village to increase capacity, functionality and overall customer experience within the district of Arun
- 2.26 **"Library Contribution"** means the sum of £2,536.00 (two thousand five hundred and thirty six pounds) County Index

		Linked payable to the County Council towards the cost of a project to enhance library space with Improved digital access at Bognor Regis Library
2.27	"Market Housing Units"	means Dwellings within the Development which are not Affordable Housing Units
2.28	"NHS Contribution"	means a financial contribution of £10,127.00 (ten thousand one hundred and twenty-seven pounds) payable to the Council towards the costs of Berstead Green Surgery and the extension of Grove House Surgery
2.29	"Nomination Agreement"	means a nomination agreement to be entered into by an Affordable Housing Provider with the Council in respect of the Affordable Housing Units containing (unless otherwise agreed between the Affordable Housing Provider and the Council) provisions substantially in the form set out in Appendix 2 to this Agreement
2.30	"Nomination Rights"	means the right of the Council to nominate occupiers to the Affordable Housing Units in accordance with paragraphs 2.6 and 2.7 of the First Schedule to this Agreement
2.31	"NPPF"	means the National Planning Policy Framework in force at the time that this Agreement is completed
2.32	"Occupied"	means the occupation of any Dwelling constructed as part of the Development (or as the case may be the first Dwelling within the Development) for the purposes authorised by the Planning Permission but for the purposes of this Agreement shall not include any occupation for the purposes of fitting out, marketing or security
2.33	"Open Market Value"	means open market value assessed in accordance with the Appraisal and Valuation Manual of the RICS (the Red Book)
2.34	"Pagham Harbour"	means a Special Protection Area, known as a Natura 2000 site, situated in Pagham, West Sussex, identified as being of international importance for the breeding, feeding, wintering or migration of rare and vulnerable species of European Union birds

2.35	"Plan"	means the plan attached hereto at Appendix 1
2.36	"Planning Permission"	means the planning permission to be granted by the Council for the Development pursuant to the Application
2.37	"Playing Pitch Contribution"	means a financial contribution of £23,861.00 (twenty-three thousand eight hundred and sixty-one pounds) Index Linked payable to the District Council to be used towards the enhancement of the quality of the playing pitch at Jubilee Playing Fields, Bersted
2.38	"Police Infrastructure Contribution"	means a financial contribution of £16,212.31 (sixteen thousand two hundred and twelve pounds and thirty-one pence) Index Linked payable to the District Council to be used as follows: a) £3,027.87 (three thousand and twenty-seven pounds and eighty-seven pence) Indexed Linked towards the cost of Officer start-up equipment, recruitment and training for the Bersted Neighbourhood Policing Team (NPT) b) £1,006.72 (one thousand and six pounds and seventy-two pence) Index Linked toward the cost of staff start-up equipment and training at Bognor Regis Police Station. c) £8,782.02 (eight thousand seven hundred and eighty-two pounds and two pence) Index Linked toward the cost of premises at Bognor Regis Police Station. d) £3,395.70 (three thousand three hundred and ninety-five pounds seventy pence) Index Linked toward the cost of vehicles for the Peveral (Sompting) NPT.
2.39	"Previous Deed"	means the Deed entered into by Arun District Council (1) West Sussex County Council (2) Olby Developments Limited (3) Landform Bognor Regis Limited under Section 106 of the Act and dated 24 February 2016 as varied by Deed of Variation dated 3 May 2017
2.40	"Previous Permission"	means the decision of the District Council dated 5 May 2017 in relation to planning application

- 2.41 **"Primary Education Contribution"** means a financial contribution £29,591.00 (twenty-nine thousand five hundred and ninety-one pounds) County Index Linked payable to the County Council to be used towards the provision of additional facilities at Southway Primary School, Bognor Regis
- 2.42 **"Provide"** means in the case of the Affordable Housing Units to design and construct such units for habitation in accordance with the Affordable Housing Standards to the reasonable satisfaction of the Approved Body and "Provided" shall be construed accordingly
- 2.43 **"PROW"** means a highway which any member of the public may use as a right; not a privilege granted by the landowner
- 2.44 **"PROW Contribution"** means a financial contribution of £4,500.00 (four thousand five hundred pounds) County Index Linked payable to the County Council to be used towards the improvement of the public right of way running along the southern boundary of the Site
- 2.45 **"Qualifying Occupier"** means persons who qualify for Affordable Housing within Schedule 1 to this Agreement and including residents of the Arun District who are unable to resolve their housing needs in the local private sector market because of the relationship between housing costs and income on in the case of any starter homes who meet the statutory criteria for occupation of any such Dwellings
- 2.46 **"RICS"** means the Royal Institute of Chartered Surveyors
- 2.47 **"SAMM"** means the Pagham Harbour Strategic Access Management and Monitoring Project
- 2.48 **"SAMM Contribution"** means the sum of £86,229.00 (eighty-six thousand two hundred and twenty-nine pounds) Index Linked to be used to fund a package of management measures to mitigate any impacts of residential development on Pagham Harbour including but not limited to wardening, a dog project, website information, signage and

monitoring as part of the Pagham Harbour Strategic Access management and monitoring project.

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| 2.49 | "Secondary Education Contribution" | means a financial contribution of £28,591.00 (twenty-eight thousand five hundred and ninety-one pounds) County Index Linked payable to the County Council to be used on Phase 1 of a new secondary school for Arun. |
| 2.50 | "Shared Ownership Lease" | means a shared ownership lease for a term of years of at least 125 years in a form consistent with any model shared ownership lease from time to time established by Homes England |
| 2.51 | "Shared Ownership Units" | means any Affordable Housing Units to be Provided as shared ownership units for sale under a Shared Ownership Lease for sale in accordance with this Agreement |
| 2.52 | "Sixth Form Education Contribution" | means a financial contribution of £7,340.00 (seven thousand three hundred and forty pounds) County Index Linked, payable to the County Council towards the cost of providing additional facilities at The Regis School, Sixth Form |
| 2.53 | "Specified Date" | means the date upon which an obligation arising under this Agreement is due to be performed |
| 2.54 | "Sports Hall Contribution" | means a financial contribution of £39,352.00 (thirty-nine thousand and five hundred and fifty two pounds) Index Linked payable to the Council towards the provision or improvement of public sports halls to provide additional multi use health and fitness/studio space and dry changing to increase capacity and improve overall customer experience within the district of Arun |
| 2.55 | "3G Playing Pitch Contribution" | means a financial contribution of £5,755.00 (five thousand seven hundred and fifty-five pounds) Index Linked towards improvements to the 3G pitch at Arun Leisure Centre to increase capacity and improve overall customer experience. |
| 2.56 | "Working Day" | means a day (other than a Saturday, Sunday or public holiday) in England when banks in London are open for business. |

3. ENABLING PROVISION

- 3.1 This Agreement is made pursuant to Sections 106 and 106A of the Act and to the extent that they fall within the scope of Sections 106 and 106A of the Act the obligations set out herein are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council and the County Council as appropriate in accordance with Section 106 of the Act as local planning authorities against the Owner.
- 3.2 To the extent that they fall outside of the scope of Sections 106 and 106A of the Act the covenants and obligations herein are entered into by the parties pursuant to Sections 111 of the Local Government Act 1972, Section 1 Localism Act 2011 and all other enabling powers.

4 COMMENCEMENT

- 4.1 This Agreement shall come into effect upon the date hereof but the obligations in Clauses 6 to 8 and in the Schedules to this Agreement shall be conditional upon and only enforceable upon the occurrence of both the grant of the Planning Permission and the Commencement of the Development.
- 4.2 On Commencement of the Development the Owner will give to the Council and the County Council notice in writing of that commencement in the form of the Commencement Notice annexed to this Agreement as the Fifth Schedule addressed to the Council's Group Head of Planning and the County Council's Monitoring and Records Team, Strategic Planning Division at the address of the County Council given herein or equivalent successor posts.

5 AMENDMENT AND IMPLEMENTATION PREVIOUS DEED

- 5.1 The Parties to this Deed agree that the Previous Deed shall be amended as follows:
- 5.1.1 That Paragraph 1 shall be amended by:
- a) deleting "Application" means the application for outline planning permission dated 8th September 2015 submitted to the District Council for the Development and allocated reference number BE/142/15/OUT; and
 - b) by inserting:

"the Applications" means
 - i. the application for outline planning permission dated 8th September 2015 submitted to the District Council for the Development and allocated reference number BE/142/15/OUT; and

- ii. the application for Variation of condition 3 for approved plans & 23 for vehicular access imposed under BE/142/15/OUT. This application is a Departure from the Development Plan and allocated reference number BE/18/17/PL; and
- iii. the applications for full permission dated 20th February 2019 submitted to the District Council and allocated reference number BE/29/19/PL and/or BE/37/19/PL"

5.2 The Parties to this Deed agree that the obligations in this Deed are in addition to and are not in substitution for those entered into by way of the Previous Deed

6 THE OWNER'S COVENANTS

- 6.1 The Owner covenants with the Council so as to bind the Land to perform the obligations as set out in First Schedule.
- 6.2 The Owner covenants with the County Council so as to bind the Land to perform the obligations as set out in Second Schedule.

7 THE COUNCIL'S COVENANTS

- 7.1 The Council covenants with the Owner and the County Council as set out in the Third Schedule.

8 THE COUNTY COUNCIL'S COVENANTS

- 8.1 The County Council covenants with the Owner and the Council as set out in the Fourth Schedule.

9 CERTIFICATES

The Owner agrees with the Council and the County Council:

- 9.1 Where this Agreement imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Specified Date the Owner shall give to the Council notice of the Specified Date not more than seven days after such Specified Date.
- 9.2 If the Owner fails to give the notice required under this Clause the Council shall be entitled acting reasonably to determine the Specified Date and shall give notice to the Owner of its determination.

10 INDEX LINKING

- 10.1 The parties agree that any sums payable by the Owner to the Council under this Agreement shall be increased or decreased by the application of the following formula:

$$A = B \times \frac{C}{D}$$

Where:

- A is the sum actually payable on the Specified Date/Payment Date
- B is the original sum mentioned in this Agreement
- C is the Index for the quarter preceding the Specified Date
- D is the Index for the quarter preceding the date of the Planning Permission

10.2 The adjustment in this clause 10 shall only be made where the Specified Date is more than 6 months after the date of this Agreement.

10.3 The parties agree that all sums payable to the County Council under this Agreement shall be increased or decreased by an amount equal to the proportionate increase in the All In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors between the quarter preceding the date of this Agreement and the quarter preceding the date of payment of the relevant contribution to the County Council.

11 LEGAL AND ADMINISTRATIVE COSTS

11.1 The Owner agrees with the Council to pay on completion of this Agreement the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Agreement in the sum of £3,000.

11.2 The Owner agrees with the County Council to pay on completion of this Agreement the reasonable legal costs of the County Council incurred in the negotiation, preparation and execution of this Agreement.

12 GENERAL

12.1 Nothing in this Agreement constitutes an obligation to grant planning permission.

12.2 Nothing in this Agreement grants planning permission or any other approval consent or permission required from the Council or the County Council in the exercise of any other statutory function.

12.3 Nothing in this Agreement fetters or restricts the exercise by the Council or the County Council of any of their powers.

- 12.4 The obligations contained in Clauses 5 to 7 and the First Second Third and Fourth Schedules are planning obligations for the purpose of Section 106 of the Act.
- 12.5 This Agreement constitutes a deed.
- 12.6 This Agreement is enforceable by Council as to Clause 5.1 and the First Schedule and by the County Council as to Clause 5.2 and the Second Schedule.
- 12.7 Nothing in this Agreement confers or is intended to confer a benefit on a third party under the Contracts (Rights of Third Parties) Act 1999.
- 12.8 This Agreement shall be registrable as a local land charge by the Council.
- 12.9 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or the County Council under the terms of this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 12.10 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall at the Owner's request effect the cancellation of all entries made in the register of local land charges in respect of this Agreement.
- 12.11 Insofar as any clause or clauses of this Agreement 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 Agreement.
- 12.12 This Agreement 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 Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development in which case the Council shall (upon written request) effect the cancellation of any entry made in its register of local land charges in respect of this Agreement.
- 12.13 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 12.14 Nothing contained or implied in this Agreement 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.

13 EXCLUSIONS OF LIABILITY

- 13.1 No covenants or obligations contained in this Agreement shall be binding upon:
 - 13.1.1 any part of the Land that may in future be acquired by a statutory undertaker for the purposes of its undertaking or operational land as defined in the Section 262 of the Act;
 - 13.1.2 any chargee or mortgagee who subsequent to the date hereof acquires an interest in the Land solely by virtue of their charge or mortgage unless said chargee or mortgagee becomes a chargee or mortgagee in possession save for any mortgagee of an individual owner or occupier as set out in clause 13.1.3 or any mortgagee or chargee of an Affordable Housing Provider who has complied with paragraph 4 of the First Schedule; or
 - 13.1.3 any individual owner or occupier of a completed Dwelling within the Development
 - 13.1.3 Any Affordable Housing Provider save for the provisions of the First Schedule paragraphs 1 – 4
- 13.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Land or that part of the Land in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest and where any obligation herein is expressed to relate to or be performed in relation to the Development it shall be enforceable only against those persons with an interest in the Development at the time the relevant obligation is triggered and falls to be performed.

14 WAIVER

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

15 CHANGE IN OWNERSHIP

- 15.1 The Owner agrees with the Council and County Council to give the Council and County Council as soon as reasonably practicable written

notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Agreement 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 Owner shall not be required to give notice to the Council of the disposal of an individual Dwelling or any subsequent change of ownership affecting a Dwelling.

16 FUTURE SECTION 73 CONSENTS

- 16.1 Subject to clauses 16.2 to 16.5 below, unless otherwise agreed between the parties to this Deed, if any permission is granted pursuant to section 73 of the Act ("Section 73 Consent") after the date of this Agreement:
- 16.1.1 the obligations in this Agreement shall relate to and bind such Section 73 Consent; and
 - 16.1.2 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.
- 16.2 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.
- 16.3 To the extent that any of the obligations in this Agreement 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.
- 16.4 the provisions of this clause 16 shall not apply to any Section 73 Consent which necessitates or requires amendments to the substantive terms or obligations of or contained within this Agreement.
- 16.5 The Council (and or County Council as the case may be) reserves the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it necessary to do so.

17 INTEREST

- 17.1 The Owner agrees with the Council and the County Council to pay interest on sums due to the Council and the County Council under this Agreement which become due on the Specified Date but are not paid on the Specified Date, such interest to be payable from the Specified

Date until actual payment. The rate of interest shall be 2% above the Bank of England base rate from time to time.

18 VAT

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

19 NOTICES

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

19.1.1 delivered by hand; or

19.1.2 sent by pre paid first class post or other next working day delivery service.

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

19.2.1 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;

19.2.2 to the County Council at Monitoring and Records Team, Strategic Planning Division, County Hall, West Street, Chichester, West Sussex, PO19 1RQ quoting the precise Planning Application number;

19.2.3 to the Owner at: the registered office of the Owner or at such other address as the relevant party shall specify by notice to the other parties

- 19.3 Any notice or other communication given in accordance with clause 19.1 and clause 19.2 will be deemed to have been received:

19.3.1 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;

19.3.2 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.

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

19.5 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.

20 ARBITRATION

20.1 Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing arising out of or connected with this Agreement shall be referred to the decision of a single arbitrator (acting as an expert and not as an arbitrator) to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force.

21 SEVERABILITY

21.1 The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

22 JURISDICTION

22.1 This Agreement 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.

FIRST SCHEDULE

The Owner's Covenants with the Council

The Owner agrees with the Council as follows:

1 TO PROVIDE ON-SITE AFFORDABLE HOUSING

- 1.1 That the Affordable Housing Units shall be provided in accordance with the Affordable Housing Scheme and this First Schedule.
- 1.2 Not to commence the construction of the Development until the Affordable Housing Scheme for the Development has been agreed in writing between the Owner and the Council.
- 1.3 Not to Occupy more than 50% (fifty percent) of the Market Housing Units on the Development until 50% (fifty percent) of the Affordable Housing Units have been Provided in accordance with the Affordable Housing Scheme and this First Schedule.
- 1.4 Not to Occupy more than 80% (eighty percent) of the Market Housing Units on the Development until the remaining 50% (fifty percent) of the Affordable Housing Units have been Provided in accordance with the Affordable Housing Scheme and this First Schedule.
- 1.5 To procure that:
 - 1.5.1 50% (fifty percent) of the Affordable Housing Units are completed and (unless otherwise agreed in writing by the Council and subject to paragraph 1.4) Disposed of to an Affordable Body on terms which ensure that the Affordable Housing Units are and remain bound by the obligations in this Schedule no later than the date on which 50% (fifty percent) of the Market Housing Units are Occupied; and
 - 1.5.2 The remaining 50% (fifty percent) of the Affordable Housing Units are completed and (unless otherwise agreed in writing by the Council and subject to paragraph 1.4) Disposed of to an Affordable Housing Provider on terms which ensure that the Affordable Housing Units are and remain bound by the obligations in this Schedule no later than the date on which 80% (eighty percent) of the Market Housing are Occupied.
- 1.6 With effect from the date on which they are completed (and subject to paragraphs 2.4, 2.9 3.2 and 4 below) the Affordable Housing Units shall not be Occupied other than by Qualifying Occupiers and for the avoidance of doubt this restriction shall apply not just to the first occupier of any of the Affordable Housing Units but to all subsequent occupiers of them.

- 1.7 It is hereby agreed between the Council and the Owner that in the event that the Council approves (or the Owner is legally required to procure) the provision of any new form of affordable supply and/or low cost affordable ownership housing introduced pursuant to any consequential amendments to the NPPF or statute as part of the Intermediate Housing element of the Affordable Housing for the purposes of this Agreement and agrees in writing that those specific Affordable Dwellings can be provided by the Owner (or their successor in title) rather than through an Affordable Housing Provider then any such offer pursuant to paragraph 2 below shall not include said units and any such units do not need to be Disposed of to an Affordable Housing Provider pursuant to paragraph 1.5 but the requirement to complete those Affordable Housing Units prior to the trigger set out in paragraphs 1.5 shall continue to be of full force and effect and apply.

2 Mechanics of Transfer

FIRST OFFER

- 2.1 In respect of the Affordable Housing Units the Owner shall make an offer to an Affordable Housing Provider which offer shall include:
- a a draft sale of land contract
 - b a draft transfer
- 2.2 Such offer ("the First Offer") shall remain open for acceptance for no less than 3 months ("the First Offer Period") from the date of the offer being made

SECOND OFFER

- 2.3 In the event that the First Offer is not accepted within the First Offer Period or in the event that the First Offer is accepted but the Affordable Housing Provider does not enter into a binding contract within 2 months of such acceptance then the Owner shall make a second offer ("the Second Offer") to another Affordable Housing Provider to enter into a contract for the sale of the Affordable Housing not later than 1 month after the expiry of the First Offer Period or the abovementioned 2 month period (as the case may be) and such Second Offer shall consist of the same as the First Offer subject to revisions necessitated by lapse of time and shall remain open for acceptance for no less than 3 months ("the Second Offer Period") from the date of the offer being made

COMMUTED SUM PAYABLE IF FIRST AND SECOND OFFER ARE NOT IMPLEMENTED

- 2.4 In the event that the Second Offer is not accepted (by the Affordable Housing Provider entering into a binding contract) within the Second Offer Period then the Owner may:

- 2.4.1 on or before the Occupation of 10 of the Market Housing Units pay to the Council the Affordable Housing Commuted Sum (as defined in paragraph 2.5 below) whereupon once such sum has been paid to the Council the Owner and any successors in title shall be released from the provisions of this Schedule insofar as it relates to all or any of the Affordable Housing Units and the Affordable Housing Units may be sold on the open market as Market Housing Units; or
- 2.4.2 Dispose of all or any of the Affordable Housing Units as Intermediate Units to an Affordable Housing Provider; or
- 2.4.3 Dispose of all or any of the Affordable Housing Units 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).
- 2.5 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 Housing Units which will not be provided on the Land as part of the Development in accordance with the terms of this Agreement.

NOMINATION RIGHTS

- 2.6 To procure that the Affordable Housing Provider grants Nomination Rights to the Council in relation to the first Occupation of 100% (one hundred percent) of the Affordable Housing Units and Nomination Rights of 75% (seventy-five percent) of all subsequent relets PROVIDED THAT if the Council do not accept the Nomination Rights or choose not to exercise them then the Affordable Housing Provider shall in seeking to allocate the Affordable Housing Units have regard as far as possible to the following criteria:
- 2.6.1 any family association in the District of Arun in accordance with any relevant housing allocation policy;
- 2.6.2 any period of ordinary residence in the District of Arun not immediately before the date on which any Affordable Housing Unit becomes vacant;
- 2.6.3 any employment opportunity in the District of Arun;

2.6.4 any other connection with the District of Arun

but for the avoidance of doubt the satisfaction of such criteria hereof shall be determined by the body responsible for the allocation of the Affordable Housing Units from time to time.

2.7 To procure that any transfer of Affordable Housing Units to an Affordable Housing Provider will contain the following provisions:

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

2.7.2 a reservation of all rights of access and passage of Services and other rights reasonably necessary for the benefit of the remainder of the Dwellings on the Land;

2.7.3 the imposition of such covenants as the Owner shall reasonably require and are consistent with the sale of any Market Unit; and

2.7.4 a condition that the Affordable Housing Provider shall within 3 months of the legal completion of the transfer, or such other period as may be agreed with the Council in writing, offer to enter into a Nominations Agreement with the Council on terms consistent with paragraph 2.6 above.

2.8 The Owner covenants with the Council:

2.8.1 in the event of the Owner becomes 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

2.8.2 in the event of the Owner becomes 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.

2.9 The Owner and the Council hereby agree that:

2.9.1 in the event of a default under any security referred to in paragraph 2.8.1 or in other circumstances warranting the intervention of Homes England (whether under the Housing Act 1996 or otherwise) nothing in this First Schedule shall prevent the transfer of the freehold of the Affordable Housing Units or any part of them to another Affordable Housing Provider;

- 2.9.2 subject to and without prejudice to the powers and requirements of Homes England under the Housing Act 1996 that in the event of a default under any security referred to in paragraph 2.8.1 the disposal of any interest in the Affordable Housing Units by the Chargee in the exercise of its power of sale will not be prevented.

3 Further Provisions

- 3.1 Nothing in this Agreement shall be construed as imposing or otherwise implying any obligation on the Council to grant or make available any public subsidy or other financial support (or to assist the Owner in obtaining such public subsidy or other financial support) in respect of the Affordable Housing Units.
- 3.2 The provisions of this Schedule above shall cease to bind any of the Affordable Housing Units if in relation to that Affordable Housing Unit:
- 3.2.1 a statutory right to acquire, right to buy (including the preserved right to buy) pursuant to the Housing Act 1985 or Housing Act 1996 (or any statutory re-enactment amendment or replacement thereof) or a voluntary right to buy has been exercised; or
 - 3.2.2 it shall have been sold under a Shared Ownership Lease and the leaseholder (or its mortgagee) has staircased its ownership under the lease to 100 percent; and
 - 3.2.3 in the event of any dispute as to whether any proposed occupier of any Affordable Housing Unit is a Qualifying Occupier the matter shall be determined by the Council (acting reasonably).

4 Mortgagee in Possession Clause

- 4.1 The Affordable Housing provisions in this Agreement shall not be binding on a Chargee of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such Chargee PROVIDED THAT:
- such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and

costs and expenses; and

- if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Agreement which provisions shall determine absolutely

5 LEISURE POOL CONTRIBUTION

- 5.1 The Owner covenants with the Council to pay to the Council the Leisure Pool Contribution within 3 months of the grant of the Planning Permission the Leisure Pool Contribution

6 SPORTS HALL CONTRIBUTION

- 6.1 The Owner covenants with the Council to pay to the Council the Sports Hall Contribution within 3 months of the grant of the Planning Permission

7 SAMM CONTRIBUTION

- 7.1 The Owner covenants with the Council to pay to the Council the SAMM Contribution within 3 months of the grant of the Planning Permission

8 NHS CONTRIBUTION

- 8.1 The Owner covenants with the Council to pay the NHS Contribution within 3 months of the grant of the Planning Permission

9 PLAYING PITCH CONTRIBUTION

- 9.1 The Owner covenants with the Council to pay the Playing Pitch Contribution within 3 months of the grant of the Planning Permission

10 3G PLAYING PITCH CONTRIBUTION

- 10.1 The Owner covenants with the Council to pay the 3G Contribution within 3 months of the grant of the Planning Permission

SECOND SCHEDULE

The Owner's Covenants with the County Council

The Owner agrees with the County Council:

1 PRIMARY EDUCATION CONTRIBUTIONS

- 1.1 The Owner covenants with the County Council to pay the Primary Education Contribution to the County Council on or before Commencement of Development
- 1.2 Not to cause or allow Commencement of Development to occur unless and until the Primary Education Contribution has been paid to the County Council.

2 SECONDARY EDUCATION CONTRIBUTIONS

- 2.1 The Owner covenants with the County Council to pay the Secondary Education Contribution to the County Council on or before Commencement of Development
- 2.2 Not to cause or allow Commencement of Development to occur unless and until the Secondary Education Contribution has been paid to the County Council.

3 SIXTH FORM EDUCATION CONTRIBUTION

- 3.1 The Owner covenants with the County Council to pay the Sixth Form Education Contribution to the County Council on or before the Commencement of Development
- 3.2 Not to cause or allow Commencement of Development to occur unless and until the Sixth Form Education Contribution has been paid to the County Council.

4 LIBRARY CONTRIBUTION

- 4.1 The Owner covenants with the County Council to pay the Library Contribution to the County Council on or before the Commencement of Development.
- 4.2 Not to cause or allow Commencement of Development to occur unless and until the Library Contribution has been paid to the County Council.

5 FIRE AND RESCUE SERVICES CONTRIBUTION

- 5.1 The Owner covenants with the County Council to pay the Fire and Rescue Services Contribution to the County Council on or before the Commencement of Development

- 5.2 Not to cause or allow Commencement of Development to occur unless and until the Fire and Rescue Services Contribution has been paid to the County Council.

6 PROW CONTRIBUTION

- 6.1 The Owner covenants with the County Council to pay the PROW Contribution to the County Council on or before the Commencement of Development.
- 6.2 Not to cause or allow Commencement of Development to occur unless and until the PROW Contribution has been paid to the County Council.

7 HIGHWAYS CONTRIBUTION

- 7.1 The Owner covenants with the County Council to pay the Highway Contribution on the earlier of:
- 7.1.1 Occupation of the thirtieth (30th) Dwelling on the Development; or
 - 7.1.2 within 3 months of the grant of the planning permission.
- 7.2 Not to cause or allow Occupation of the 30th Dwelling on the Development to occur unless and until the Highway Contribution has been paid to the County Council.

THIRD SCHEDULE

Council Covenants

- 1 The Council covenants to expend the Leisure Pool Contribution together with any interest accruing thereon only towards the provision or improvement of public swimming pools within the district.
- 2 The Council covenants to expend the Leisure Sports Hall Contribution together with any interest accruing thereon only towards the provision and improvement of public sports halls within the locality of the site.
- 3 The Council covenants to expand the NHS Contribution together with any interest accruing thereon only by paying it to the CCG for the provision of healthcare facilities within the district of Arun including an extension to the Croft GP Surgery Barnham Road, Eastergate.
- 4 The Council covenants to expend the Police Infrastructure Contribution together with any interest accruing thereon only by paying it to Sussex Police.
- 5 The Council covenants to expend the 3G Playing Pitch Contribution together with any interest accruing thereon only towards the provision of a new 3G pitch facility in the Western Analysis Area within the catchment of Pagham to mitigate the adjusted population for the Development.
- 6 The Council covenants to expend the SAMM Contribution together with any interest accruing thereon only towards the provision of a package of management measures to mitigate any impacts of residential development on Pagham Harbour including but not limited to wardening, a dog project, website information, signage and monitoring as part of the Pagham Harbour Strategic Access management and monitoring project.
- 6 If or to the extent the Leisure Pool Contribution, the Leisure Sports Hall Contribution, the 3G Playing Pitch Contribution and the SAMM Contribution shall not have been spent (within ten (10) years of the receipt of the respective contribution for the purposes detailed in this Agreement the Council shall on such date refund to the party that paid the contribution(s) any unexpended sum together with interest thereon from the date of receipt of the relevant contribution(s) to the date of repayment at the base rate of the Bank of England applicable from time to time calculated on a day to day basis.

FOURTH SCHEDULE

County Council Covenants

- 1 The County Council covenants with the Owner as follows:
 - 1.1 to expend the Library Contribution together with any interest accruing thereon towards a project to enhance library space with improved digital access at Bognor Regis Library to mitigate the adjusted population for the Development;
 - 1.2 to expend the Fire and Rescue Contribution together with any interest accruing thereon towards the supply and installation of additional fire safety equipment to vulnerable persons homes in West Sussex Fire Rescue Services Northern Area serving Bersted to mitigate the adjusted population for the Development;
 - 1.3 to expend the Primary Education Contribution together with any interest accruing thereon towards additional facilities at Southway Primary School, Bognor Regis; to mitigate the adjusted population for the Development;
 - 1.4 to expend the Secondary Education Contribution together with any interest accruing thereon towards phase 1 of a new secondary school for Arun to mitigate the adjusted population for the Development;
 - 1.5 to expend the Further Secondary Education Contribution together with any interest accruing thereon towards additional facilities at The Regis School Sixth Form to mitigate the adjusted population for the Development;
 - 1.6 To expend the PROW Contribution together with any interest accruing thereon only towards the improvement of the public right of way running along the southern boundary of the Land
 - 1.7 If or to the extent the said Library Contribution the Fire and Rescue Contribution the Secondary Education Contribution the Further Secondary Education Contribution the Primary Education Contribution the PROW Contribution ("the Contributions") shall not have been spent (within ten (10) years of the receipt of the respective contribution for the purposes detailed in this Agreement the County Council shall on such date refund to the party that paid the Contribution(s) any unexpended sum together with interest thereon from the date of receipt of the relevant Contribution(s) to the date of repayment at the base rate of the Bank of England applicable from time to time calculated on a day to day basis.
 - 1.8 if at the date referred to in clause 1.7 the County Council or any

person acting on the instruction of the County Council shall have entered into a contract or other legally binding obligation to expend the County Council Contributions or part thereof for the purpose specified in paragraphs 1.1 to 1.6 then the County Council shall not be required to refund any part of the County Council Contributions required for that purpose but shall as soon as possible following the completion of the said contract or other legally binding commitment refund any unexpended part of the said County Council Contributions in the manner set out in paragraph 1.7 above.

FIFTH SCHEDULE

Commencement Notice

Pursuant to Clause 4.2 in Planning Obligation Described Below

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

Dated this _____ day of _____ 20

Signed _____

On Behalf Of: _____

To:

- [1] Head of Planning Services, Arun District Council,
Arun Civic Centre, Maltravers Road,
Littlehampton,
West Sussex, BN17 5LF [DX: 57406]
Littlehampton
- [2] Monitoring and Records Team, Strategic
Planning Division, West Sussex County Council,
County Hall, Chichester, West Sussex, PO19
1RQ
[DX: 157410] Chichester 8

FROM:

DEVELOPMENT AT:

NATURE OF DEVELOPMENT:

PLANNING PERMISSION
DATE & REFERENCE

PLANNING OBLIGATION
DATE & PARTIES

START DATE:

NUMBER OF DWELLINGS
NUMBER OF AFFORDABLE
/SOCIAL RENTED AND 1
BEDROOM DWELLINGS

CONTRIBUTION AMOUNTS
DUE

SIXTH SCHEDULE

Payment Notice

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

Please answer all the questions.

1. Payment to be made by/on behalf of

.....

2. Land at:

.....

3. Agreement dated:

...../...../.....

4. Planning application reference number [where applicable]

5. Obligation in Agreement

[a]	clause no.	
[b]	contribution towards	
[c]	amount of contribution due	
[d]	date upon which contribution is due	
[e]	amount of contribution enclosed	
[f]	amount of monitoring sum	

SEALED with the COMMON SEAL
of ARUN DISTRICT COUNCIL



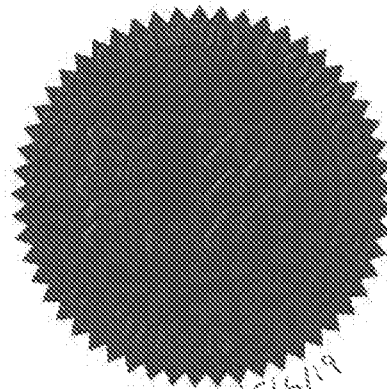
[Redacted] ce of:

SMITH CHARLES
PROPERTY LAWYER

Seal Book No 256/2019

Authorised Signatory

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



[Redacted]

Seal Book No

Authorised Signatory

25764/5/6/19

EXECUTED AS A DEED on behalf of
of LINDEN LIMITED
acting by:

[Redacted]
[Redacted]
Director

[Redacted]

Company Secretary

DIRECTOR

[Redacted]

APPENDIX 1 PLAN



PROJECT
**Land West of New Barn Lane
 North Bersted, Bognor Regis
 Alternative Application
 Linden Homes South**

Project type:
 Drawing classification:
 Work stage:
 Drawing title:
Location Plan

SCALE	PROJECT NO.	DATE	DESIGNED	CHECKED	DATE	CAD FILE
1:3500	A3	1st 1			12/05/2019	

The Studio, Unit 17, Vicarage Farm, Winchester Road,
 Fareham, Hampshire, SO50 7HD
 023 8049 7810
enquiries@urbanpulsedesign.co.uk www.urbanpulsedesign.co.uk

19-1013-001-1st

**APPENDIX 2
DRAFT NOMINATIONS AGREEMENT**

DATED

20[]

(1) [•][]

AND

(2) ARUN DISTRICT COUNCIL

DEED OF NOMINATION

**relating to
rented units at**

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BETWEEN

- (1) [•][] of [•][]; and
- (2) **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN15 7LF.

2 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 4.3 and 4.10 (as may be updated from time to time in accordance with clause 4.16).

"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 4.10.

"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.

3 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.

4 PROCEDURE

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

Initial Lets

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 The Nomination List to be served by the Council under clause 4.3 shall:
 - 4.4.1 specify the appropriate category of Rented Unit to which it relates; and
 - 4.4.2 indicate the priority for the housing of the Nominees.
- 4.5 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 4.3 within the period of 10 working days of receipt of the Vacancy Notice.
- 4.6 The RSL shall within five working days of the date of receipt of the Nomination List referred to in clause 4.3 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.
- 4.7 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 4.6 and this clause shall be repeated.

- 4.8 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 4.7 then the RSL shall make an offer to a third Nominee and the procedure set out in clauses 4.6 and 4.7 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.
- 4.9 The RSL's obligations under clauses 4.1 to 4.8 shall cease when all of the Rented Units have been offered to Nominees in accordance with clauses 4.6 to 4.8.

Voids

- 4.10 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:
- 4.10.1 the RSL shall serve a Void Notice in respect of the relevant vacant Rented Unit; and
- 4.10.2 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 4.4.
- 4.11 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 4.10 within 10 working days of receipt of the Void Notice.
- 4.12 Upon receipt of the Nomination List referred to in clause 4.10 the RSL shall follow the procedure mutatis mutandis set out in clauses 4.6 to 4.8.
- 4.13 The RSL shall not be obliged to follow the procedure set out in clauses 4.10 to 4.12 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

- 4.14 The RSL shall give notification to the Council of the occurrence of the following events within five working days of their occurrence:

- 4.14.1 a Nominee or Subsequent Nominee failing to view a Rented Unit within 10 working days of an offer being made;
- 4.14.2 a Nominee or Subsequent Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Agreement;
- 4.14.3 a Nominee or Subsequent Nominee accepting an offer of a Tenancy Agreement;
- 4.14.4 a person accepting an offer of a tenancy from the RSL;
- 4.14.5 the RSL rejecting a Nominee or Subsequent Nominee in accordance with clause 4.20.
- 4.15 In the event of a notice being served pursuant to clause 4.14 then the name of such Nominee or Subsequent Nominee shall be removed from the Nomination List.
- 4.16 Within 10 working days of the Council receiving notice served in accordance with clause 4.14 above save for notice under 4.14.4 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 4.4.
- 4.17 If the Council shall within the period mentioned in clause 4.16 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.
- 4.18 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.
- 4.19 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.
- 4.20 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.
- 4.21 The Council shall immediately notify the RSL in writing if any Nominee or Subsequent Nominee is withdrawn from the Nomination List.
- 4.22 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.

4.23 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.

5 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.

6 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.

7 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.

8 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.

9 COSTS

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

10 AGREEMENTS AND DECLARATIONS

The parties agree:

10.1 nothing in this deed fetters or restricts the exercise by the Council of any of its powers; and

10.2 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.

EXECUTED BY AFFIXING with the
COMMON SEAL

of ARUN DISTRICT COUNCIL

in the presence of:

Seal Book No:

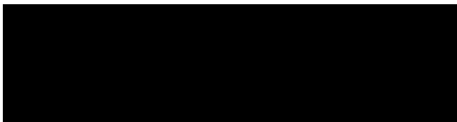
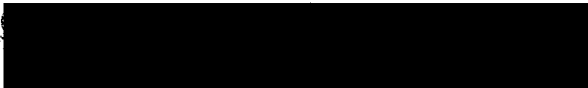
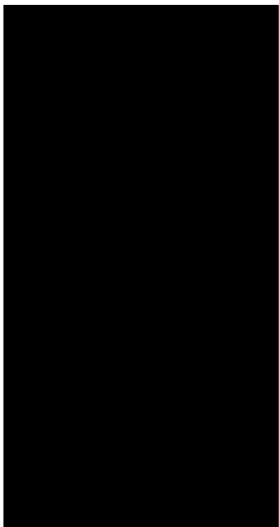
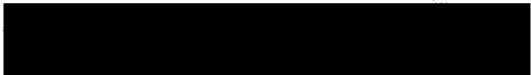
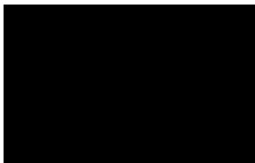
AUTHORISED SIGNATORY

PRINT NAME

JOB TITLE

APPENDIX 3

List of the Council's Approved Affordable Housing Providers

Provider	Contact and email	Address	Tel. No
Clarion Housing Group	Liz Hills, Head of Development (New Projects) 	Upton House, 7 Perrymount Rd, Haywards Heath, West Sussex, RH16 3TN	
The Guinness Partnership	Claudette Rawlinson, New Business Manager 	33 East Street Havant Hampshire PO9 1AA	
The Hyde Group	John Martin 	Telecom House 125 – 135 Preston Road Brighton West Sussex BN1 6AF	
Worthing Homes	Damian Haley, Development Manager 	Davison House North Street Worthing West Sussex	

BN11 1ER

Stonewater Jacqueline Burton,
Development Officer

Waverley House

115-118
Holdenhurst
Road

Bournemouth

BH8 8DY

Saxon Weald Mona Johansson,
Programme Manager

Saxon Weald
House
38-42 Worthing
Road
Horsham
West Sussex
RH12 1DT

Hastoe
Housing
Association

Marina House
17 Marina Place
Hampton Wick
Kingston-Upon-
Thames
Surrey
KT1 4BH

Aster Group Edward Till,
Development Manager

Arun
District

Satnam Kaur,

Civic Centre,

Council

Group Head of Residential Services



Maltravers Rd,
Littlehampton,
BN17 5LF