

DATED THIS 17 DAY OF February 2020

- (1) ARUN DISTRICT COUNCIL
- (2) WEST SUSSEX COUNTY COUNCIL
- (3) MAURICE PHILIP BAILLIE
- (4) CASTLE PROPERTY DEVELOPMENTS
LIMITED

Agreement pursuant to Section 106 of
the Town and Country Planning Act 1990
relating to land at The Cottage, Shripney
Road, Bognor Regis, West Sussex,
PO22 9PA
Planning ref: BE/69/19/OUT

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

Date:

17 February

2020

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. **MAURICE PHILIP BAILLIE** of The Cottage, Shripney Road, Bognor Regis, West Sussex, PO22 9PA ("the Owner")
4. **CASTLE PROPERTY DEVELOPMENTS LIMITED** (Company Number 09842142) whose registered office is at 1 & 2 The Barn, West Stoke Road, Lavant, Chichester, West Sussex PO18 9AA ("the Applicant")

WHEREAS

1. The Council is the local planning authority, and the local authority responsible for housing, public open space 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 and is the freehold owner of the land registered at HM Land Registry under title number WSX335368 comprising the Land
3. The Owner is the freehold owner of land registered at HM Land Registry under title number WSX224893 comprising the Land
4. The Applicant has submitted the Planning Application to the Council and is proposing to carry out the Development on the Land
5. The Planning Application was refused by the Council on 10 October 2019 and the Applicant is lodging an appeal against that refusal with the Planning Inspectorate.
6. The Applicant is interested in the Land for the purposes of Section 106 of the Act under a sale contract dated 22 December 2016 between the Owner (1) and the Applicant (2) and consents to its interest taking subject to the terms of this Agreement
7. This Agreement is made as a Deed and is entered into by the parties to secure planning obligations which the Council and the County Council consider are necessary to make the Development acceptable in planning terms

NOW THIS AGREEMENT WITNESSETH as follows:

1 INTERPRETATION

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

- “Act”** means the Town and Country Planning Act 1990 as amended
- “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)
- “Affordable Housing Commuted Sum”** shall be calculated in accordance with the following formula:
- X multiplied by Y
- Where:
X = £80,000 (eighty thousand pounds); 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
- “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 either on the Council list of Approved Affordable Providers (annexed as Appendix 1); 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

- d Arun District Council as Local Housing Authority

"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

"Affordable Housing Units"

means nine (9) of the Dwellings to be provided as Affordable Housing in accordance with the terms of the First Schedule

"Affordable Rented Units"

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

"Approved Body"

means a Registered Provider being one of the Council's preferred partners or such other Registered Provider acceptable to the Council in accordance with the Council's Supplementary Planning Guidance and which has been first approved in writing by the Council

"BCIS Index"

means the BCIS All In Tender Price Index issued in the monthly bulletin of indices published by the Office of National Statistics or any successor government office, ministry or department

"CIL Regulations"

means the Community Infrastructure Levy Regulations 2010/948 (as amended)

"Clinical Commissioning Group" or "CCG"

means the NHS body responsible for the planning and commissioning of health care services for the local area

"Commencement of the Development"

means the date on which any material operation as defined in section 56(4) of the Act forming part of the Development is begun (excluding for the purposes of this Agreement and for no other purpose) any works in connection with:

- (a) operations consisting of site clearance and preparation;
- (b) archaeological, ecological and environmental investigations and surveys;
- (c) investigations and surveys for the purpose of assessing ground conditions;
- (d) remedial work in respect of any contamination or other adverse ground conditions;
- (e) removal diversion and laying of service media;
- (f) removal relocation and construction of accesses;
- (g) erection of temporary means of enclosure including hoardings and fences;
- (h) the temporary display of site notices or advertisements,

and the term **"Commence the Development"** **"Commence"** and **"Commenced"** shall be construed accordingly

"Common Parts"

means all parts of the Property that are not intended to become adopted and maintainable at the public expense including but not limited to landscaped areas footpaths estate roads and land to be used as public open space from time to time provided or designated by the Management Company for the common or general use by or for the benefit of occupiers tenants or licensees of the Dwellings and where appropriate their respective employees agents and licensees and all others from time to time authorised by the Management Company

"Completion Date"

means the date notified by the Owner to the Council in writing which is (a) before the date of First Occupation of the final Unit and (b) no less than 10 Working Days after the date the Owner elects under paragraph 5 of the First Schedule to transfer the Open Space to the Council

"CPI"

means the Consumer Price Index published from time to time by the Office of National Statistics

"Development"

means the development of the Land pursuant to the Planning Permission for 31 No. houses and flats with car parking, landscaping and associated infrastructure and access off Shripney Road (A29), all following the demolition of the existing dwelling and outbuildings

"Disposal"

means a disposal of the Affordable Dwelling Units and /or land upon which those units are to be

constructed to an Approved Body 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

"District"
"Dwelling"

means the administrative area of Arun District Council
means a residential dwelling unit to be constructed on the Land pursuant to the Planning Permission and **"Dwellings"** shall be construed accordingly

"Estate Roads"

means roads hammerheads and adjacent footways that are within the land as set out in the Second Schedule Paragraph 6

"Fire and Rescue Contribution"

means the financial contribution payable to the County Council to be used towards the supply and installation of additional fire safety equipment to vulnerable persons homes in West Sussex Fire Rescue Services Southern Area serving Bersted and which shall be payable and calculated in accordance with the following formula:

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

Where:

Note: x= multiplied by

Y = the estimated adjusted increase in population by the Development, calculated by reference to the total number of Dwellings, less any allowance for Affordable Housing Units as approved by a subsequent Reserved Matters Application approval. Using the latest published occupancy rates from census statistics published by the Office for National Statistics with the current occupancy rates given as a guidance:

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

Z = the estimated costs of providing additional fire and rescue infrastructure per head in the Southern Service Division of West Sussex at the time of payment (which for 2018/19 is £15 for Southern Division)

"First Occupation"

means beneficial Occupation for any use for which the Development was designed other than Occupation for the purposes of construction, fitting out or marketing

"Further Secondary Education Contribution"

means a financial contribution Index Linked, payable to the County Council towards the cost of providing additional educational infrastructure required to accommodate the extra demands for further secondary education generated by the Development to be used towards improved digital infrastructure for classrooms at St Philip Howard Catholic High School Sixth Form which shall be calculated as follows:
 $\text{DfE Figure (Further Secondary)} \times \text{ACP} = \text{Further Secondary Education Contribution}$
Where:

ACP (Additional Child Product) = the estimated additional number of school age children likely to be generated by the development calculated by reference to the total number of Dwellings, less any allowance for Affordable Housing Units, as approved by a subsequent reserved matters planning application. The current occupancy rates are as follows:

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

Using the latest published occupancy rates from the census statistics published by the Office for National Statistics to determine an overall population increase the following factors are applied. According to 2001 census data, there are:

- 14 persons per 1000 population in each school year group for houses; and
- 5 persons per 1000 population in each school year group for flats.

There are 5 year groups for secondary.

For Sixth Form, a factor of 0.54 is applied to the Additional Child Product figure as this is the average percentage of year 11 school leavers who continue into Sixth Form colleges in West Sussex.

DfE Figure (Further Secondary) = Department for Education (DfE) Further Secondary school building

costs per pupil place as adjusted for the West Sussex area applicable at the date when the Further Secondary Education Contribution is paid (which currently for the financial year 2019/2020 is £30,019 (thirty thousand and nineteen pounds) to be County Index Linked by reference to any change in the Royal Institution of Chartered Surveyors Building Cost Information Service All-In Tender Price Index between the date hereof and the date of payment.

"Index Linked"

means adjusted in according with clause 13

With regards to sums payable to the County Council indexation means such increase to sums payable to 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 quarter preceding the date of this Agreement and the quarter preceding the date of payment of the relevant contribution to the County Council.

"Interest Rate"

means the rate 4% above the base rate from time to time of Lloyds Bank applicable at the date the relevant contribution under this Agreement is paid

"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 Housing or such other products as may be agreed with the Council and which may include shared equity loans and discount market sale housing

"Land"

means land known as Land at The Cottage, Shripney Road, Bognor Regis, West Sussex PO22 9PA shown for identification purposes only edged red on the Plan attached hereto as Appendix 2

"LAP"

means a Local Area for Play for children of early school age which is to be provided in accordance with Arun District Council Supplementary Planning Guidance on Open Space and Recreation Standards (October 2000) or its successor Supplementary Planning Document

"LEAP"

means a Local Equipped Area for Play provided in accordance with Arun District Council Supplementary Planning Guidance on Open Space and Recreation Standards (October 2000) or its successor

Supplementary Planning Document

"Libraries Contribution"

means the financial contribution payable to the County Council for the provision of additional library facilities to serve the additional needs of the community generated by the Development and to be used on a project to enhance library space with improved digital access at Bognor Regis Library and which shall be payable in accordance with the following formula:

$L \times AP = \text{Libraries Infrastructure Contribution}$
where:

Note x = multiplied by

AP (Additional Persons) = the estimated number of additional persons generated by the development calculated by reference to the total number of Open Market Units less any allowance for Affordable Housing Units as approved by a subsequent Reserved Matters Application approval. Using the latest published occupancy rates from census statistics published by the Office for National Statistics with the current occupancy rates given as a guideline:

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

L = Extra library space in sqm, per 1,000 population x the library cost multiplier (which currently for the financial year 2019/2020 are [30/35/sqm] and £5,384 per sqm respectively)

"Management Company"

means a management company incorporated by the Owner to hold the freehold interest in the Common Parts

"Monitoring Fee"

means a contribution £2,550.00 (TWO THOUSAND FIVE HUNDRED AND FIFTY POUNDS) towards the Council's costs in monitoring compliance with this Deed

"NHS Contribution"

means a financial contribution of £35,357.00 (thirty five thousand three hundred and fifty seven pounds) Index Linked towards the infrastructure needs of

	(preferred option) to be delivered by Croft Surgery or towards the infrastructure of a new integrated community hub site in Arun which may include the provision of a new GP estate to be built on strategic sites as per the Arun District Council Local Plan (2011-2031)
"Nomination Agreement"	means a nomination agreement entered into by an Approved Body with the Council in respect of the Affordable Units containing provisions substantially in the form set out in the Appendix 3 to this Agreement
"Nomination Rights"	means the right of the Council to nominate occupiers of the Affordable Housing Units in accordance with paragraphs 2.5 – 2.8 (inclusive) of the First Schedule to this Agreement
"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
"Occupation" and "Occupied"	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security occupations
"Off-Site Children's Play Contribution"	means a financial contribution of £1,000 per dwelling index linked to Arun District Council's 'Supplementary Planning Guidance Open Space and Recreation Standards October 2000' in conjunction with Fields in Trust's 'Guidance for Outdoor Sport and Play Beyond the Six Acre Standard October 2015' towards improvements and/or additions to children's play equipment at the Berghestede play area on The Trees Estate, North Bersted
"Open Market Units"	means all those residential units to be constructed on the Land pursuant to the Permission which are not Affordable Housing Units
"Open Market Value"	means open market value assessed in accordance with the Appraisal and Valuation Manual of the RICS (the Red Book)
"Open Space"	means those areas of open space and amenity space to be provided within the Development the approximate location of which is to be shown on the Plan or such other areas as the Council may approve in writing to be laid out in accordance with the Open Space Scheme approved by the Council

"Open Space Contribution"	means the Open Space and Play Areas Maintenance Commuted Sum
"Open Space and Play Areas Maintenance Commuted Sum"	means the sum of £13.51 per m ² to be paid by the Owner to the Council if the Open Space is transferred to the Council in accordance with Paragraph 5.7 of the First Schedule (for the avoidance of doubt it is agreed that the Owner may appoint an independent measurer to measure the area of the Open Space and the independent measurer's determination of the area of the Open Space shall be final and binding on the parties).
"Open Space Scheme"	means a scheme to be submitted to and approved by the Council setting out: a) the proposed timetable and programme for delivery of the Open Space to be provided at the Development by reference to the Occupation of a certain number of Dwellings at the Development or such other alternative trigger points for delivery of the scheme as may be approved by the Council in writing when approving the scheme b) a maintenance and management plan for any Open Space to be provided at the Development, including details of whether the areas in question are to be transferred to or managed by the Owner, a Management Company or some other body or organisation c) details of the circumstances in which the Open Space may be closed to the public for maintenance, management, health and safety, and other reasons d) the Open Space Specification
"Open Space Specification"	means the specification for the Open Space to be approved by the Council as part of the Open Space Scheme which is in turn approved by the Council in accordance with the provisions of paragraph 5 of the First Schedule
"Plan"	means the Plan attached as Appendix 2
"Planning Application"	means the outline application for planning permission under BE/69/19/OUT with all matters reserved except for access

"Planning Obligations"

means the covenants, restrictions and obligations in clause 5, the First Schedule and the Second Schedule

"Planning Permission"

means a planning permission for the Development granted pursuant to the Planning Application in the form of the draft attached to this agreement as Appendix 1

"Primary Education Contribution"

means the financial contribution payable to the County Council for the provision of primary education to serve the additional needs of the community generated by the Development and to be used towards additional facilities at Aldingbourne Primary School and which shall be payable in accordance with the following formula:

$$\text{DfE figure (Primary)} \times \text{ACP} = \text{Primary Education Contribution}$$

where:

Note:

x = multiplied by

ACP (Additional Child Product) = the estimated additional number of school age children likely to be generated by the development calculated by reference to the total number of Dwellings, less any allowance for Affordable Housing Units, as approved by a subsequent Reserved Matters Application approval. The current occupancy rates are as follows:

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

Using the latest published occupancy rates from the census statistics published by the Office for National Statistics to determine an overall population increase the following factors are applied. According to 2001 census data, there are:

-14 persons per 1000 population in each school year group for houses; and

-5 persons per 1000 population in each school year group for flats.

There are 7 year groups for primary (years R to 6)

DfE Figure (Primary) = Department for Education

(DfE) Primary school building costs per pupil place as adjusted for the West Sussex area applicable at the

date when the Primary Education Contribution is paid (which currently for the financial year 2019/2020 is £18,370 (eighteen thousand three hundred and seventy pounds)) updated as necessary by the Royal Institute of Chartered Surveyors Building Cost Information Service All-In Tender Price Index

"Provide"	means a) in the case of Affordable Housing Units to design and construct such units for for habitation in accordance with the Design and Quality Standards of the Homes and Communities Agency or any replacement standards (or equivalent standards published by any replacement or successor body) to the reasonable satisfaction of the Approved Body and "Provided" shall be construed accordingly
"Qualifying Occupier"	means a person who qualifies for Affordable Housing within Schedule 1 to this Agreement and including residents of the District who are unable to resolve their housing needs in the local private sector market because of the relationship between housing costs and income
"Registered Provider"	means a provider of affordable housing registered as a provider of social housing under part 2 of the Housing and Regeneration Act 2008 or such other class or body as may be constituted under any legislation replacing that provision and appearing within or who is on the Arun District Council list of Approved Registered Providers (attached as Appendix 4 to this Agreement) or specifically approved by the Council in writing for the purposes of this Agreement (and such approval can include the Council itself as a provider of affordable housing)
"Reserved Matters Application"	means an application for approval of the details reserved by the Planning Application submitted to the Council pursuant to the Planning Permission
"RICS"	means the Royal Institute of Chartered Surveyors
"RPI Index"	means the All Items Index of Retail Prices issued in the monthly bulletin of indices published by the Office for National Statistics or any successor government office, ministry or department
"Secondary Education Contribution"	means a financial contribution payable to the County Council to be spent on fixtures, fittings and equipment

at phase 1 of the new secondary school serving Arun and which shall be calculated using the following formula:

DfE Figure (£33,538 (thirty three thousand five hundred and thirty eight pounds) x ACP = Secondary Education Contribution

Where:

ACP (Additional Child Product) = the estimated additional number of school age children likely to be generated by the development calculated by reference to the total number of Dwellings, as approved by a subsequent Reserved Matters Application approval. The current occupancy rates are as follows:

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

Using the latest published occupancy rates from the census statistics published by the Office for National Statistics to determine an overall population increase the following factors are applied. According to 2001 census data, there are:

- 14 persons per 1000 population in each school year group for houses; and
- 5 persons per 1000 population in each school year group for flats.

There are 5 year groups for secondary education (years 7 to 11)

"Section 73/96A Applications"

means applications for modifications and/or variations of the Planning Permission made under those sections of the Act

"Section 73/96A Consent"

means a planning permission granted pursuant to a successful Section 73/96A Application

"Specified Date"

means the date upon which an obligation arising under this Agreement is due to be performed

"VAT"

value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and

any similar additional tax

"Working Day"

any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

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 vice versa.
- 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 to this Agreement shall include that party's representatives, successors in title 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 A references to a clause or Schedule or plan is to a clauses a schedule or a plan in on or attached to 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 pursuant to Section 106 of the Act, Sections 111 and 135 of the Local Government Act 1972, Section 1 Localism Act 2011 and any other enabling powers
- 3.2 The covenants, restrictions and obligations contained in this Agreement are planning obligations for the purposes of Section 106 of the Act and are entered into by the Owner with the intention that they bind the interests held by those persons in the Land and their respective successors and assigns. To the extent that they fall outside of the scope of Section 106 of the Act the covenants and obligations herein are entered into by the parties pursuant to Sections 111 and 135 of the Local Government Act 1972, Section 1 Localism Act 2011 and all other enabling powers.
- 3.3 The covenants, restrictions and obligations contained in this Agreement are enforceable by the Council and County Council (as appropriate) in accordance with Section 106 of the Act.

4 CONDITIONALITY

- 4.1 This Agreement is conditional upon:
 - 4.1.1 the grant of the Planning Permission; and
 - 4.1.2 the Commencement of the Developmentsave for the provisions of Clauses 3, 4, 8.1, 8.2, 16,17,18, 19 which shall come into effect immediately upon completion of this Agreement.
- 4.2 In the event that the Planning 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/her 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/her 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.

4.3 The Council and County Council are satisfied that the Planning Obligations set out in this Agreement accord with the statutory tests set out in Regulations 122 and 123 of the CIL Regulations and shall be in full and final settlement of any community infrastructure levy which may apply to the Land due to and following the grant of the Planning Permission.

4.4 In the event that the Council or the County Council adopt a charging schedule under the CIL Regulations prior to Planning Permission being granted, the Owners shall be released from any of the obligations in this Agreement that relate to an item or project included on the Council and/or County Council's infrastructure lists and/or infrastructure funding statements.

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 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 Second Schedule.

5.3 Within seven (7) Working Days of Commencement of the Development the Owner will serve on the Council and the County Council written notification of the date on which the Commencement of Development took place

6 THE COUNCIL'S COVENANTS

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

7 THE COUNTY COUNCIL'S COVENANTS

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

8 MISCELLANEOUS

- 8.1 The Owner shall pay to the Council on completion of this Agreement the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Agreement
- 8.2 The Owner shall pay to the County Council on completion of this Agreement the reasonable legal costs of the County Council incurred in the negotiation, preparation and execution of this Agreement
- 8.3 No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.4 This Agreement shall be registrable as a local land charge by the Council.
- 8.5 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.
- 8.6 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall at the Owners' request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.
- 8.7 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.
- 8.8 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.
- 8.9 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.
- 8.10 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

9 EXCLUSIONS OF LIABILITY

- 9.1 No person shall be liable for any breach of any of the 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.
- 9.2 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.
- 9.3 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.
- 9.5 Notwithstanding any other provision of this Agreement the obligations under this Agreement shall not be binding or enforceable against:
- 9.5.1 Any mortgagee of any tenant or person to whom an Affordable Housing Provider grants a shared ownership lease or any receiver appointed by such mortgagee or any person deriving title through any such mortgagee or receiver.
- 9.5.2 Any person to whom a shared ownership lease is granted.
- 9.5.3 Any person who has acquired a either a reversionary interest or a new shared ownership lease.
- 9.6 The obligations in this Agreement shall not bind or be enforceable against any statutory undertaker who has or takes in the future an interest in the Land for the purpose of providing apparatus pursuant to its statutory undertaking for the Development
- 9.7 The obligations in this Agreement shall not bind or be enforceable against any mortgagee, chargee or receiver of an Affordable Housing Provider or any successor in title to such mortgagee chargee or receiver.
- 9.8 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

10 WAIVER

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

11 CHANGE IN OWNERSHIP

The Owner agrees with the Council and the County Council to give the Council and the County Council immediate 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 or County Council of any change of ownership affecting a Dwelling.

12 FUTURE SECTION 73/96A CONSENTS

- 12.1 Subject to clauses 12.2 to 12.5 below, if any Section 73/96A Consent is granted after the date of this Agreement:
- 12.1.1 the obligations in this Agreement shall relate to and bind such Section 73/96A Consent; and
 - 12.1.2 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 Section 73/96A Application, the development permitted by the Section 73/96A Consent and the Section 73/96A Consent itself;
- 12.2 nothing in this clause shall fetter the discretion of the Council in determining any application for a Section 73/96A Consent and the appropriate planning obligations required in connection with the determination of the same;
- 12.3 to the extent that any of the obligations in this Agreement have already been discharged at the date that a Section 73/96A Consent is granted they shall remain discharged for the purposes of the Section 73/96A Consent;

13 INDEX LINKED

- 13.1 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 Schedule 1 shall be increased by the application of the following formula:

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

Where	A	is the sum actually payable on the Specified Date
	B	is the original sum mentioned in this Agreement
	C	is the RPI Index for the quarter preceding the Specified Date

D is the RPI Index for the quarter preceding the date of this Agreement

C/D is equal to or greater than 1

- 13.2 Unless there is an express provision to the contrary the Owners agree with the County Council that any sum payable by the Owners and referred to in Schedule 2 shall be increased by the application of the following formula:

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

Where A is the sum actually payable on the Specified Date
B is the original sum mentioned in this Agreement
C is the BCIS Index for the quarter preceding the Specified Date
D is the BCIS Index for the quarter preceding the date that Planning Permission is granted
C/D is equal to or greater than 1

- 13.3 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.

- 13.4 The adjustments in clauses 13.1 and 13.2 above shall only be made where the Specified Date is more than six (6) months after the date of this Agreement

14 INTEREST

If any payment due under this Agreement is paid late, interest will be payable from the date payment is due to the date of payment at the Interest Rate

15 VAT

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

16 NOTICES

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

16.1.1 delivered by hand; or

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

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

16.2.1 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;

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

16.2.3 to the Owner at: *The Cottage Nursery, Shipney Road, Bosmer Ridge, West Sussex PO22 9PA*

16.2.4 to the Applicant at: Mr J Chatterton, Castle Property Developments Limited, 1 & 2 The Barn, West Stoke Road, Lavant, Chichester, West Sussex, PO18 9AA

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

16.3 Any notice or other communication given in accordance with clause 16.1 and clause 16.2 will be deemed to have been received:

16.3.1 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;

16.3.2 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.

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

16.5 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.

17 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.

18 DISPUTES

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 Institute of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996

19 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
The Owner's Covenants with the Council

The Owner covenants with the Council as follows:

1 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 To submit the Affordable Housing Scheme to the Council for approval as part of any Reserved Matters Application (such approval not to be unreasonably withheld)
- 1.3 To construct the Affordable Housing at the Development in accordance with the approved Affordable Housing Scheme.
- 1.4 Subject to the provisions of this paragraph 1 the Affordable Housing Units shall only be disposed of by an Owner to an Affordable Housing Provider save by way of mortgage or charge.
- 1.5 To procure that the Affordable Housing Units are to be constructed and completed no later than the date on which the last market Housing Unit is completed.
- 1.6 (Unless otherwise agreed in writing with the Council) not to Occupy or permit or allow the Occupation of any of the market Housing Units without first having procured the disposal of the Affordable Housing Units (either freehold or leasehold for a period of not less than 165 years) to a Registered Provider on terms which ensure that the Affordable Housing Units are and remain bound by the obligations and restrictions in this First Schedule
- 1.7 With effect from the date on which they are completed 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

2.0 Mechanics of Transfer to a Registered Provider

FIRST OFFER

- 2.1 The Owner shall make an offer to a Registered Provider which shall include:
 - 2.1.1 a contract for the sale of land;
 - 2.1.2 a draft transfer
- 2.2 such offer shall remain open for acceptance for no less than 3 months ("the first offer period") from the date of the offer being made ("the

offer date").

SECOND OFFER

- 2.3 In the event that the first offer is not accepted within 3 months of the offer date then the Owner shall make a second offer to another Registered Provider to enter into a sale of land contract not later than one month after the expiry of the first offer period ("**the second offer**") and such 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 ("**the second offer date**")

Commuted Sum Payable If First and Second Offer Not Implemented

- 2.4 In the event that the second offer is not accepted (through the Affordable Housing Provider entering into a binding contract) within the Second Offer Period that the Owner shall:

2.4.1 on or before Occupation of 50% of the Open Market Units pay to the Council the Affordable Housing Commuted Sum whereupon once such sum has been paid to the Council the Owner and any successor in title shall be released from the provisions of this Schedule insofar as they relate to all or any of the Affordable Housing Units and the Affordable Housing Units may be sold on the open market as Open Market Units; and

2.4.2 not cause or permit more than 50% of the Open Market Units to be Occupied unless the Affordable Housing Commuted Sum has been paid to the Council

NOMINATION RIGHTS

- 2.5 To procure that the Registered Provider grants 100% Nomination Rights to the Council in relation to the First Occupation of the Affordable Housing Units and 75% thereafter PROVIDED THAT if the Council do not accept such offer then the Registered Provider shall in seeking to allocate the Affordable Housing Units have regard as far as possible to the following criteria:

2.5.1 any family association in the District in accordance with any relevant housing allocation policy;

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

2.5.3 any employment opportunity in the District;

- 2.5.4 any other connection with the District but for the avoidance of doubt the satisfaction of such criteria hereof shall be determined by the Registered Provider.
- 2.6 To procure that any transfer of Affordable Housing Units to an Affordable Housing Provider will contain the following provisions:
- 2.6.1 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;
- 2.6.2 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; and
- 2.6.3 the imposition of such covenants as the Owner shall reasonably require and are consistent with the sale of any Open Market Unit.
- 2.6.4 a condition that the Registered 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, enter into a Nomination Agreement with the Council
- 2.7 The Owner covenants with the Council:
- 2.7.1 to take all reasonable and prudent steps within its power to advertise the repossession of the Affordable Dwellings by any Chargee of the Affordable Housing Provider or the exercise by any Chargee of a power of sale and for these purposes in the event of a default under the security or likely default to cooperate fully with the Council to assist in arranging the transfer of the Affordable Dwellings with sitting tenants to another Affordable Housing Provider or, at the Council's option, to the Council;
- 2.7.2 in the event 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
- 2.7.3 in the event 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.

2.8 the Owner and the Council hereby agrees that:

2.8.1 in the event of a default under any security referred to in paragraph 2.7 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 Dwellings or any part of them to another Affordable Housing Provider;

2.8.2 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 2.7.1 the disposal of any interest in the Affordable Dwellings 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 or Applicant in obtaining such subsidy or other financial support) in respect of the Affordable Housing Units;

3.2 The provisions of this Schedule shall cease to bind any of the Affordable Housing Units if in relation to that Affordable Housing Unit:

3.2.1 a tenant (or their successor in title or mortgagee) has exercised their statutory right to acquire pursuant to the Housing Act 1985 or Housing Act 1996 (or any statutory re-enactment amendment or replacement thereof);

3.2.2 it shall have been sold under a shared ownership lease and the leaseholder (or their successor in title or mortgagee) has staircased his ownership under the lease to 100 percent

4 MORTGAGEE IN POSSESSION CLAUSE

4.1 The Affordable Housing provisions in this Agreement shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator

(howsoever appointed) including a housing administrator (each a Receiver) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- 4.1.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Unit(s) 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 Unit(s) 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
- 4.1.2 if such disposal has not completed within the three (3) month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Unit(s) free from the Affordable Housing provisions in this Agreement which provisions shall in respect of that Affordable Housing Unit(s) determine absolutely

5 PROVISION OF PUBLIC OPEN SPACE

- 5.1 Prior to the Commencement of the Development to submit the Open Space Scheme to the Council for approval (such approval not to be unreasonably withheld)
- 5.2 Not to cause or permit the Development to be Commenced until the Open Space Scheme has been submitted to the Council for approval (such approval not to be unreasonably withheld)
- 5.3 Not to cause or permit the First Occupation of the 19th Dwelling until the Open Space has been provided and laid out in accordance with the Open Space Specification
- 5.4 Not to cause or permit First Occupation of the 19th Dwelling until the Owner has notified the Council in writing as to whether it has elected to transfer the Open Space to:
 - 5.4.1 a Management Company or such other third party which may be approved by the Council in writing, or
 - 5.4.2 the Council (and if so elects, the Completion Date for this transfer)
- 5.5 If the Owner under paragraph 5.4 above elects to transfer the Open Space to the Management Company, it shall effect the transfer of the

Open Space upon the earlier of (a) First Occupation of the Final Unit; or
(b) incorporation of the Management Company

- 5.6 If the Owner under paragraph 5.5 above elects to transfer the Open Space to the Council the Owner shall pay the Open Space Contribution to the Council within 12 (twelve) months of completion of the Open Space

6 OFF-SITE CHILDREN'S PLAY CONTRIBUTION

- 6.1 To pay to the Council prior to the First Occupation of any Dwelling the Off-Site Children's Play Contribution
- 6.2 Not to Occupy or cause or permit the First Occupation of any Dwelling until the Off-Site Children's Play Contribution has been paid to the Council

7 NHS CONTRIBUTION

- 7.1 Prior to Commencement of Development to pay to the Council the NHS Contribution
- 7.2 Not to Commence or cause or permit Commencement of Development until the NHS Contribution has been paid to the Council

8 MONITORING FEE

- 8.1 To pay to the Council on completion of this Deed the Monitoring Fee

SECOND SCHEDULE
The Owner's Covenants with the County Council

1 PRIMARY EDUCATION CONTRIBUTION

- 1.1 Prior to the First Occupation of any Dwelling to pay to the County Council the Primary Education Contribution.
- 1.2 Not to cause or allow the First Occupation of any Dwelling before the Primary Education Contribution has been paid to the County Council.

2 SECONDARY EDUCATION CONTRIBUTION

- 2.1 Prior to the First Occupation of any Dwelling to pay to the County Council the Secondary Education Contribution.
- 2.2 Not to cause or allow the First Occupation of any Dwelling before the Secondary Education Contribution has been paid to the County Council.

3 FURTHER SECONDARY EDUCATION CONTRIBUTION

- 3.1 Prior to the First Occupation of any Dwelling to pay to the County Council the Further Secondary Education Contribution.
- 3.2 Not to cause or allow the First Occupation of any Dwelling before the Further Secondary Education Contribution has been paid to the County Council.

4 LIBRARY CONTRIBUTION

- 4.1 Prior to the First Occupation of any Dwelling to pay to the County Council the Library Contribution.
- 4.2 Not to cause or allow the First Occupation of any Dwelling before the Library Contribution has been paid to the County Council.

5 FIRE AND RESCUE CONTRIBUTION

- 5.1 Prior to the First Occupation of any Dwelling to pay to the County Council the Fire and Rescue Contribution.
- 5.2 Not to cause or allow the First Occupation of any Dwelling before the Fire and Rescue Contribution has been paid to the County Council.

6 ESTATE ROADS

- 6.1 Prior to the Commencement of Development to submit to the County Council for approval a plan showing the intended status of the Estate Roads and associated footways, footpaths and cycleways (for the avoidance of doubt those roads, footways and footpaths and cycleways that will be offered for adoption under s38 of the Highways Act 1980). Any plan should also include details of surfacing, materials and construction of the Estate Roads.
- 6.2 In the event that all or part of the Estate roads are not to be offered for adoption then prior to First Occupation to submit to County Council:
- 6.2.1 the name and contact details of the person or persons responsible for maintaining the Estate Roads; and
- 6.2.2 a schedule for approval of the street furniture and a regime of maintenance
- 6.3 It is agreed with County Council that all Estate Roads that are stated to be privately maintained shall be:
- 6.3.1 constructed to a standard that is suitable for their intended use; and
- 6.3.2 maintained by the Owner or Management Company at their own expense in good and substantial repair and condition
- 6.3.3 shall not be dedicated by the Owner or Management Company as a public highway or become a private street as defined in the New Roads and Street Works Act 1991
- 6.4 Upon completion of the construction of the Estate Roads not being adopted under a s38 Agreement the Owner will provide a report to be prepared and signed by a chartered engineer at their own expense to confirm that construction of the privately maintained Estate Roads have been designed and built to a suitable standard for their intended use.
- 6.5 The Owner and any Management Company covenant with County Council:
- 6.5.1 that the privately maintained Estate Roads shall remain at all times available for use by both residents of the Development and members of the public, in the latter case without charge; and
- 6.5.2 to erect and maintain signs in positions agreed with County Council advising the public that they are permitted to use the privately maintained Estate Roads on foot and by

bicycle but that it is not a public highway so as to prevent the dedication of the privately maintained Estate Roads and to prevent any presumption of dedication (whether arising under Section 31 Highways Act 1980 or otherwise).

THIRD SCHEDULE Council Covenants

The Council covenants with the Owner as follows:

1. Open Space Contribution

- 1.1 Upon receipt of the Open Space Contribution under paragraph 5 of the First Schedule it will hold it in a separately identified interest bearing section of the Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Agreement in the vicinity of the Land.
- 1.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Open Space Contribution to issue to the party that paid the Open Space Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the Council detailing how the Open Space Contribution has been expended by the Council
- 1.3 If or to the extent that any of the Open Space Contribution shall not have been spent by the Council by the end of the period referred to in paragraph 1.2 above the Council shall on such date refund to the party that paid the Open Space Contribution any unexpended part of any of Open Space Contribution together with compound interest on the unexpended part(s) from the date of receipt by the Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 1.4 If at the end of the period referred to in paragraph 1.2 of this Schedule the Council shall have entered into a contract or other legally binding obligation to expend the Open Space Contribution or part thereof for the purposes specified in paragraph 1.1 then the Council shall not be required to refund any part of the Open Space Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Open Space Contribution in the manner set out in paragraph 1.2 of this Schedule and refund any unexpended part of the Open Space Contribution in the manner set out in paragraph 1.3 of this Schedule

2 Off-Site Children's Play Contribution

- 2.1 Upon receipt of the Off-Site Children's Play Contribution under paragraph 6 of the First Schedule it will hold it in a separately identified interest bearing section of the Council's combined accounts and apply the same together with any interest accruing on it for the purpose

specified by this Agreement in the vicinity of the Land.

- 2.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Off-Site Children's Play Contribution to issue to the party that paid the Off-Site Children's Play Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the Council detailing how the Off-Site Children's Play Contribution has been expended by the Council
- 2.3 If or to the extent that any of the Off-Site Children's Play Contribution shall not have been spent by the Council by the end of the period referred to in paragraph 2.2 above the Council shall on such date refund to the party that paid the Off-Site Children's Play Contribution any unexpended part of any of Off-Site Children's Play Contribution together with compound interest on the unexpended part(s) from the date of receipt by the Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 2.4 If at the end of the period referred to in paragraph 2.2 of this Schedule the Council shall have entered into a contract or other legally binding obligation to expend the Off-Site Children's Play Area Contribution or part thereof for the purposes specified in paragraph 2.1 then the Council shall not be required to refund any part of the Off-Land Children's Play Area Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Off-Site Children's Play Area Contribution in the manner set out in paragraph 2.2 of this Schedule and refund any unexpended part of the Off-Site Children's Play Area Contribution in the manner set out in paragraph 2.3 of this Schedule

3 NHS Contribution

- 3.1 To expend the NHS Contribution together with any interest accruing thereon only by paying it to the CCG to mitigate the adjusted population for the Development

FOURTH SCHEDULE

County Council Covenants

The County Council covenants with the Owner as follows:

1 Primary Education Contribution

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

2 Secondary Education Contribution

- 2.1 Upon receipt of each instalment of the Secondary Education Contribution under paragraph 2 of the Second Schedule it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Agreement in the vicinity of the Land.

- 2.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Secondary Education Contribution to issue to the party that paid the Secondary Education Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the Secondary Education Contribution has been expended by the County Council.
- 2.3 If or to the extent that any of the Secondary Education Contribution shall not have been spent by the County Council by the end of the period referred to in paragraph 2.2 above the County Council shall on such date refund to the party that paid the Secondary Education Contribution any unexpended part of any of Secondary Education Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 2.4 If at the end of the period referred to in paragraph 2.2 of this Schedule the County Council shall have entered into a contract or other legally binding obligation to expend the Secondary Education Contribution or part thereof for the purposes specified in paragraph 2.1 then the County Council shall not be required to refund any part of the Secondary Education Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Secondary Education Contribution in the manner set out in paragraph 2.2 of this Schedule and refund any unexpended part of the Secondary Education Contribution in the manner set out in paragraph 2.3 of this Schedule.

3 Further Secondary Education Contribution

- 3.1 Upon receipt of the Further Secondary Education Contribution under paragraph 3 of the Second Schedule it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Agreement in the vicinity of the Land.
- 3.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Further Secondary Education Contribution to issue to the party that paid the Further Secondary Education Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the Further Secondary Education Contribution has been expended by the County Council.
- 3.3 If or to the extent that any of the Further Secondary Education

Contribution shall not have been spent by the County Council by the end of the period referred to in paragraph 3.2 above the County Council shall on such date refund to the party that paid the Further Secondary Education Contribution any unexpended part of any of Further Secondary Education Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.

- 3.4 If at the end of the period referred to in paragraph 3.2 of this Schedule the County Council shall have entered into a contract or other legally binding obligation to expend the Further Secondary Education Contribution or part thereof for the purposes specified in paragraph 3.1 then the County Council shall not be required to refund any part of the Further Secondary Education Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Further Secondary Education Contribution in the manner set out in paragraph 3.2 of this Schedule and refund any unexpended part of the Further Secondary Education Contribution in the manner set out in paragraph 3.3 of this Schedule.

4 Library Contribution

- 4.1 Upon receipt of the Library Contribution under paragraph 4 of the Second Schedule it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Agreement in the vicinity of the Land.
- 4.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Library Contribution to issue to the party that paid the Library Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the Library Contribution has been expended by the County Council.
- 4.3 If or to the extent that any of the Library Contribution shall not have been spent by the County Council by the end of the period referred to in paragraph 4.2 above the County Council shall on such date refund to the party that paid the Library Contribution any unexpended part of any of Library Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 4.4 If at the end of the period referred to in paragraph 4.2 of this Schedule the County Council shall have entered into a contract or other legally

binding obligation to expend the Library Contribution or part thereof for the purposes specified in paragraph 4.1 then the County Council shall not be required to refund any part of the Library Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Library Contribution in the manner set out in paragraph 4.2 of this Schedule and refund any unexpended part of the Library Contribution in the manner set out in paragraph 4.3 of this Schedule.

5 Fire And Rescue Contribution

- 5.1 Upon receipt of the Fire and Rescue Contribution under paragraph 5 of the Second Schedule it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Agreement in the vicinity of the Land.
- 5.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Fire and Rescue Contribution to issue to the party that paid the Fire and Rescue Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the Fire and Rescue Contribution has been expended by the County Council.
- 5.3 If or to the extent that any of the Fire and Rescue Contribution shall not have been spent by the County Council by the end of the period referred to in paragraph 5.2 above the County Council shall on such date refund to the party that paid the Fire and Rescue Contribution any unexpended part of any of Fire and Rescue Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 5.4 If at the end of the period referred to in paragraph 5.2 of this Schedule the County Council shall have entered into a contract or other legally binding obligation to expend the Fire and Rescue Contribution or part thereof for the purposes specified in paragraph 5.1 then the County Council shall not be required to refund any part of the Fire and Rescue Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Fire and Rescue Contribution in the manner set out in paragraph 5.2 of this Schedule and refund any unexpended part of the Fire and Rescue Contribution in the manner set out in paragraph 5.3 of this Schedule.

APPENDIX 1
DRAFT PLANNING PERMISSION

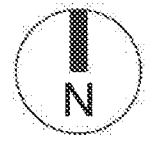
APPENDIX 2 PLAN



Lindley

Peacehaven

Royce Cottage



SITE PLAN

Client's Name
Castle Property Developments Ltd.

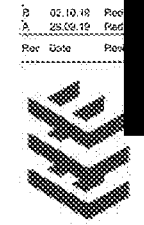
Job Title
The Cottage, Shripney Road,
Bognor, PO22 9PA

Drawing Title
Site Plan
Section 106

Scale:
1:500 @ A3

Drawn	Checked	Date
JR	KE	19.09.19
Job No	Drawing No	Rev
6656	020	B

INFORMATION



1 01963 263177 E.surrey@ecearchitecture.com
Bognor: 01243 85571 E.bognor@ecearchitecture.com
1 0117 315 8557 E.bognor@ecearchitecture.com
www.ecearchitecture.com

APPENDIX 3
DRAFT NOMINATIONS AGREEMENT

DATED

20[]

(1) [•][]

AND

(2) ARUN DISTRICT COUNCIL

AGREEMENT OF NOMINATION

relating to
rented units at

CONTENTS

	Page No.
1 DEFINITIONS	2
2 ENABLING PROVISIONS	2
3 PROCEDURE	3
4 NOTICES	5
5 TRANSFERS TO OTHER REGISTERED SOCIAL LANDLORDS	5
6 MORTGAGEES IN POSSESSION	5
7 DISPUTES	5
8 COSTS	5
9 AGREEMENTS AND DECLARATIONS	5

BETWEEN

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

1 DEFINITIONS

In this Agreement :

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

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

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

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

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

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

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

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

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

- (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 Agreement) the function of such a notice being the notification to the Council of a Void.

2 ENABLING PROVISIONS

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

3 PROCEDURE

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

Initial Lets

- 3.1 The RSL shall give the Council not less than eight weeks written notice of the date when the Initial Let units will be ready for Occupation.
- 3.2 The RSL shall serve on the Council a Vacancy Notice in respect of each Rented Unit not less than four weeks prior to such newly constructed and previously unoccupied Rented Unit becoming available for Occupation.
- 3.3 The Council shall within 10 working days of receipt of a Vacancy Notice serve upon the RSL the Nomination List setting out a list of Nominees.
- 3.4 The Nomination List to be served by the Council under clause 3.3 shall:
 - 3.4.1 specify the appropriate category of Rented Unit to which it relates; and
 - 3.4.2 indicate the priority for the housing of the Nominees.
- 3.5 The RSL shall have the right to let the Initial Let in respect of the Rented Units to persons of its own choosing in the event of the Council's failure to serve the Nomination List referred to in clause 3.3 within the period of 10 working days of receipt of the Vacancy Notice.
- 3.6 The RSL shall within five working days of the date of receipt of the Nomination List referred to in clause 3.3 select a Nominee from the Nomination List in priority order and shall use its reasonable endeavours to arrange viewing of the relevant Rented Unit and offer a Tenancy Agreement to such selected Nominee.
- 3.7 If the selected Nominee fails to enter into a Tenancy Agreement within five working days of receipt of the RSL's offer of a Tenancy Agreement such selected Nominee shall be deemed to have rejected the RSL's offer and the RSL shall select another Nominee whereupon the procedure set out in clause 3.6 and this clause shall be repeated.
- 3.8 In the event of the second selected Nominee failing to accept the RSL's offer of a Tenancy Agreement within the time prescribed by clause 3.7 then the RSL shall make an offer to a third Nominee and the procedure set out in clauses 3.6 and 3.7 shall apply but in the event of such third selected Nominee failing to accept the RSL's offer of a Tenancy Agreement within the prescribed time limits the RSL shall not be bound to make any further offers of accommodation to Nominees in respect of such vacancy of the Rented Unit but shall be entitled to let the Rented Unit to a tenant of its own choosing.
- 3.9 The RSL's obligations under clauses 3.1 to 3.8 shall cease when all of the Rented Units have been offered to Nominees in accordance with clauses 3.6 to 3.8.

Voids

- 3.10 Should a Rented Unit become a Void after the Initial Let or the RSL has reasonable cause to believe it will become a Void then and in each case:
 - 3.10.1 the RSL shall serve a Void Notice in respect of the relevant vacant Rented Unit; and

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

Provision of information and alteration of lists

- 3.14 The RSL shall give notification to the Council of the occurrence of the following events within five working days of their occurrence:
 - 3.14.1 a Nominee or Subsequent Nominee failing to view a Rented Unit within 10 working days of an offer being made;
 - 3.14.2 a Nominee or Subsequent Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Agreement;
 - 3.14.3 a Nominee or Subsequent Nominee accepting an offer of a Tenancy Agreement;
 - 3.14.4 a person accepting an offer of a tenancy from the RSL;
 - 3.14.5 the RSL rejecting a Nominee or Subsequent Nominee in accordance with clause 3.20.
- 3.15 In the event of a notice being served pursuant to clause 3.14 then the name of such Nominee or Subsequent Nominee shall be removed from the Nomination List.
- 3.16 Within 10 working days of the Council receiving notice served in accordance with clause 3.14 above save for notice under 3.14.4 the Council shall serve upon the RSL the name and address of a Nominee or Subsequent Nominee to add to the Nomination List such notice to include the information set out in clause 3.4.
- 3.17 If the Council shall within the period mentioned in clause 3.16 notify the RSL that the Council then has no suitable Nominee or Subsequent Nominee the Council shall advise the RSL of a suitable replacement Nominee or Subsequent Nominee as soon as reasonably practicable.
- 3.18 The RSL shall have the right to let a Rented Unit to a person of its choosing if the Council's failure to provide a Nominee or Subsequent Nominee creates a Void in respect of that Rented Unit.
- 3.19 On 1 April, 1 July, 1 October and 1 January in each year the RSL shall serve the Council with details of the letting activities of the Rented Units in a format to be agreed between the RSL and the Council.
- 3.20 The RSL shall have the right to interview and make enquiries of each Nominee or Subsequent Nominee and by serving written notice upon the Council to that effect to

reject any Nominee or Subsequent Nominee if in the opinion of the RSL the grant of an Assured Tenancy to such Nominee would be in contravention of the RSL's registered rules or its letting criteria.

- 3.21 The Council shall immediately notify the RSL in writing if any Nominee or Subsequent Nominee is withdrawn from the Nomination List.
- 3.22 When calculating percentage for the purposes of this Agreement percentage equal to or in excess of 0.5 shall be rounded up and percentages less than 0.5 shall also be rounded up.
- 3.23 The Council and the RSL agree that the nomination rights contained in this Agreement may be varied from time to time but only by agreement in writing by the parties.

4 NOTICES

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

5 TRANSFERS TO OTHER REGISTERED SOCIAL LANDLORDS

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

6 MORTGAGEES IN POSSESSION

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

7 DISPUTES

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

8 COSTS

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

9 AGREEMENTS AND DECLARATIONS

The parties agree:

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

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

APPENDIX 4 **ARUN DISTRICT COUNCIL APPROVED REGISTERED PROVIDERS**

Provider	Contact and email	Address	Tel. No
Clarion Housing Group	Liz Hills, Head of Development (New Projects) [REDACTED]	Upton House, 7 Perrymount Rd, Haywards Heath, West Sussex, RH16 3TN	[REDACTED]
The Guinness Partnership	Claudette Rawlinson, New Business Manager [REDACTED]	33 East Street Havant Hampshire PO9 1AA	
The Hyde Group	John Martin [REDACTED]	Telecom House 125 – 135 Preston Road Brighton West Sussex BN1 6AF	
Worthing Homes	Damian Haley, Development Manager [REDACTED]	Davison House North Street Worthing West Sussex BN11 1ER	
Stonewater	Jacqueline Burton, Development Officer [REDACTED]	Waverley House 115-118 Holdenhurst Road Bournemouth BH8 8DY	
Saxon Weald	Mona Johansson, Programme Manager [REDACTED]	Saxon Weald House 38-42 Worthing Road Horsham West Sussex RH12 1DT	
Aster Group	Edward Till, Development Manager [REDACTED]		
Arun District Council	Satnam Kaur, Group Head of Residential Services [REDACTED]	Civic Centre, Maltravers Rd, Littlehampton, BN17 5LF	

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:

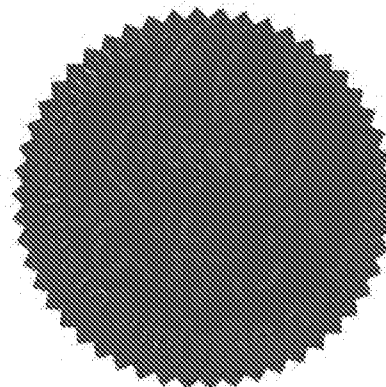


Seal Book No: 22(2020)

AUTHORISED SIGNATORY

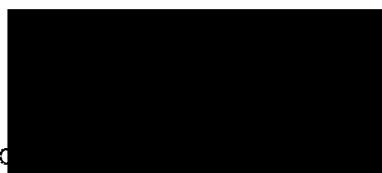
PRINT NAME SARAH CHARLES

JOB TITLE PROPERTY LAWYER



SEALED with the COMMON SEAL
of **WEST SUSSEX COUNTY COUNCIL**

in the presence of:

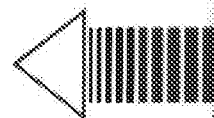
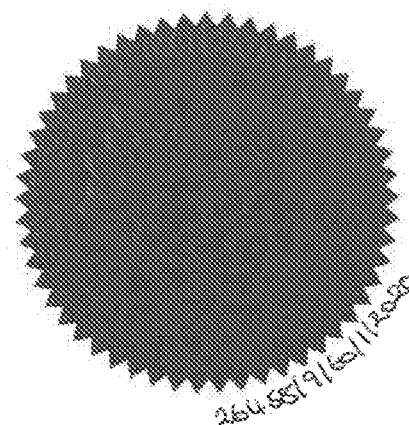


Seal Book

AUTHORISED SIGNATORY

PRINT NAME

JOB TITLE



EXECUTED AS A DEED by

MAURICE PHILIP BAILLIE

in the presence of:

Signature of Witness:

Witness Name:

Witness Address:

Aimee Ellery - Solicitor
62 North Street
Chichester PO19 1NQ

Witness Occupation:

EXECUTED AS A DEED on behalf of
of **CASTLE PROPERTY DEVELOPMENTS LIMITED**
acting by a Director in the presence of:

Signature of Witness:

Witness Name: *Julia Gleeson*

Witness Address: *56 Sea Lane,
Aoring, Worthing, West Sussex
BN12 4PY*

Witness Occupation: *Fitness Manager*