

1 October

DATED: ^ 2024		
(1)	ARUN DISTRICT COUNCIL	
(2)	WEST SUSSEX COUNTY COUNCIL	
(3)	KINSTED DEVELOPMENTS LLP	
(4)	WEST SUSSEX COUNTY COUNCIL	
	Agreement pursuant to Section 106 of the Town and Country Planning Act 1990 relating to Land at Former Bartons Infant School, Romney Broadwalk, Bersted, PO22 9BH Planning ref: BE/40/22/PL	
	Arun District Council The Civic Centre Maltravers Road LITTLEHAMPTON BN17 5LF	

Date:

1 October

2024

PARTIES:

1. **ARUN DISTRICT COUNCIL** of The Civic Centre, Maltravers Road, LITTLEHAMPTON BN17 5LF ("the **Council**"); and
2. **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, PO19 1RQ ("the **County Council**"); and
3. **KINSTED DEVELOPMENTS LLP** (company number: OC437407 of Kent House, 14 - 17 Market Place, London, United Kingdom, W1W 8AJ (the "**Developer**")
4. **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, PO19 1RQ ("the **Owner**")

together "**the Parties**"

WHEREAS

1. The Council is the Local Planning Authority, for the purposes of the Act for the area in which the Land is situated and the authority responsible for the provision of housing, leisure and recreation services.
2. The County Council is a planning authority for the area in which the Land is situated and the authority for the provision of education, library services, fire and rescue services and is the Local Highway Authority for the area in which the Land is situated and is also the Owner of the Land
3. The Council shall be responsible for enforcing this Agreement for all purposes.
4. The Council shall also be responsible for enforcing this Agreement so far as education, library services, fire and rescue and highways matters are concerned until such a time that the Land has been transferred from the Owner to the Developer, after which the County Council will be responsible for enforcing such matters.
5. References to the "**Owner**" shall mean West Sussex County Council acting as the owner of the Site, and references to the County Council shall mean West Sussex County Council acting in its capacity as planning authority.
6. The County Council is also the freehold owner of the Land which is registered under title number SX54860 and has entered into an option agreement with the Developer for the sale of the Land to the Developer.
7. The Developer has made the Application and is proposing to carry out the Development.
8. On 7 August 2024 the Council resolved at Planning Committee to grant planning permission for the Application and also subject to conditions and subject to a section 106 agreement being entered into.

9.	The Parties are satisfied that the planning obligations contained in this Agreement are necessary to make the Development acceptable in planning terms directly related to the Development and fairly and reasonably related in scale and kind to such Development and thus satisfy the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.
10.	The Owner and Developer have agreed to enter into this Agreement to give planning obligations to the Council and the County Council upon the terms and subject to the conditions herein.
11.	This Agreement is made as a Deed.

NOW THIS AGREEMENT WITNESSETH as follows:

1.	Interpretation		
	In this Agreement unless otherwise stated the following expressions shall where the context so admits have the following meanings:		
1.1	"Act"	means the Town and Country Planning Act 1990 as amended;	
1.2	"Affordable Housing Contribution"	Means the contribution of £80,000 (eighty thousand pounds) to be paid to the Council as an off-site contribution towards affordable housing;	
1.3	"Agreement"	Means this section 106 agreement;	
1.4	"All Requisite Consents"	means all requisite consents, orders, agreements, authorisations, licences and permissions required to implement a scheme;	
1.5	"Application"	means an application in respect of the Land for the Development and given Council reference BE/40/22/PL;	
1.6	"BCIS Index"	means the All-in Tender Price Index published by the Building Costs Information Service of the Royal Institution of Chartered Surveyors or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the County Council may specify;	
1.7	"CIL Regulations"	means the Community Infrastructure Levy Regulations 2010 (as amended);	
1.8	"Commencement"	means the carrying out of a material operation as defined in section 56(4) of the Act in respect of the Development but excluding for the purposes of this Agreement (and for	

			no other purpose) any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof enabling works site clearance (including the demolition of the existing primary school building) archaeological investigations and digs exploratory boreholes operations permitted by the Town and Country Planning (General Permitted Development) Order 2015 the erection of hoardings and fencing temporary diversion of services and signage (including the formation of temporary construction accesses) and "Commence and Commenced " shall be construed accordingly;
	1.9	"Commencement Notice"	means notice in the form annexed to this Agreement as Appendix 1;
	1.10	"Council Contributions"	means the Affordable Housing Contribution, the National Highways Contribution, the NHS Contribution, the Pagham Harbour Contribution and the Sport and Leisure Contribution;
	1.11	"County Council Contributions"	means the Education (Primary) Contribution, the Education (Secondary) Contribution, the Education (Sixth Form) Contribution, the Libraries Contribution, the Fire and Rescue Contribution, and the Secondary School Transport Contribution;
	1.12	"County Council's Monitoring Fee"	means the total sum of £3,120 (three thousand one hundred and twenty pounds) £2,880 (two thousand eight hundred and eighty pounds) payable to the County Council for monitoring the delivery and performance of the obligations contained within this Agreement over the lifetime of the Development and is payable upon completion of this Agreement;
	1.13	"the Development"	means the development of the Land being the demolition of former school building and erection of 20 No. new dwellings and associated

			car parking, cycle parking and landscaping;
	1.14	"Dwelling"	means a residential dwelling unit to be constructed on the Land pursuant to this Planning Permission;
	1.15	"Education (Primary) Contribution"	means the sum of £52,034 (fifty two thousand and thirty four pounds) subject to adjustment, in accordance with the provisions of the Second Schedule and which is calculated using current occupancy rates from census statistics published by the Office for National Statistics and payable in accordance with this Agreement being a financial contribution towards the costs of providing the additional primary education infrastructure required to accommodate the extra demands for primary education services that would be generated by the Development and to be paid by the Owner to the County Council for the purpose of additional facilities at Bersted Green Primary School PROVIDED THAT should Commencement of the Development take place after 31 st March 2025, the sum shall be re-calculated using the latest published census statistics published by the Office for National Statistics;
	1.16	"Education (Secondary) Contribution"	means the sum of £116,965 (one hundred and sixteen thousand nine hundred and sixty five pounds) subject to adjustment, in accordance with the provisions of the Second Schedule and which is calculated using current occupancy rates from census statistics published by the Office for National Statistics and payable in accordance with this Agreement being a financial contribution towards the costs of providing the additional secondary education infrastructure required to

			accommodate the extra demands for secondary education services that would be generated by the Development to be paid by the Owner to the County Council for the purpose of additional facilities at the new Secondary school serving Arun PROVIDED THAT should Commencement of the Development take place after 31st March 2025, the sum shall be re-calculated using the latest published census statistics published by the Office for National Statistics;
	1.17	"Education (Sixth Form) Contribution"	means the sum of £20,682 (twenty thousand six hundred and eighty two pounds) subject to adjustment, in accordance with the provisions of the Second Schedule and which is calculated using current occupancy rates from census statistics published by the Office for National Statistics and payable in accordance with this Agreement being a financial contribution towards the costs of providing the additional sixth form education infrastructure required to accommodate the extra demands for sixth form education services that would be generated by the Development and to be paid by the Owner to the County Council for the purpose of additional facilities at the new Arun secondary school sixth form serving Arun or The Regis School Sixth Form PROVIDED THAT should Commencement of the Development take place after 31st March 2025, the sum shall be re-calculated using the latest published census statistics published by the Office for National Statistics;
	1.18	"Fire and Rescue Contribution"	Means the sum of £733 (seven hundred and thirty three pounds) subject to adjustment, in accordance with the provisions of the Second Schedule and which is

			calculated using current occupancy rates from census statistics published by the Office for National Statistics and payable in accordance with this Agreement being a financial contribution towards the costs of providing the additional fire and rescue infrastructure required to accommodate the extra demands for fire and rescue services that would be generated by the Development and to be paid by the Owner to the County Council for the purpose of additional fire safety equipment/smoke alarms to vulnerable persons homes in West Sussex Fire Rescue Services Southern Area serving Bersted PROVIDED THAT should Commencement of the Development take place after 31st March 2025, the sum shall be re-calculated using the latest published census statistics published by the Office for National Statistics;
	1.19	"Index"	means : (a) subject to the National Highways Contribution at (b) such increase to sums payable to the Council and the County Council 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 date of the grant of planning permission and the date that payment of the relevant contribution is due to the Council and the County Council; (b) In relation to the National Highways Contribution such increase to sums payable to the Council 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 first quarter of 2016 and the date that payment of the contribution is due to the Council;
	1.20	"Index Linked"	means indexation (which may increase or decrease) calculated in accordance with Clause 15 below;
	1.21	"Interest Rate"	means the rate 4% above the base rate from time to time of Lloyds Bank applicable at the Specified Date or the actual date on which the relevant obligation under this Agreement is paid whichever is the higher;
	1.22	"Land"	means the land at Former Bartons Infant School, Romney Broadwalk, Bersted, PO22 9BH shown for on the Plan attached hereto as Appendix 3;
	1.23	"Libraries Contribution"	Means the sum of £7,359 (seven thousand three hundred and fifty nine pounds) subject to adjustment, in accordance with the provisions of the Second Schedule and which is calculated using current occupancy rates from census statistics published by the Office for National Statistics and payable in accordance with this Agreement being a financial contribution towards the costs of providing the additional library infrastructure required to accommodate the extra demands for library services that would be generated by the Development and to be paid by the Owner to the County Council for the purpose of additional facilities at Bognor Regis Library PROVIDED THAT should Commencement of the Development take place after 31 st March 2025, the sum shall be re-calculated using the latest published census statistics published by the Office for National Statistics;
	1.24	"Market Dwelling"	Means all those residential units to be constructed on the Land pursuant to the Planning

			Permission and "Market Dwellings" shall be construed accordingly;
	1.25	"Monitoring Fee"	means a sum of £3,150.00 (three thousand, one hundred and fifty pounds) payable to the Council in accordance with paragraph 1 of the First Schedule in accordance with Regulation 122(2A) of CIL in respect of the cost of monitoring (including reporting under CIL) in relation to the delivery of these Planning Obligations;
	1.26	"National Highways Contribution"	means the contribution of £9,112.80 (nine thousand one hundred and twelve pounds and eighty pence) to be paid to the Council towards the A27 Whyke and Bognor Road Roundabouts in Chichester;
	1.27	"NHS Contribution"	means a sum of £29,830.00 (twenty nine thousand eight hundred and thirty pounds) to be paid to the Council for the purpose of the provision of health facilities provided by NHS Sussex, or any commissioning body that may replace it;
	1.28	"NPPF"	means the National Planning Policy Framework in force at the time that this Agreement is completed or at the time any appeal is determined;
	1.29	"Occupation"	means occupation of the Development for the purposes of the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration marketing and display or security purposes and "First Occupation" and "Occupiers" and "Occupy" and "Occupied" shall be construed accordingly;
	1.30	"Pagham Harbour Contribution"	means the contribution of £19,000 (nineteen thousand pounds) to be paid to the Council towards mitigating recreational disturbance at Pagham Harbour;
	1.31	"Payment Notice"	means a notice in the form annexed to this Agreement as Appendix 2;
	1.32	"Plan"	means the plan annexed hereto as Appendix 3 and marked "Plan":

1.33	"Planning Authority"	means the Council and the County Council;
1.34	"Planning Condition"	means any condition subject to which the Planning Permission is granted;
1.35	"Planning Obligations"	means the obligations, conditions and stipulations set out in the First Schedule and the Second Schedule and "Planning Obligation" shall be construed accordingly;
1.36	"Planning Permission"	means a planning permission for the Development granted pursuant to the Application;
1.37	"Reserved Matters Approval(s)"	means approval by the Council of one or more matters reserved for approval by the Planning Permission;
1.38	"Secondary School Transport Contribution"	Means the sum of £68,947.00 (sixty eight thousand nine hundred and forty seven pounds) to be paid by the Owner to the County Council calculated in accordance with the Second Schedule and the Secondary School Transport Contribution Calculation Methodology which shall be paid to the County Council to be used towards school transport for the number of secondary aged children expected from the development to an existing secondary school and which shall be split into the following: • Secondary School Transport Contribution First Instalment £21,546.00 (twenty one thousand five hundred and forty six pounds) where the factor G is 5 years • Secondary School Transport Contribution Second Instalment £21,546.00 (twenty one thousand five hundred and forty six pounds) where the factor G is 5 years (or less depending on the number of years until the secondary school is provided)

			Secondary School Transport Contribution Third Instalment £25,855.00 (twenty five thousand eight hundred and fifty five pounds) where the factor G is 6 years (or less depending on the number of years until the secondary school is provided);
	1.39	“Secondary School Transport Contribution Calculation Methodology”	means the method of calculation of the Secondary School Transport Contribution calculated by the County Council based on the current costs for transporting school aged children using passenger transport, to the nearest secondary school with places available, based on £1,581 per pupil, per year (for 2024/2025 costs are revised annually in April). The temporary costs to transport children to the nearest available or West Sussex catchment school with space is calculated by using the equation $A / B \times C = D$ and $D \times (E \times G) \times F = \text{Secondary School Transport Contribution}$ Where: A – actual cost of transport per day in West Sussex for bus/coach travel to school, at the time of the signing of the legal agreement. Which for 2024/2025 is £441 per day, with costs revised annually B – coach capacity (53) C - number of academic days in a year (190) D - Cost per pupil per year (441 per day / 53 = £8.32 x 190 = £1,581 per pupil per year for 2024/2025; costs are reviewed annually in April) E – number of children generated by the development aged 0-16 F – 5 years of Secondary Education G – number of year that school transport is provided being a total of 16 years but can be phased to allow for instalment payments of 5 years, 5 years and 6 years (or less depending on the number of years

			until the secondary school is provided at the time of the relevant review);
	1.40	"Secretary of State"	means the Secretary of State for Housing, Communities and Local Government from time to time appointed and includes any successor in function;
	1.41	"Section 73 Consent"	means any approval or consent given by the Council under Section 73 of the Act;
	1.42	"Specified Date"	means the date upon which a Planning Obligation arising under this Agreement is to be carried out or is due to be performed;
	1.43	"Sport and Leisure Contribution"	Means the sum of £30,000 (thirty thousand pounds) to be paid to the Council for the provision of sports and leisure facilities related to the Development, specifically: • £1,170 (one thousand one hundred and seventy pounds) for grass football pitch improvements at Bersted Park • £4,800 (four thousand eight hundred pounds) towards maintenance of football pitches • £3,093 (three thousand and ninety three pounds) towards ancillary facilities at the football pitch • £400 (four hundred pounds) for improvements to the grass playing surface of the rugby pitches at Hawthorn Road, Bognor Regis • £1,740 (one thousand seven hundred and forty pounds) towards maintenance of rugby pitches • £900 (nine hundred pounds) for improvements to ancillary facilities the rugby pitch • £900 (nine hundred pounds) for cricket pitch

			improvements at Bersted Park plus • £3,700 (three thousand seven hundred pounds) towards maintenance of cricket pitches • £1,000 (one thousand pounds) for improvements to ancillary facilities at cricket pitches • £897 (eight hundred and ninety seven pounds) towards surfacing 3G pitches at the West of Bersted strategic development site • £600 (six hundred pounds) towards maintenance of 3G pitches • £300 (three hundred pounds) for ancillary facilities at the 3G pitches • £4,900 (four thousand nine hundred pounds) towards swimming pool facilities at a new leisure centre in the west of the district • £4,400 (four thousand four hundred pounds) towards sports hall provision at a new leisure centre in the west of the district • £1,200 (one thousand two hundred pounds) towards health and fitness provision at a new leisure centre in the west of the district;
	1.44	"Working Day"	means a weekday (Saturdays, Sundays and public holidays days excepted) and "Working Days" shall be construed accordingly;
2.		INTERPRETATION	
	2.1	Clause headings shall not affect the interpretation of this Agreement.	
	2.2	A "person" includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).	

2.3	A reference to a “company” shall include any company, corporation or other body corporate, where and however incorporated or established.
2.4	Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
2.5	Unless the context otherwise requires a reference to one gender shall include a reference to other genders.
2.6	A reference to any party shall include that party's representatives, successors and permitted assigns and to any person deriving title through or under the party and in the case of the Council and the County Council the successors to their respective statutory functions.
2.7	Unless the context otherwise requires a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
2.8	Unless the context otherwise requires a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
2.9	A reference to “writing” and “written” does not include fax or email.
2.10	References to clauses and schedules are to the clauses and schedules of this Agreement.
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 Agreement is made under Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers whether listed in the Agreement or not.
3.2	The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations under Section 106 of the Act and subject to clause 3.3 are enforceable by the Council and the County Council as local planning authorities as appropriate against the Owner in accordance with Section 106 of the Act.
3.3	Until such time that the Owner has disposed of its interest in the Land and the transfer of part of title number SX54860 is

		registered at Land Registry the Council will be the enforcing authority in relation to the County Council Contributions.
	3.4	Upon disposal by the Owner of its interest in the Land, the County Council shall become the local planning authority responsible for enforcing the County Council Contributions.
	3.5	To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 1 Localism Act 2011 and all other enabling powers.
4	CONDITIONALITY	
	4.1	This Agreement is conditional upon the Commencement of Development save for the provisions of Clauses 2, 3, 4, 12, 14, 19, 20 and 21 which shall come into effect immediately upon completion of this Agreement.
	4.2	In the event that the Application or any Planning Condition is subject to an appeal then each Planning Obligation in this Agreement is also conditional upon:
	4.2.1	The Secretary of State or the planning inspector deciding the appeal 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 the Agreement is not compliant with the CIL Regulations and/or the NPPF or is immaterial to the grant of the 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 Agreement 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.
5	THE OWNERS' COVENANTS	
	5.1	The Owner covenants with the Council so as to bind the Land to perform the obligations as set out in the First Schedule.
	5.2	The Owner covenants with the County Council so as to bind the Land to perform the obligations as set out in the Second Schedule.
6	THE COUNCIL'S COVENANTS	
	The Council covenants with the Owner and the County Council as set out in the Third Schedule.	
7	THE COUNTY COUNCIL'S COVENANTS	
	The County Council covenants with the Owner and the Council as set out in the Third Schedule.	
8	CERTIFICATES	
	8.1	The Owner agrees with the Council and the County Council:
	8.1.1	Not more than 7 (seven) days after the Development is Commenced the Owner shall serve on the Council and the County Council a Commencement Notice in the form set out in Appendix 1 hereto.
9	MISCELLANEOUS	
	9.1	Nothing in this Agreement constitutes an obligation to grant planning permission.
	9.2	The Developer shall on completion of this Agreement pay to the Council the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Agreement in the sum of £2,200.00 (two thousand two hundred pounds)
	9.3	The Developer shall on completion of this Agreement pay to the County Council the reasonable legal costs of the County Council incurred in the negotiation, preparation and execution of this Agreement in the sum of £2,500 (Two Thousand Five Hundred Pounds)
	9.4	No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
	9.5	This Agreement shall be registered by the Council as a local land charge.
	9.6	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.
	9.7	Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall at the Owner's written request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.
	9.8	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.
	9.9	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.
	9.10	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.
	9.11	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
10	PAYMENT NOTICE	
	All payments due under this Agreement shall be forwarded to the payee and shall have attached to them a copy of the Payment Notice attached at Appendix 2 duly completed.	
11	EXCLUSIONS OF LIABILITY	
	11.1	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 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.
	11.2	No person shall be liable for any breach of any of the Planning Obligations or other provisions of this Agreement which relate to a part of the Land in which it does not have an interest.
	11.3	This Agreement 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.

	11.4	The Planning Obligations in this Agreement 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 Agreement.
	11.5	Any legal charge entered into in respect of the Land or any part of the Land after this Agreement has been completed shall take effect subject to this Agreement PROVIDED THAT the mortgagee under such a legal charge shall have no liability under this Agreement 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 Agreement that occurs prior to the mortgagee taking possession of the land.
12	WAIVER	
	No waiver (whether expressed or implied) by the Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.	
13	CHANGE IN OWNERSHIP	
	The Owner agrees with the Council and the County Council to give the Council and the County Council written notice within 10 Working Days of any change in ownership of any of its interests in the Land occurring before all the Planning 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 and County Council of any change of ownership affecting a Dwelling.	
14	FUTURE SECTION 73 CONSENTS	
	14.1	Subject to clauses 14.2 to 14.5 below, if any Section 73 Consent is granted after the date of this Agreement:
	14.1.1	the obligations in this Agreement shall relate to and bind such Section 73 Consent; and
	14.1.2	the definitions of 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.
	14.2	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.	
14.3		to the extent that any of the Planning 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.	
14.4		the provisions of this clause 14 shall not apply to any Section 73 Consent which necessitates or requires amendments to the substantive terms or Planning Obligations of or contained within this Agreement.	
14.5		the Council reserves the right to insist upon the completion of a separate Planning Obligation by Agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it necessary to do so.	
15	INDEX LINKED		
15.1		Unless there is an express provision to the contrary the Owner agrees with the Council that any sum payable by the Owner and referred to in the First Schedule shall be increased by the application of the following formula: $A = B \times (C \text{ divided by } D)$	
Where	A	is the sum actually payable on the Specified Date	
	B	is the original sum mentioned in this Agreement	
	C	is the BCIS Index for the month two months before the Specified Date	
	D	is the BCIS Index for the month two months before the date that Planning Permission is granted	
	C/D	is equal to or greater than 1	
15.2		Unless there is an express provision to the contrary the Owner agrees with the County Council that any sum payable by the Owner and referred to in the Second Schedule shall be increased by the application of the following formula: $A = B \times \frac{C}{D} \text{ where } C/D \text{ is equal to or greater than } 1$	
Where	A	A	is the sum actually payable on the Specified Date
		B	is the original sum mentioned in this Agreement
		C	is the BCIS Index for the quarter preceding the Specified Date
		D	is the BCIS Index for the date of the S106 consultation date (24 th May 2023)
		C/D	is equal to or greater than 1
15.3		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 Agreement) or in the event the index is not replaced to an alternative reasonably comparable basis or index as the Council or the County Council (as applicable) shall advise the Owner in writing.
16	INTEREST	
	Interest will be paid on sums due to the Council and the County Council under this Agreement, but not paid on the Specified Date, from the Specified Date until actual payment. The rate of interest shall be the Interest Rate.	
17	VAT	
	All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable.	
18	NOTICES	
	18.1	A notice or other communication to be given under or in connection with this Agreement must be in writing and must be:
	18.1.1	delivered by hand; or
	18.1.2	sent by recorded delivery post or other next working day delivery service.
	18.2	Any notice or other communication to be given under this Agreement must be sent to the relevant party as follows:
	18.2.1	to the Council at: Arun Civic Centre Maltravers Road, Littlehampton BN17 5LF marked for the attention of the Planning Department; and by email to planning@arun.gov.uk and quoting the Application number
	18.2.2	to the County Council at Monitoring and Records Team, Strategic Planning Division, County Hall, West Street, Chichester PO19 1RQ quoting the Application number:
	18.2.3	to the Developer at George Holdsworth, Kinsted Developments LLP, Kent House, 14-17 Market Place London, W1W 8AJ and by email to [REDACTED] and quoting the application number
	or at such other address as the relevant party shall specify by written notice to the other parties.	
	18.3	Any notice or other communication given in accordance with clause 18.1 and clause 18.2 will be deemed to have been received:
	18.3.1	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;
	18.3.2	if sent by recorded delivery or other next working day delivery service at 9 am on the second Working Day after posting.
18.4	A notice or other communication given under this Agreement shall be validly given if sent by email.	
18.5	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.	
19	Dispute Resolution	
19.1	Where any matter the subject of this Agreement shall be in dispute the parties shall use their reasonable endeavours to resolve the same within 28 (twenty-eight) days of the dispute arising.	
19.2	Failing the resolution of any such dispute disagreement or difference within 28 (twenty-eight) days of the same arising it may be referred for determination in accordance with the provisions of this clause on the reference of any of the Parties to the dispute.	
19.3	in the case of any legal requirement or interpretation or other matter regarding this Agreement the same shall be referred to Counsel of at least 15 (fifteen) years' experience in such matters who shall be appointed in default of agreement between the Owner and the Council or the County Council (as the case may be) by the Chair of the Bar Council or the Vice-Chair of the Bar Council; and	
19.4	The determination of the expert (including any determination as to the responsibility for the payment of his own costs and those of the Parties) shall be final and binding upon the Parties and on any persons claiming through or under them and judgement upon the matter may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be.	
19.5	The terms of reference of any Expert appointed to determine a dispute disagreement or difference shall include the following:	
	19.5.1	the Expert shall call for representations from both parties within 21 (twenty one) days of a reference to him under this Agreement and require the parties to exchange representations within this period;
	19.5.2	the Expert shall allow the parties 14 (fourteen) days from the expiry date of the period referred to in 19.5.1 above to make counter representations;

	19.5.3	any representations or counter representations received out of time may be disregarded by the Expert;
	19.5.4	the Expert shall provide the parties with a written decision (including his reasons) within 28 (twenty eight) days of the last date of receipt of counter representations and he shall be entitled to call for such independent expert as he shall think fit;
	19.5.5	the Expert's costs and the costs of any independent expert advice called for by the Expert shall be included in the award;
	19.5.6	unless this Agreement has already been terminated each of the respective parties shall in every case continue to comply with its obligations under this Agreement regardless of the nature of the dispute for resolution pursuant to this clause 19 (but without prejudice to the rights and obligations of the respective parties in relation to the termination of the Agreement).
20	JURISDICTION	
	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.	
21	DELIVERY	
	The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.	

FIRST SCHEDULE – OWNER COVENANTS WITH COUNCIL

The Owner covenants with the Council as follows:

1	MONITORING FEE AND COUNCIL CONTRIBUTIONS	
1.1	Prior to the Commencement of the Development to pay to the Council the Monitoring Fee.	
1.2	Shall not cause or permit the Development to be Commenced until the Monitoring Fee has been paid to the Council.	
1.3	Prior to Occupation of 50% (fifty percent) of the Market Dwellings to pay to the Council the Affordable Housing Contribution.	
1.4	Shall not cause or permit 50% (fifty percent) of the Market Dwellings to be Occupied until the Affordable Housing Contribution has been paid to the Council.	
1.5	Prior to first Occupation of the Development to pay in full to the Council the Pagham Harbour Contribution.	
1.6	Shall not cause or permit the Development to be Occupied until the Pagham Harbour Contribution has been paid in full to the Council.	
1.7	Prior to first Occupation of the Development to pay to the Council in full the Sport and Leisure Contribution.	
1.8	Shall not cause or permit the Development to be Occupied until the Sport and Leisure Contribution has been paid in full to the Council.	
1.9	Prior to first Occupation of the Development to pay to the Council the National Highways Contribution.	
1.10	Shall not cause or permit the Development to be Occupied until the National Highways Contribution has been paid to the Council.	
1.11	Prior to first Occupation of the Development to pay to the Council in full the NHS Contribution.	
1.12	Shall not cause or permit the Development to be Occupied until the NHS Contribution has been paid in full to the Council.	

SECOND SCHEDULE		
The Owner's Covenants with the County Council		
1	Education Contributions	
	1.1	To pay to the County Council prior to Commencement the Education (Primary) Contribution.
	1.2	Not to cause or allow the Commencement of the Development to occur until the Education (Primary) Contribution has been paid to the County Council.
	1.3	To pay to the County Council prior to Commencement the Education (Secondary) Contribution.
	1.4	Not to cause or allow the Commencement of the Development to occur until the Education (Secondary) Contribution has been paid to the County Council.
	1.5	To pay to the County Council prior to Commencement the Education (Sixth Form) Contribution.
	1.6	Not to cause or allow the Commencement of the Development to occur until the Education (Sixth Form) Contribution has been paid to the County Council.
	1.7	The Education (Primary) Contribution, the Education (Secondary) Contribution and the Education (Sixth Form) Contribution shall be Index Linked.
2.	Library Contribution	
	2.1	To pay to the County Council prior to Commencement the Library Contribution.
	2.2	Not to cause or allow the Commencement of the Development to occur until the Library Contribution has been paid to the County Council.
	2.3	The Library Contribution shall be Index Linked.
3.	Fire and Rescue Contribution	
	3.1	To pay to the County Council prior to Commencement the Fire and Rescue Contribution.
	3.2	Not to cause or allow the Commencement of the Development to occur until the Fire and Rescue Contribution has been paid to the County Council.

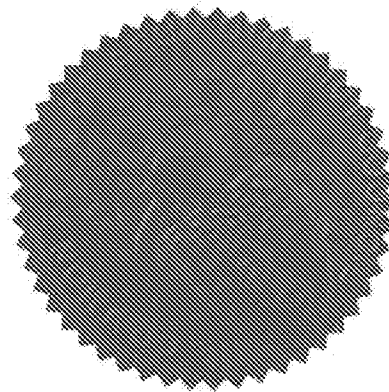
	3.3	The Fire and Rescue Contribution shall be Index Linked.
4.	Secondary School Transport Contribution	
	4.1	To pay to the County Council upon First Occupation the Secondary School Transport Contribution First Instalment Index Linked; and
	4.2	Five years after payment of the Secondary School Transport Contribution First Instalment, there shall as soon as reasonably practicable be a review by the County Council of whether the secondary school has been provided. If the secondary school has not been provided then the Owner shall pay the Secondary School Transport Contribution Second Instalment Index Linked to the County Council PROVIDED THAT should the review identify that the secondary school will be provided within the next five years, the Secondary School Transport Contribution Second Instalment shall be re-calculated in accordance with the Secondary School Transport Contribution Calculation Methodology changing the factor G to the number of years until the secondary school is provided; and
	4.3	Five years after payment of the Secondary School Transport Contribution Second Instalment (if applicable), there shall as soon as reasonably practicable be a review by the County Council of whether the secondary school has been provided. If the secondary school has not been provided then the Owner shall pay the Secondary School Transport Contribution Third Instalment Index Linked to the County Council PROVIDED THAT should the review identify that the secondary school will be provided within less than six years, the Secondary School Transport Contribution Third Instalment shall be re-calculated in accordance with the Secondary School Transport Contribution Calculation Methodology, changing the factor G to the number of years until the secondary school is provided.
5.	The County Council's Monitoring Fee	
	5.1	To pay to the County Council the County Council's Monitoring Fee on completion of this Agreement.

THIRD SCHEDULE			
The Council's and County Council's Covenants			
1	Discharge of Obligations		
	1.1	The Council covenants that at the written request of the Owner the District Council shall provide within ten Working Days written confirmation of the discharge of obligations contained in this Agreement when satisfied that the obligations have been performed.	
2	Repayment of Contributions by the District Council		
	The Council covenants with the Owner as follows:		
	2.1	to use all sums received under this Agreement for the purposes specified for which they are paid;	
	2.2	to provide the Owner with such evidence as it may reasonably require in order to confirm the expenditure of sums paid by the Owner under this Agreement; and	
	2.3	to repay to the person who made the payment such amount paid to the Council under this Agreement which has not been expended or contractually committed in accordance with the provisions of this Agreement within:	
		2.3.1	In respect of the Council Contributions 5 (five) years of the date of receipt together with interest for the period from the date of payment to the date of refund.
3	Repayment of Contributions by the County Council		
	The County Council covenants with the Owner as follows:		
3.1	Education Contributions		
	3.1.1	To expend the Education (Primary) Contribution together with any interest accruing thereon only on providing additional facilities at Bersted Green Primary School.	
	3.1.2	To expend the Education (Secondary) Contribution together with any interest accruing thereon only on providing additional facilities at the new secondary school serving Arun.	
	3.1.3	To expend the Education (Sixth Form) Contribution together with any interest accruing thereon only on providing additional facilities at the new secondary school serving Arun or The Regis School Sixth Form.	
	3.1.4	It is hereby acknowledged for the avoidance of doubt and without prejudice to paragraphs 3.1.1, 3.1.2 and 3.1.3 above that the County Council is authorised (at its discretion) to apply the Education (Primary) Contribution, the Education (Secondary) Contribution and the Education (Sixth Form) Contribution (or any parts thereof) to compensate the County Council for all work done by the County Council's employees servants agents or contractors (in all cases at fair and proper rates) to include without limitation the processing and obtaining of All Requisite Consents and the supervision and design of the implementation if a scheme and any necessary advertisements.	
3.2	Library Contribution		

	3.2.1	To expend the Library Contribution together with any interest accruing thereon only on providing additional facilities at Bognor Regis Library.
	3.2.2	It is hereby acknowledged for the avoidance of doubt and without prejudice to paragraph 3.2.1 above that the County Council is authorised (at its discretion) to apply the Library Contribution (or any parts thereof) to compensate the County Council for all work done by the County Council's employees servants agents or contractors (in all cases at fair and proper rates) to include without limitation the processing and obtaining of All Requisite Consents and the supervision and design of the implementation if a scheme and any necessary advertisements.
3.3	Fire and Rescue Contribution	
	3.3.1	To expend the Fire and Rescue Contribution together with any interest accruing thereon only on providing additional facilities to the West Sussex Fire and Rescue Services Southern Area serving Bersted.
	3.3.2	It is hereby acknowledged for the avoidance of doubt and without prejudice to paragraph 3.3.1 above that the County Council is authorised (at its discretion) to apply the Fire and Rescue Contribution (or any parts thereof) to compensate the County Council for all work done by the County Council's employees servants agents or contractors (in all cases at fair and proper rates) to include without limitation the processing and obtaining of All Requisite Consents and the supervision and design of the implementation if a scheme and any necessary advertisements.
3.4	Secondary School Transport Contribution	
	3.4.1	To expend the Secondary School Transport Contribution together with any interest accruing thereon to be used towards school transport for the number of secondary aged children expected from the development to an existing secondary school.
	3.4.2	It is hereby acknowledged for the avoidance of doubt and without prejudice to paragraph 3.4.1 above that the County Council is authorised (at its discretion) to apply the Secondary School Transport Contribution (or any parts thereof) to compensate the County Council for all work done by the County Council's employees servants agents or contractors (in all cases at fair and proper rates) to include without limitation the processing and obtaining of All Requisite Consents and the supervision and design of the implementation if a scheme and any necessary advertisements.
3.5	upon receipt of the County Council Contributions (or any part thereof) as paid to the County Council under this Agreement it will hold them 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 purposes specified in this Agreement.	

3.6	upon written request on or after 10 (ten) years of the date of receipt of the County Council Contributions (or any part thereof) to issue to the party that paid the said contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the County Council Contributions (or any part thereof) has been expended by the County Council.
3.7	if or to the extent that the County Council Contributions (or any parts thereof) shall not have been spent by the County Council by the end of the period referred to in paragraph 3.6 above the County Council shall on such date refund to the party that paid the County Council Contributions, (or any part thereof) any unexpended part of the County Contributions (or any part thereof) together with compound interest on the unexpended part from the date of receipt by the County Council Contributions (or any part thereof) 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;
3.8	if at the end of the period referred to in paragraph 3.6 of this Third Schedule 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 purposes specified 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 account to the party that paid the County Council Contributions (or any part thereof) in the manner set out in paragraph 3.6 of this Third Schedule and refund any unexpended part of the County Council Contributions (or any part thereof) in the manner set out in paragraph 3.7 of this Third Schedule.
3.9	At the written request of the Owner the County Council shall provide within 10 (ten) Working Days written confirmation of the discharge of obligations contained in this Agreement when satisfied that the obligations have been performed.

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



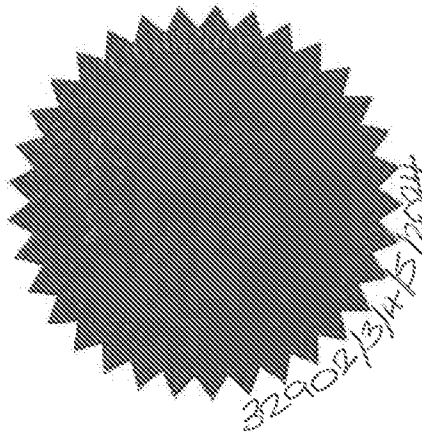
Authorised Signatory

Name: *SOFIA AHMED*

Job Title: *LAWYER*

Seal Book Number. *101/2024*

EXECUTED AS A DEED by affixing
the Common Seal of
WEST SUSSEX COUNTY COUNCIL acting as the County Council
in the presence of



Authorised Signatory

Name: *REBECCA MOUTREY*

Job Title: *SENIOR JOURNALIST*

Seal Book Number.

EXECUTED and **DELIVERED** as a deed by)
KINSTED DEVELOPMENTS)
LLP acting by its designated)
members:

.....
Duly authorised for and on behalf of
EDES ESTATES LIMITED, member

.....
..... as attorney for
LOVELL PARTNERSHIPS LIMITED,
member, under a power of attorney dated
25th July 2023

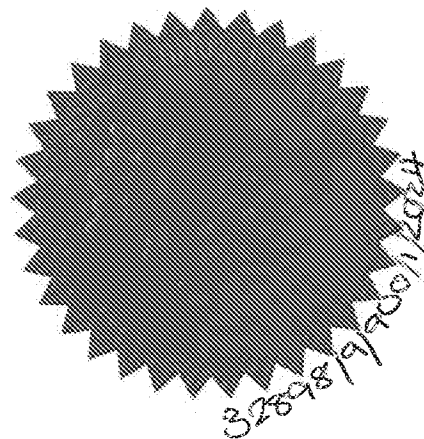
EXECUTED AS A DEED by affixing
the Common Seal of
WEST SUSSEX COUNTY COUNCIL acting as the Owner
in the presence of

.....
Authorised Signatory

Name: JONATHAN BROWN

Job Title: PRINCIPAL SOLICITOR

Seal Book Number.



APPENDIX 1
(Commencement Notice)

Pursuant to Clause 8.1.1 in the Agreement Described Below

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

Dated: this _____ day of _____ 20

Signed: _____

On Behalf of: _____

To: (1) Group Head of Planning, Arun District Council, The Civic Centre,
Maltravers Road, Littlehampton BN17 5LF (DX:57406 Littlehampton);

(2) Monitoring and Records Team, Strategic Planning Division of County Hall,
Chichester PO19 1RQ

From:

Development At:

Nature of Development:

Planning Permission Date & Reference:

Planning Obligation Date & Parties:

Start Date:

APPENDIX 2
(Payment Notice)

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

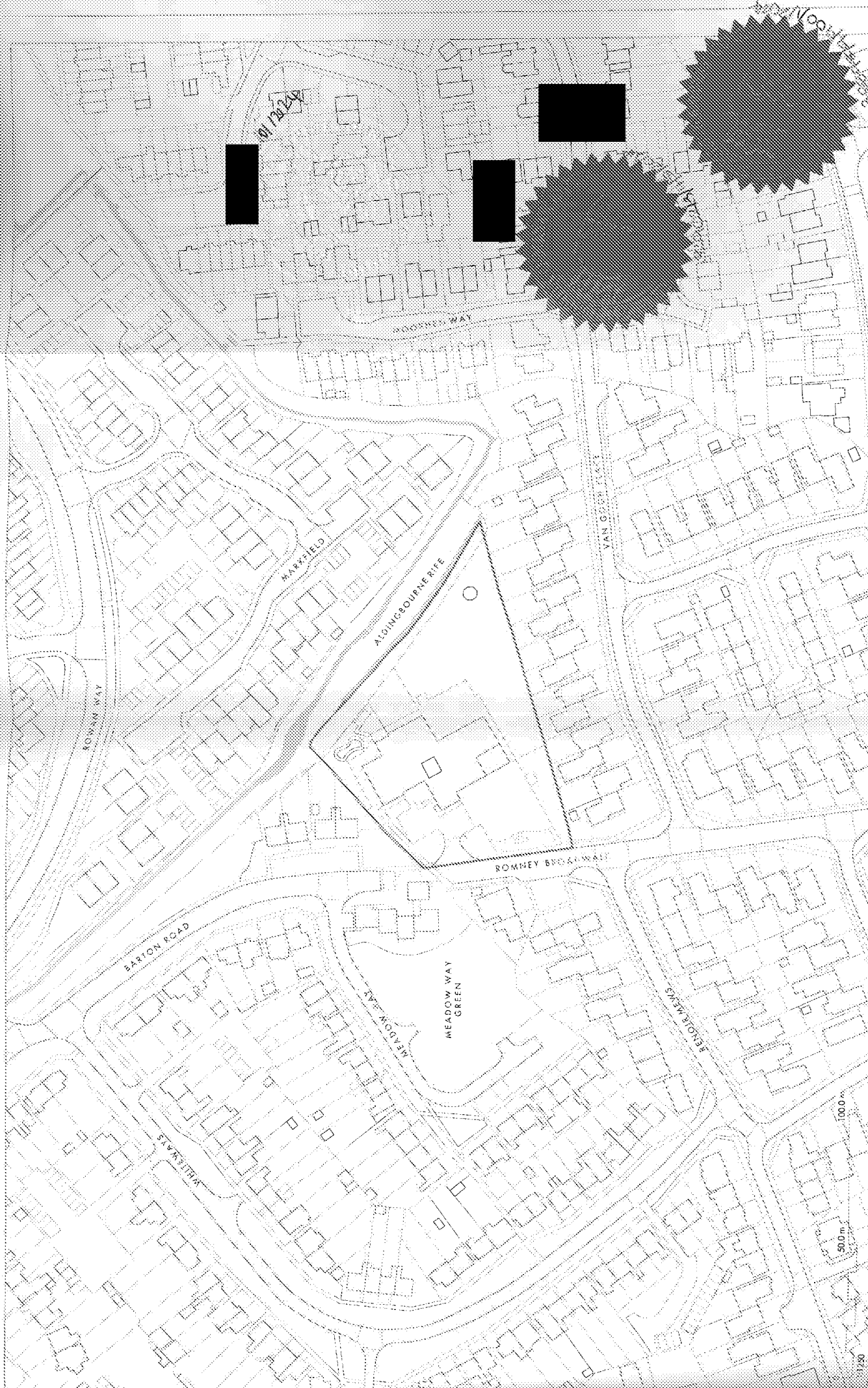
Dated: this _____ day of _____ 20

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	

APPENDIX 3 PLAN



West Sussex Site 02, North Berund
Former St James Primary School, North Berund, PO22 8BE
Site Location Plan
Site Information
21080_02-AM-07-001
SCALE 1:1250 WAS

Allies and Morrison LP
115 Southwick Street
Brighton, BN1 2BC
Tel: 01273 201 2101
www.alliesandmorrison.co.uk
AAM JOB No: 21080_02



REV.	DATE	DESCRIPTION
1	23.03.202	Issued for planning
2		

Legend:
----- Site boundary