

DATED 3 December 2021

- (1) ARUN DISTRICT COUNCIL
- (2) WEST SUSSEX COUNTY COUNCIL
- (3) PAUL VOLLER and CLARE JANE VOLLER
- (4) LLOYDS BANK PLC

Agreement pursuant to Section 106 of
the Town and Country Planning Act
1990 relating to land at Land South Of Barnham Station.

Planning ref: BN/142/20/OUT

Appeal Ref: APP/P/C3810/W/21/3273087

Arun District Council
The Civic Centre
Maltravers Road
Littlehampton
BN17 5LF
DX57406 LITTLEHAMPTON

Ref: 8661

Date:

3 December

2021

PARTIES:

- 1 ARUN DISTRICT COUNCIL of The Civic Centre, Maltravers Road, LITTLEHAMPTON BN17 5LF ("the Council")
- 2 WEST SUSSEX COUNTY COUNCIL of County Hall, West Street, Chichester, PO19 1RQ ("the County Council")
- 3 PAUL VOLLER and CLARE JANE VOLLER of Tars Farm, Church Lane, Barnham, Bognor Regis, PO22 0DB ("the Owner")
4. LLOYDS BANK PLC (Company Registration Number 2065) of Pendeford Securities Centre, Pendeford Business Park, Wobaston Road, Wolverhampton, WV9 5HZ ("Lloyds")

RECITALS

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 is the Local Highway Authority for the area in which the Land is situated.
3. The Council shall be responsible for enforcing this Deed for all purposes.
4. The County Council shall be responsible for enforcing this Deed so far as highways and transport matters are concerned.
5. The Owner is the registered proprietor with Title Absolute of the Land registered at HM Land Registry under Title Numbers WSX360689 and WSX360690, known respectively as land at Tars Farm, Church Lane, Barnham, Bognor

Regis and land adjoining Tars Farm, Church Lane, Barnham, Bognor Regis and known as land south of Barnham Station, Barnham.

6. The Developer made the Application to the Council and is proposing to carry out the Development.
7. The Council refused the Application on 23rd February 2021 and the Developer has lodged the Appeal against the said refusal with the Secretary of State pursuant to section 78(1) of the Act.
8. The Owner and the Council agree that in the event that the Appeal is allowed by the Secretary of State and the Planning Permission is granted the Planning Obligations herein are necessary to mitigate the impacts of the Development and therefore have agreed to enter into this Agreement accordingly.
9. Lloyds has an interest in the Land by virtue of the following:
 - 9.1 a registered charge dated 23 June 2008 in respect of those parts of the Land registered under Title Number WSX360689;
 - 9.2 a registered charge dated 26 July 2013 in respect of part of the Land registered under Title Number WSX360689; and
 - 9.3 a registered charge dated 26 July 2013 in respect of part of the land registered under Title Number WSX360690;

and Lloyds therefore enters into this Deed solely to give the consent set out at Clause 9.7 herein.

NOW THIS DEED WITNESSETH as follows:

1. Interpretation:

In this Agreement unless the 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
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1.2 "A27 Works"	means a scheme of works to the A27 junctions in Arun and Chichester to be identified by Highways England
1.3 "A27 Works Agreement"	means an agreement entered into prior to First Occupation made pursuant to s278 of the Highways Act 1980 to secure the payment of the A27 Works Contribution to Highways England prior to the Occupation of more than 100 Dwellings
1.4 "A27 Works Contribution"	means the sum of £103,116 (one hundred and three thousand, one hundred and sixteen pounds) Indexed Linked, towards a scheme of highway mitigation measures on the A27 for junctions identified in the Enterprise Bognor Regis Transport Review 2017 as impacted by development in the Barham area (Whyke, Bognor Road, Nyton Road, Fontwell West, Fontwell East, Ford Road and The Causeway)
1.5 "Affordable Dwelling(s)"	means those Dwellings to be provided within the Development as Affordable Housing which shall comprise 30% of the Dwellings on the Land (or the nearest full number) to be provided as Affordable Housing in accordance with this Agreement and comprising a tenure split of 75% (seventy five percent) Affordable Rented Units and 25% (twenty five percent) Intermediate Housing (unless the tenure target is varied in accordance with an approved Affordable Housing Scheme and/or Reserved Matters Approval(s))

1.6 "Affordable Housing"	means any form of housing identified within legislation national planning policy framework or a ministerial statement as meeting the requirements of an 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 Units; * Shared Ownership Housing; * Intermediate Housing (including intermediate rent, shared equity and low-cost homes for sale).
1.7 "Affordable Housing Commuted Sum"	means a financial contribution calculated in accordance with paragraph 2.15 of the First Schedule.
1.8 "Affordable Housing Disposal"	means a disposal of Affordable Dwellings and/or land upon which those Dwellings are to be constructed to an Affordable Housing Provider whether by transfer of the freehold or the grant of a long lease for a term of at least 125 years
1.9 "Affordable Housing Provider"	means either one or a combination of: a. a Registered Provider who is on the Council list of Approved Affordable Providers (annexed as Appendix 2); 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.
1.10 "Affordable Housing Scheme"	means a scheme drawn up by the Owner, setting out, in relation to the Affordable Dwellings within the Development (or as the case may be a Phase thereof): a) the tenure mix; b) the dwelling mix; and c) the location.
1.11 "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 Rented Unit" and "Affordable Rent" shall be construed accordingly.
1.12 "Agreed" or "Approved"	means agreed or approved in writing and given for the purpose of this Deed.
1.13 "Appeal"	means the appeal submitted by the Developer to the Secretary of State against the refusal of the Application by the Council pursuant to s78(1) of the Act and assigned reference number APP/ ^{CP} PP/C3810/W/21/ ^{CP} 3273807 by the Planning Inspectorate.

1.14 "Application"	means the planning application in respect of the Land for the Development given Council reference BN/142/20/OUT
1.15 "CIL Regulations"	means the Community Infrastructure Regulations 2010 (as amended).
1.16 "Commencement"	means the carrying out of a material operation as defined in section 56(4) of the Act in respect of the Development pursuant to the Planning Permission 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 archaeological investigations and digs exploratory boreholes operations permitted by the Town and Country Planning General Permitted Development) Order 1995 the erection of hoardings and fencing temporary diversion of services and signage (including the formation of temporary construction accesses) and "Commence" shall be construed accordingly.
1.17 "Commencement Notice"	means a notice in the form annexed to this to this Agreement as Appendix 4.
1.18 "CPI"	means the Consumer Price Index published from time to time by the Office of National Statistics
1.19 "Development"	means the development of the Land for up to 200 Dwellings with access from Marshall Close, associated infrastructure and landscaping and the

	demolition of existing buildings pursuant to the Planning Permission.
1.20 "Developer"	means Gleeson Strategic Land Limited (Company Registration Number 05181745) whose registered office is at 6 Europa Court, Sheffield Business Park, Sheffield, S9 1XE.
1.21 "Disposal"	means a disposal of the Affordable Dwellings and /or land upon which those units are to be constructed to an Affordable Housing Provider whether by transfer of the freehold or the grant of a long lease for a term of at least 125 years and "Dispose" and "Disposed" shall be construed accordingly.
1.22 "Dwelling"	means a residential dwelling unit to be constructed on the Land pursuant to the Planning Permission.
1.23 "Footpath 323 Improvement Works"	means either: (i) a scheme of surfacing/widening works to be agreed between the Owner and the County Council to that section of Footpath 323 as runs between the eastern boundary of the Land and Church Lane as is shown coloured blue on Plan 3 as may be reasonably required to enable use of the footpath by cyclists as well as pedestrians; or (ii) such scheme of works as is may be reasonably required to divert said section of footpath to facilitate its improvement/widening for use by cyclists as may be agreed with the County Council ("the Diversion Works")

1.24 "Footpath 323 Improvement Works Contribution"	means a financial contribution agreed between the Owner and the County Council as representing an estimate of the reasonable costs of undertaking the Footpath 323 Improvement Works.
1.25 "Homes England"	means Homes England or any bodies undertaking the existing functions of Homes England within the meaning of Part 1 of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act).
1.26 "Index"	means the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any successor government office, ministry or department.
1.27 "Index Linked"	means index linked in accordance with Clause 13.1.
1.28 "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 Deed is paid whichever is the higher.
1.29 "Intermediate Housing"	means Affordable Housing other than Affordable Rented Units for sale and rent provided at a cost above social rent but below market levels which may include shared equity (Shared Ownership and equity loans) other low-cost homes for sale and intermediate rent.

1.30 "Land"	means those parts of the land at Land South of Barnham Station shown outlined in red on Plan 1 attached hereto at Appendix 1 as are registered at HM Land Registry under title numbers WSX360689 and WSX360690.
1.31 "Management Company"	means a limited company or companies registered at Companies House which may already exist or which may be formed by the Owner for the purposes of carrying out future maintenance of the Public Open Space and Play Areas the details of which have been provided to the Council which satisfy the Council that: 1. It is incorporated in England and Wales or Scotland; 2. it has a registered office in England or Scotland; 3. its primary objects permit it to maintain and renew the Public Open Space.
1.32 "Market Dwelling(s)"	means all those Dwellings to be constructed on the Land pursuant to the Planning Permission which are not Affordable Dwellings.
1.33 "Monitoring Fee ADC"	means the sum of £2,400.00 (two thousand four hundred pounds) Index Linked 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 to the Council of monitoring (including reporting under CIL) the delivery of these Planning Obligations.

1.34 "Monitoring Fee (WSCC)"	means £1200 (one thousand two hundred pounds) Index Linked towards the costs of monitoring the performance of the County Council obligations and reporting under The Community Infrastructure Levy Regulations, 2010.
1.35 "Mortgagee"	means any chargee or mortgagee or their appointed receiver.
1.36 "Nomination Agreement"	means a nomination agreement entered into by an Affordable Housing Provider with the Council in respect of the Affordable Dwellings containing provisions substantially in the form set out in the Appendix 3 to this Agreement.
1.37 "Nomination Rights"	means the right of the Council to nominate occupiers to the Affordable Dwellings in accordance with paragraph 2.16 of the First Schedule to this Agreement.
1.39 "NPPF"	means the National Planning Policy Framework in force at the time that this Agreement is completed or at the time the Appeal is determined.
1.40 "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.

1.41 "Open Market Value"	means open market value assessed in accordance with the Appraisal and Valuation Manual of the RICS (the Red Book).
1.42 "Play Area(s)"	means any Neighbourhood Equipped Area for Play ("NEAP"), Local Equipped Area for Play ("LEAP") or Local Area for Play ("LAP") comprised within the Development (in each case as defined within the Fields in Trust Guidance for Outdoor Sports and Play 2015).
1.43 "Play Areas Maintenance Sum"	means a sum of £30,000.00 (thirty thousand pounds) Index Linked per NEAP or LEAP situated within the Public Open Space (being a sum of £1,500.00 (one thousand five hundred pounds) per annum for 20 years) payable towards the future maintenance and upkeep of said areas in the event they are transferred to the Council.
1.44 "Public Open Space"	means those areas of public open space and amenity space (and containing the Play Areas) to be provided within the Development the approximate location of which is shown hatched green on Plan 2 and which consists of the following areas: • allotments and community orchard (approximately 0.3 ha); • amenity green space (approximately 0.54ha); • natural and semi-natural open space/ parks and gardens (approximately 7 ha) within which 0.242ha of Play Areas shall be Provided;

	or such other areas as the Council may approve in writing to be laid out in accordance with and the final details of which shall be approved pursuant to the Public Open Space Scheme approved by the Council and the Reserved Matters Approvals.
1.45 "Public Open Space Maintenance Commuted Sum"	means a sum calculated at a rate of £11.23 (eleven pounds and twenty three pence) per m2 Index Linked (excluding any Play Areas) to be paid by the Owner to the Council if the Public Open Space (or part thereof) is transferred to the Council in accordance with Paragraph 3.6.2 of the First Schedule.
1.46 "Public Open Space Scheme"	means a scheme for provision, management and maintenance of the Public Open Space and the Play Area(s) to be submitted to and approved by the Council in accordance with paragraph 3 of the First Schedule and which shall set out: (i) the proposed timetable and programme for delivery of the Public Open Space and Play Area(s) 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 but which shall ensure that a Play Area is Provided prior to the Occupation of no more than 50% (fifty percent) of the Dwellings in the Development and that all of the Open Space is provided prior to the Occupation of no more than 80% (eighty percent) of the Dwellings in the Development;

	(ii) a maintenance and management plan for any Public Open Space and Play Area(s) to be provided at the Development; and (iii) details of the circumstances in which the Public Open Space or Play Area(s) may be closed to the public for maintenance, management, health and safety, and other reasons; and (iv) details of the location of and specification for any Play Area(s).
1.47 "Operative Date"	means the date the Development is Commenced.
1.48 "Owner"	means Paul Voller and Clare Jane Voller of Tars Farm, Church Lane, Barnham, Bognor Regis, PO22 0DB and includes their respective successors in title.
1.49 "Payment Notice"	means a notice in the form annexed to this Agreement as Appendix 5.
1.50 "Phase"	means a discrete part of the Development which contains Dwellings and in respect of which Reserved Matters Approval is applied for and granted.
1.50 "Plan 1"	means the plan annexed hereto at Appendix 1 with drawing number 1311.01.
1.51 "Plan 2"	means the plan annexed hereto at Appendix 1 with drawing number 1311.04A.

1.52 "Plan 3"	means the plan attached hereto at Appendix 1 marked "Plan 3" showing the location of the Footpath 923 Works.
1.53 "Planning Condition"	means any condition subject to which the Planning Permission is granted.
1.54 "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.
1.55 "Planning Permission"	means a planning permission for the Development granted pursuant to the Appeal.
1.56 "Provide"	means in the case of Affordable Dwellings to design and construct such Dwellings for habitation to the reasonable satisfaction of the Council or in the case of any Public Open Space or Play Area(s) means laid out and available for public use to the reasonable satisfaction of the Council and "Provided" shall be construed accordingly.
1.57 "Qualified Occupier"	means a person who qualifies for Affordable Housing within the First Schedule to this Agreement and including residents of the district of Arun who are unable to resolve their housing needs in the local private sector market because of the relationship between housing costs and income.
1.58 "Registered Provider"	means a provider of Affordable Housing pursuant to the Housing and Regeneration Act 2008.

1.59 "Signed For Delivery"	means post that when received must be signed for by the recipient.
1.60 "Reserved Matters Approval(s)"	means approval by the Council of one or more matters reserved for approval by the Planning Permission.
1.61 "Residents"	means the owners and occupiers of individual Dwellings to be constructed on the Land.
1.62 "RICS"	means the Royal Institution of Chartered Surveyors.
1.63 "Section 73 Consent"	means any approval or consent given by the Council for a minor material amendment to the Planning Permission under Section 73 of the Act.
1.64 "Shared Ownership Housing"	means Affordable Housing occupied under a shared ownership lease for a term of years of at least 125 years in the form regulated by Homes England from time to time and which shall accord with the requirements and be consistent with any model shared ownership lease from time to time established by Homes England.
1.65 "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.
1.66 "Travel Plan (Framework)"	means the I-Transport Framework Travel Plan (Ref DC/AI/ITB14160-004A) dated 10 February 2021.

1.67 "Travel Plan (Final)"	means the final travel plan for the Development to be submitted to and approved by the County Council pursuant to paragraph 4 of the Second Schedule.
1.68 "Travel Plan Auditing Fee"	means the sum of £3,500 (three thousand five hundred pounds) payable to the County Council towards the cost of the County Council auditing the implementation of the Travel Plan (Final).
1.69 "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 are entered into by the Owner and enforceable by the Council and the County Council as local planning authorities with the intention that they bind the interests held by the Owner in the Land and its successors in title and assigns in accordance with Section 106 of the Act.

4. Conditionality

4.1 This Agreement shall take effect of the date hereof but the Planning Obligations within the First and Second Schedules and clause 5 herein are conditional upon and shall not be enforceable until the occurrence of both:

4.1.1 the grant of Planning Permission; and

4.1.2 the Operative Date.

4.2 Each Planning Obligation in this Agreement is also conditional upon the Secretary of State or the planning inspector deciding the Appeal being satisfied that it complies in all respects with the CIL Regulations and in the event that the Secretary of State or the planning inspector deciding the Appeal expressly states in their Decision Letter that any individual Planning Obligation within the Agreement is not compliant with the CIL Regulations 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 Planning Obligation and the remaining clauses will remain in full force and effect provided that severance is achievable.

5. The Owner's 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 and County Council's Covenants

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

7. Certificates

- 7.1 The Owner agrees with the Council and the County Council:
 - 7.1.1 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 4 hereto.
 - 7.1.2 Where this Agreement imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Specified Date the Owner shall give the Council or (as applicable) the County Council notice of the Specified Date not more than seven days after such Specified Date; and
 - 7.1.3 If the Owner fails to give the notice required under this Clause the Council or the County Council shall acting reasonably be entitled in their absolute discretion to determine the Specified Date and shall give notice to the Owner of that determination.

8. Miscellaneous

- 8.1 Nothing in this Agreement constitutes an obligation to grant planning permission.
- 8.2 The Owner 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.
- 8.3 The Owner 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 £1,500.00 (one thousand five hundred pounds).
- 8.4 No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.5 This Agreement shall be registered by the Council as a local land charge.
- 8.6 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 or delivered by hand in accordance with Clause 16.
- 8.7 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.
- 8.8 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.
- 8.9 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 or if the Appeal is dismissed.

8.10 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.

8.11 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.

9. Exclusion of liability

9.1 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.

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 Save as provided for at clause 9.4 below this Agreement shall not be enforceable against any Resident of any completed Dwelling constructed pursuant to the Planning Permission, or their Mortgagees, nor against those deriving title from them.

9.4 Notwithstanding any other provision of this Agreement the Planning Obligations under this Agreement (other than the obligation at paragraph 2.6 of the First Schedule which subject to paragraphs 2.14, 2.21 and 2.22 therein shall be enforceable against the Affordable Housing Provider and any Residents of the Affordable Dwellings) shall not be binding or enforceable against:

- 9.4.1 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.
- 9.4.2 Any person to whom a shared ownership lease of an Affordable Dwelling is granted.
- 9.4.3 Any person who has acquired either a reversionary interest or a new lease in an Affordable Dwelling pursuant to the terms of a shared ownership lease.
- 9.4.4 Any Affordable Housing Provider whose interest in the Land relates only to the Affordable Dwellings or their Mortgagee or their successors in title.
- 9.5 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.
- 9.6 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.
- 9.7 Lloyds hereby enters into this Agreement to consent to its interest in the Land by virtue of its charges referred to at Recital 9 being bound by the Planning Obligations herein PROVIDED THAT Lloyds shall have no liability under this Agreement unless it triggers any Planning Obligation or causes any breach after it becomes a mortgagee in possession of those parts of the Land comprised in its legal charges and Lloyds shall not be liable for any Planning Obligation triggered or breach of this Agreement prior to taking possession of the Land (or part thereof).

10. Waiver

- 10.1 No waiver (whether expressed or implied) by the Council, County Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council 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

- 11.1 After the Operative Date the Owner agrees with the Council and the County Council to give the Council and the County Council written notice within 14 Working Days of any disposition 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.

12. Future Section 73 Consents

- 12.1 Subject to clauses 12.2 to 12.4 below, if any Section 73 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 Consent; and

12.1.2 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;

- 12.2 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;

- 12.3 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;
- 12.4 the provisions of this clause 12 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 or where the Council (acting reasonably) considers it necessary to require a further planning obligation prior to issuing the relevant Section 73 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 the First Schedule shall be increased by the application of the following formula:

$$A=B \times (C/D)$$

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 month two months before the date that the Specified Date

D is the RPI Index for the month two months before the date that the Planning Permission is granted

C/D is equal to or greater than 1

- 13.2 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:

$$A=(B \times C)/D$$

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 the Planning Permission is granted

$(B \times C) / D$ 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.

14. Interest

- 14.1 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.

15. VAT

- 15.1 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 Recorded Delivery 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 Application number;

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

16.2.3 to the Owner at the address given in the particulars herein.

16.2.4 to Lloyds at Pendeford Securities Centre, Pendeford Business Park, Wobaston Road, Wolverhampton, WV9 5HZ

or such other address as the relevant party shall specify by written 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 Signed for First Class or other next working day delivery service at 9 a.m. 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 or fax.

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. Dispute Resolution

17.1 Where any matter the subject of this Agreement shall be in dispute the parties shall use their reasonable endeavours to resolve the same within twenty-eight days of the dispute arising.

17.2 Failing the resolution of any such dispute disagreement or difference within 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.

17.3 Any dispute disagreement or difference arising out of the provisions relating to Affordable Housing the same shall be referred to an independent Chartered Surveyor of at least fifteen (15) years standing who shall be nominated in default of agreement between the Owner and the Council by the President for the time being of the Royal Institution of Chartered Surveyors or his deputy

17.4 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 fifteen (15) 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

17.5 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.

17.6 The terms of reference of any Expert appointed to determine a dispute disagreement or difference shall include the following:

17.6.1 the Expert shall call for representations from both parties within 21 days of a reference to him under this Agreement and require the parties to exchange representations within this period;

17.6.2 the Expert shall allow the parties to the arbitration 14 days from the expiry date of the period referred to in clause 17.6.1 above to make counter representations

17.6.3 any representations or counter representations received out of time may be disregarded by the Expert

17.6.4 the Expert shall provide the parties with a written decision (including his reasons) within 28 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.

17.6.5 the Expert's costs and the costs of any independent expert advice called for by the Expert shall be included in the award.

17.6.6 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 17 (but without prejudice to the rights and obligations of the respective parties in relation to the termination of the Agreement).

18. Jurisdiction

18.1 This Agreement is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

19. Delivery

19.1 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 covenants with the Council as follows:

1 MONITORING FEE

- 1.1 Prior to the Commencement of the Development to pay to the Council the Monitoring Fee (ADC).
- 1.2 Not to cause or permit the Development to be Commenced until the Monitoring Fee (ADC) has been paid to the Council.

2 AFFORDABLE HOUSING

- 2.1 That thirty percent (30%) of the Dwellings shall be provided as Affordable Dwellings to be Provided in accordance with the Affordable Housing Scheme(s).
- 2.2 Not to Commence the construction of any Dwellings on a Phase on which Affordable Dwellings are to be provided until an Affordable Housing Scheme has been submitted (whether or not as part of an application for Reserved Matters Approval) to and approved in writing by the Council.
- 2.3 To Provide the Affordable Dwellings in accordance with the Planning Permission, Reserved Matters Approval(s) and any approved Affordable Housing Scheme(s) (subject to any amendments agreed by the Council in writing from time to time).
- 2.4 Subject to the provisions of this paragraph 2 (or where otherwise permitted under the approved Affordable Housing Scheme) the Affordable Dwellings shall only be Disposed of by the Owner to an Affordable Housing Provider through a Disposal save by way of mortgage or charge PROVIDED THAT this paragraph shall not prevent their subsequent letting or sale by the Affordable Housing Provider to Residents.
- 2.5 Not to Occupy or cause or permit the Occupation of more than:
 - 2.5.1 twenty-five percent (25%) of the Market Dwellings (or twenty-five percent (25%) of the Market Dwellings on a Phase as the case may be) (or such other number of Market Dwellings that may be agreed in writing by the Council) until the Owners have entered into a legally binding contract with an Affordable Housing Provider for the Disposal of the Affordable Dwellings (or the Affordable Dwellings on the Phase as the case may be);
 - 2.5.2 fifty percent (50%) of the Market Dwellings (or fifty percent (50%) of the Market Dwellings on a Phase as the case may be) (or such other number of Market Dwellings as may be agreed in writing by the Council) unless and until the Affordable Dwellings (or the Affordable Dwellings on a Phase as the case may be) have been Provided and are ready for Occupation.

- 2.6 Subject to paragraphs 2.14, 2.21 and 2.22 of this Schedule, with effect from the date on which they are completed the Affordable Dwellings shall not be Occupied other than by a Qualifying Occupier 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 the Affordable Housing Units.
- 2.7 In the event of any dispute as to whether any proposed occupier of any Affordable Dwelling is a Qualifying Occupier the matter shall be determined by the Council (acting reasonably).

Mechanics of Transfer

- 2.8 The Owner shall offer the Affordable Dwellings to an Affordable Housing Provider ("First Offer") by provision of:
- 2.8.1 A contract for the sale of land; and
 - 2.8.2 A draft transfer which shall include the provisions set out in paragraph 2.17 below.
- 2.9 The First Offer shall remain open for acceptance for no less than two (2) months from the date of the First Offer being made ("First Offer Period").
- 2.10 In the event that the First Offer made in accordance with paragraph 2.8 above is not accepted within the First Offer Period then the Owners shall make a second offer to transfer the Affordable Dwellings to an Affordable Housing Provider ("Second Offer") by provision of:
- 2.10.1 A contract for the sale of land; and
 - 2.10.2 A draft transfer which shall include the provisions set out in paragraph 2.17 below.
- 2.11 The Second Offer shall consist of the same terms as the First Offer subject to revisions necessitated by the lapse of time
- 2.12 The Second Offer shall be made not later than one (1) month after the expiry of the First Offer Period.
- 2.13 The Second Offer shall remain open for acceptance for no less than two (2) months from the date of the Second Offer being made ("Second Offer Period").

Commuted Sum Payable If First and Second Offer Not Accepted

- 2.14 In the event that the Second Offer is not accepted within the Second Offer Period then the Owners may elect (by service of notice on the Council in writing in respect of all of the Affordable Dwellings that were the subject of the Second Offer) at any point prior to the Occupation of 25% (twenty five percent) of the Market Dwellings to pay to the Council an Affordable Housing Commuted Sum

in respect of the relevant Affordable Dwellings whereupon once such sum has been paid to the Council the Owner and any successors in title shall be released from the provisions of this paragraph 2 insofar as it relates to the Affordable Dwellings in question and the Affordable Dwellings may be sold on the open market as Market Dwellings;

PROVIDED THAT

2.14.1 The Owner shall have provided the Council with written evidence of their reasonable endeavours to dispose of the Affordable Dwellings to an Affordable Housing Provider; and

2.14.2 the Council shall, acting reasonably, have confirmed in writing that such reasonable endeavours were reasonable or an expert shall have determined that such reasonable endeavours were reasonable.

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

$X \text{ multiplied by } Y = \text{the Affordable Housing Commuted Sum}$

Where:

$X = \text{£80,000.00; and}$

$Y = \text{the number of Affordable Dwellings which will not be provided on the Land as part of the Development in accordance with the terms of this Agreement}$

Nomination Rights

2.16 To seek to procure (through compliance with paragraph 2.17.4 below) that the Affordable Housing Provider grants Nomination Rights to the Council to the first Occupation of the Affordable Dwellings PROVIDED THAT if the Council do not accept such offer then the Affordable Housing Provider shall in seeking to allocate the Affordable Dwellings have regard as far as possible to the following criteria:

2.16.1 any family association in the District of Arun in accordance with any relevant housing allocation policy;

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

2.16.3 any employment opportunity in the District of Arun;

2.16.4 any other connection with the District of Arun;

but for the avoidance of doubt the satisfaction of such criteria hereof shall be determined by the Affordable Housing Provider.

Terms of Transfer to the Affordable Housing Provider

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

- 2.17.1 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 Dwellings;
- 2.17.2 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
- 2.17.3 The imposition of such covenants as the Owner shall reasonably require and are consistent with the sale of any Market Dwelling.
- 2.17.4 A condition that the Registered Provider shall within 1 (one) month of the legal completion of the transfer, or such other period as may be agreed with the Council in writing, use reasonable endeavours to enter into a Nominations Agreement (in like terms to that in the Draft Nominations Agreement at Appendix 3) with the Council

Mortgagee Power of Sale Provisions

2.18 The Owner covenants with the Council:

- 2.18.1 To take all reasonable and prudent steps within its power to avert the repossession of the Affordable Dwellings by any Mortgagee of the Affordable Housing Provider or the exercise by any such Mortgagee 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;
- 2.18.2 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
- 2.18.3 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.

2.19 The parties hereto agree that:

2.19.1 in the event of a default under any security or in other circumstances warranting the intervention of Homes England (whether under the Housing Act 1996 or otherwise) the transfer of the freehold of the Affordable Dwellings or any part of them to another Affordable Housing Provider will not be prevented;

2.19.2 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 the disposal of any interest in the Affordable Dwellings by the Mortgagee in the exercise of its power of sale will not be prevented.

2.20 Nothing in this Agreement shall be construed as imposing or otherwise implying any obligation on the Council to grant or make available any public subsidy or other financial support (or to assist the Owner in obtaining such public subsidy or other financial support) in respect of the Affordable Dwellings.

2.21 The provisions of this paragraph 2 of this Schedule shall cease to bind any of the Affordable Dwellings if in relation to that Affordable Dwelling:

2.21.1 a statutory right to acquire pursuant to the Housing Act 1985 or Housing Act 1996 (or any statutory re-enactment amendment or replacement thereof) has been exercised; or

2.21.2 it shall have been sold under a shared ownership lease and the leaseholder (or its mortgagee) has staircased his ownership under the lease to 100%.

2.22 The Affordable Housing provisions in this Agreement shall not be binding on a Mortgagee of the whole or any part of the Affordable Dwelling or any persons or bodies deriving title through such Mortgagee PROVIDED THAT:

2.22.1 such Mortgagee shall first give written notice to the Council of its intention to dispose of the Affordable Dwellings 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 Dwellings 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

2.22.2 if such disposal has not completed within the three-month period, the Mortgagee shall be entitled to dispose of the Affordable Dwellings free from the

affordable housing provisions in this Agreement which provisions shall determine absolutely;

3 PROVISION OF PUBLIC OPEN SPACE AND PLAY AREA(S)

- 3.1 Prior to Occupation of the first Dwelling to submit a Public Open Space Scheme (either as part of an application for Reserved Matters Approval or separately) for approval in writing by the Council ("the Approved Public Open Space Scheme").
- 3.2 Upon receipt of the Council's approval pursuant to sub-paragraph 3.1 of this Schedule the Owner shall Provide the Public Open Space and Play Area(s) in accordance with the Planning Permission and the Approved Public Open Space Scheme (subject to any amendments agreed by the Council in writing from time to time).
- 3.3 Prior to completion of the Development to Provide the Public Open Space and Play Areas and make them available for use by the public.
- 3.4 Upon completion of the Public Open Space and Play Area(s) in accordance with the Approved Public Open Space Scheme the Owner shall notify the Council in writing and invite it to inspect the Public Open Space and Play Areas as soon as reasonably practicable thereafter and shall request that the Council confirms that the Public Open Space and Play Area(s) have been completed in accordance with the Approved Public Open Space Scheme to the reasonable satisfaction of the Council.
- 3.5 If upon notification by the Owner pursuant to paragraph 3.4 of this Schedule the Council is of the view that the Public Open Space and Play Area(s) have not been provided in accordance with the Approved Public Open Space Scheme to the reasonable satisfaction of the Council and notifies the Owner accordingly, specifying the measures reasonably necessary to satisfactorily complete the Public Open Space in accordance with the Approved Public Open Space Scheme, the Owner shall within such reasonable period as specified by the Council carry out those works and shall notify the Council pursuant to paragraph 3.4 of this Schedule (such procedure being repeated as often as is necessary until such time as the Council confirms reasonable satisfactory completion thereof).
- 3.6 On completion of the Public Open Space and Play Area(s) in accordance with the Approved Public Open Space Scheme and upon satisfactory completion of any works identified by the Council in accordance with paragraph 3.5 of this Schedule and no later than 2 months from completion of the Public Open Space and any works identified by the Council in accordance with paragraph 3.5 the Owner will (at its discretion) either:

3.6.1 Transfer the Public Open Space and Play Area(s) to a Management Company (having first supplied to the Council a certified copy of the Memorandum and Articles of Association of the Management Company) for the purpose of undertaking the future management and maintenance of the Public Open Space and Play Areas on terms agreed between the Owner and the Management Company and all further management and maintenance shall be thereafter carried out by the Management Company in accordance with the Public Open Space Scheme and this sub-paragraph PROVIDED THAT it is agreed that it shall be a term of Management Company's engagement that the Management Company will:

- (a) maintain and manage in perpetuity the Public Open Space and Play Areas in accordance with the Approved Open Space Scheme or any variations that may be agreed in writing by the Council from time to time; and
- (b) only allow the use of the Public Open Space and Play Areas as public open space and for recreation and for no other purpose.

OR

3.6.2 Subject to an offer being made by the Owner and the Council's acceptance of that offer in writing the Public Open Space and Play Area(s) shall be transferred to the Council and on completion of said transfer the Open Space Maintenance Commuted Sum and the Play Areas Maintenance Commuted Sum shall be paid to the Council after which time the Owner shall no longer have any responsibility for the Public Open Space and Play Area(s) PROVIDED THAT it is agreed that if the Council does not accept an offer of transfer within 3 (three) months of the date of the offer of transfer the offer will lapse and the Owner will transfer the Public Open Space and Play Area(s) to a Management Company in accordance with the provisions of paragraph 3.6.1 of this Schedule.

AND FURTHER PROVIDED THAT it is agreed that the Owner will comply with the provisions set out in sub-paragraphs 3.6.1(a) and 3.6.1(b) of this Schedule until such time as a Management Company has been engaged to undertake the future management and maintenance of the Public Open Space and Play Area(s) after which point the Management Company shall be responsible for its maintenance and management.

3.7 To allow public access to the Public Open Space and Play Area(s) situated thereon but access shall be subject to such other requirements and regulations as may from time to time be reasonably imposed by the Owner or the Management Company having regard to overriding reasons of safety, security and prudent building management PROVIDED THAT such requirements and regulations shall not be imposed unless set out within the Approved Public Open Space Scheme or otherwise without the Council's prior approval;

4. A27 Works Agreement/Contribution

4.1 Not to Occupy or permit Occupation of the Development until:

4.1.1 The A27 Works Agreement has been entered into with Highways England; OR

4.2.2 Where despite the Owner using reasonable endeavours for a period of at least 6 (six) months it has not been possible to enter into the A27 Works Agreement with Highways England the Owner has paid to the Council the A27 Works Contribution for onward payment to Highways England for use towards the A27 Works.

SECOND SCHEDULE

The Owner covenants with the County Council as follows:

Monitoring Fee

1. Prior to the Commencement of the Development to pay to the County Council the Monitoring Fee (WSCC).
2. Not to cause or permit the Development to be Commenced until the Monitoring (WSCC) Fee has been paid to the County Council.

Travel Plan

3. Not to Occupy or permit Occupation of the Development unless and until the Owner has paid the Travel Plan Auditing Fee to the County Council.
4. Prior to Occupation of the first Dwelling to submit a Travel Plan (Full) based on the Framework Travel Plan (ref: DS/GT/ITB14160-004A) (either as part of an application for Reserved Matters Approval or separately) for approval in writing by the County Council and thereafter to implement said Travel Plan (Full) as approved.

Footpath 323 Improvement Works

5. In respect of the Footpath 323 Improvement Works not without the consent of the County Council to allow Occupation of the fiftieth (50th) Dwelling until:
 - 5.1 the Footpath 323 Improvement Works have been completed to the satisfaction of the County Council; or
 - 5.2 The Footpath 323 Improvement Works Contribution has been paid to the County Council;

PROVIDED THAT it is hereby agreed that the Owner shall only be entitled to pay the Footpath 323 Improvement Works Contribution if it has evidenced to the County Council's reasonable satisfaction that the Owner has approached the owners of the land upon which the relevant section of the Footpath 323 is situated and has used reasonable endeavours (which for the avoidance of doubt shall not include the payment of any demanded ransom payment) for a period of at least (six) 6 months to obtain the written consent of said landowner(s) to (and the grant by said landowners of any necessary rights required for) the conversion of the relevant section of Footpath 323 from a footpath to a footpath and cycleway but has been unable to do so OR in the event that the Owner and the County Council have agreed a scheme which comprises Diversion Works the Owner has sought but has been refused the requisite order or orders necessary under the Highways Act 1980 or the 1990 Act in order to facilitate the Diversion Works.

THIRD SCHEDULE

Council and County Council Covenants

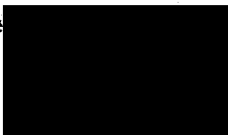
1. The Council covenants with the Owner that where any contribution is paid to it pursuant to this Agreement (other than the A27 Works Contribution) it will use said contribution solely for the purposes specified herein and that in the event that the date falling 10 (ten) years from payment of the relevant contribution the contribution (or part thereof) remains unspent or uncommitted the Council will (upon receipt of a written request from the Owner) repay to the owner such part of the contribution as remains unspent or uncommitted along with any interest accrued.
2. The Council covenants with the Owner that in the event that the A27 Works Contribution is paid to it pursuant to this Agreement it will hold said contribution and not use it for any other purpose and upon receipt of any request from ~~Highways England~~ ^{National Highways} for payment of said contribution will forward the contribution to ~~Highways England~~ ^{National Highways} as soon as reasonably practicable and in any event no later than 20 Working Days from receipt of any such request and that in the event that that the date falling 10 (ten) years from payment of the A27 Works Contribution to the Council the contribution (or part thereof) has not been paid to ~~Highways England~~ ^{National Highways} the Council will (upon receipt of a written request from the Owner) repay ~~to the Owner~~ ^{to the Owner} such part of the contribution as has not been paid to ~~Highways England~~ ^{National Highways} along with any interest accrued.
3. The County Council covenants with the Owner that where any contribution is paid to it pursuant to this Agreement it will use said contribution solely for the purposes specified herein and that in the event that the date falling 10 (ten) years from payment of the relevant contribution the contribution (or part thereof) remains unspent or uncommitted the County Council will (upon receipt of a written request from the Owner) repay to the owner such part of the contribution as remains unspent or uncommitted along with any interest accrued.

EXECUTED AS A DEED by affixing

the Common Seal of

ARUN DISTRICT COUNCIL

in the



Authorised Signatory

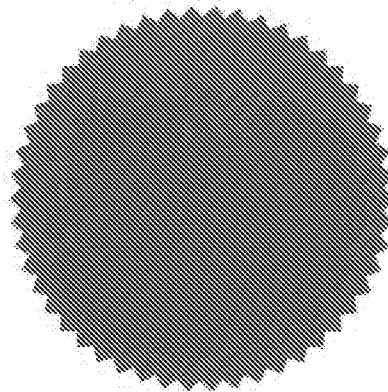
Name: *CAROLINE PERRY*

Job Title:

PRINCIPAL LAWYER

Seal Book Number.

234/2021

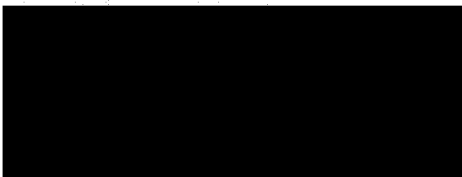


EXECUTED AS A DEED by affixing

the Common Seal of

WEST SUSSEX COUNTY COUNCIL

in the presence of

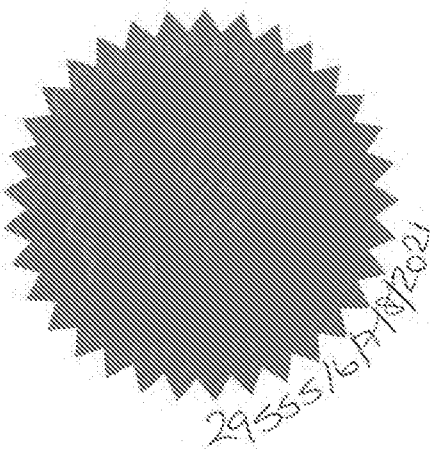


Authorised Signatory

Name:

Job Title:

Seal Book Number.



EXECUTED as a

PAUL VOLLER

In the presence of

Witness name:

Witness address:

BLAKE
MORGAN

New Kings Court, Tollgate
Chandler's Ford, Eastleigh SO53 3LG

Occupation:

SOLICITOR

EXECUTED as a deed

CLARE JANE VOLLE

In the presence of

Witness name:

Witness address:

BLAKE
MORGAN

New Kings Court, Tollgate
Chandler's Ford, Eastleigh SO53 3LG

Occupation:

SOLICITOR

EXECUTED as a deed by

LLOYDS BANK PLC acting by an authorised attorney

Authorised Attorney

In the presence of

Witness name:

Witness address:

EXECUTED AS A DEED

BY CASE HANDLER

as authorised signatory for
Lloyds Bank plc

In the presence of signatories of witnesses

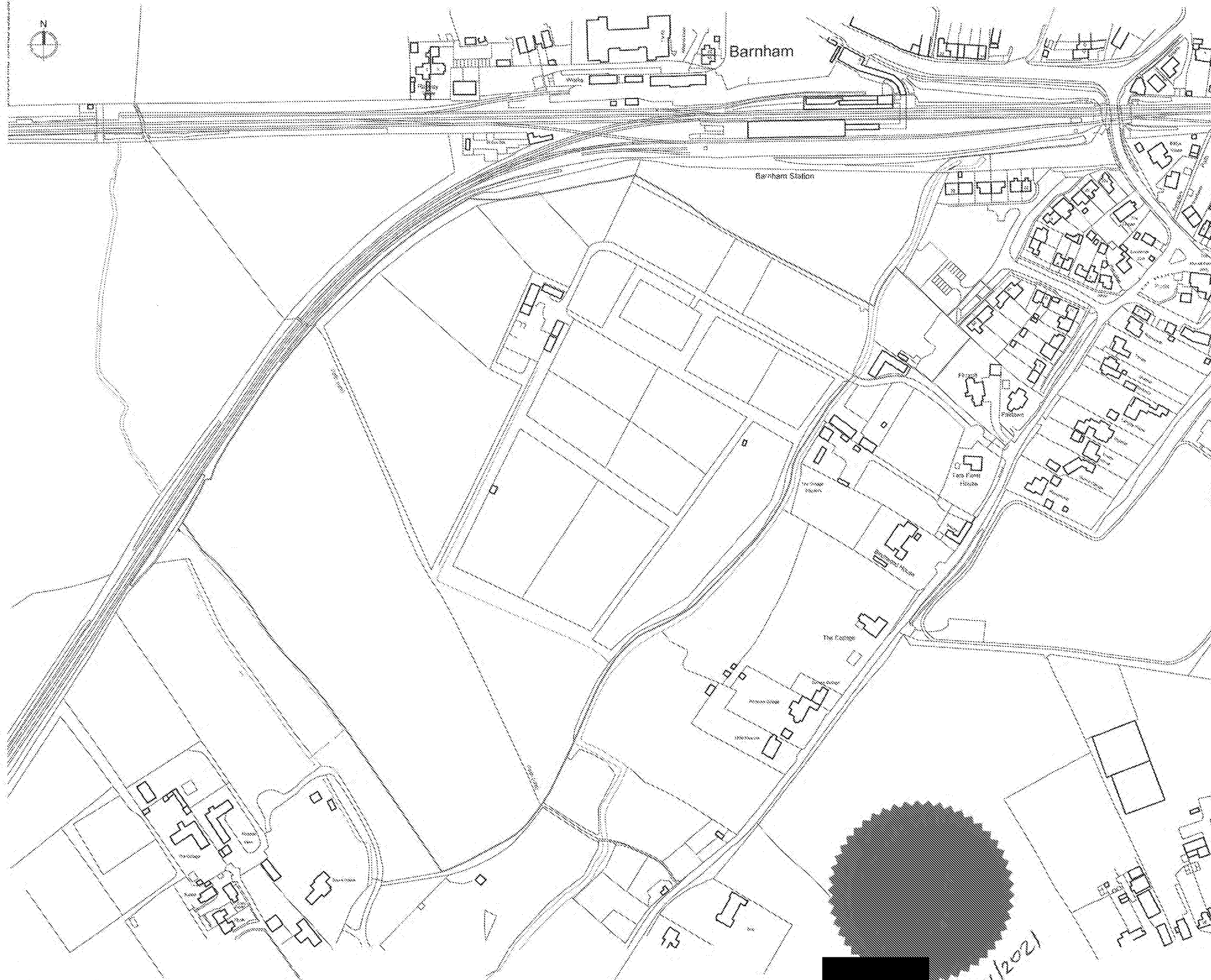
for the

Lloyds Bank plc

~~gh Leanne Booth~~

Sarah Leanne Booth

APPENDIX 1 – PLANS



Site
**LAND SOUTH OF
BARNHAM STATION**

Drawing
Site location plan

Scale
1:2500@A3

Date
18.11.20

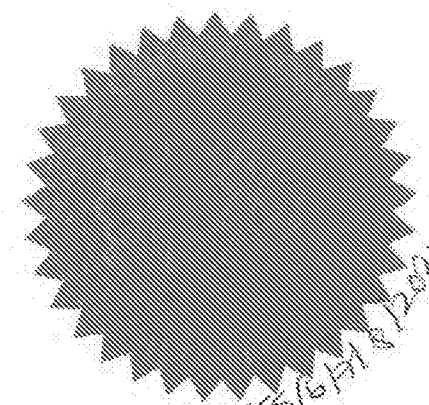
Drawing no. **1311.01**

0 20 40 60 80 100m
1:2500@A3

KEY

Site boundary (13.8ha)

per pro Lloyds Bank
Security Centre





LAND SOUTH OF
BARNHAM STATION

Drawing:
Parameter plan

Scale:
1:2000@A3

Date:
12.02.20

Drawing ref: 1311.04A

1:2500@A3

KEY

Site boundary

DEVELOPMENT AREAS AND SCALE

Maximum 2 storey development (up to 10m)

Maximum 2.5 storey development (up to 11.5m)

Residential Development area to include C3
residential uses, roads, parking, open space,
Sustainable Urban Drainage System and landscaping

GREEN INFRASTRUCTURE AND OPEN SPACE

Green Infrastructure including landscape buffers,
public open space including areas of natural
play, orchards, community orchards, landscape
planting and Sustainable Urban Drainage System

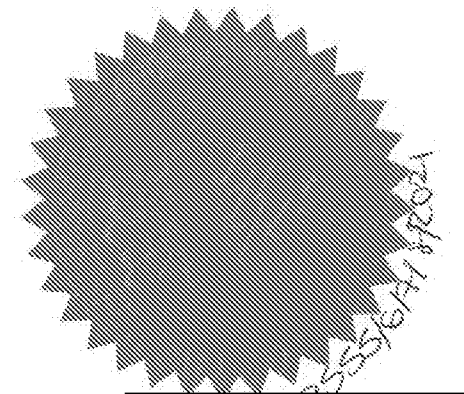
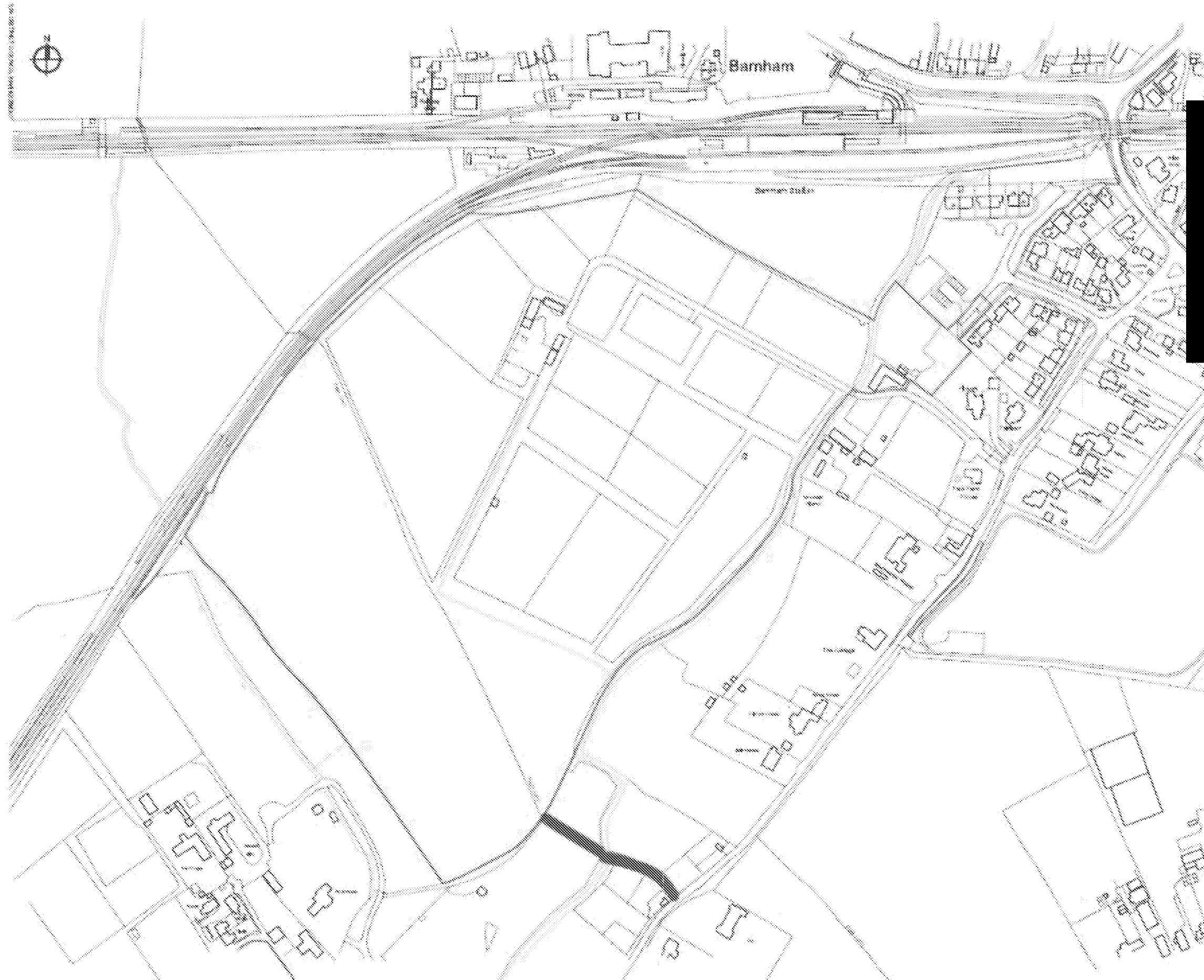
ACCESS AND MOVEMENT

Existing public right of way retained and upgraded

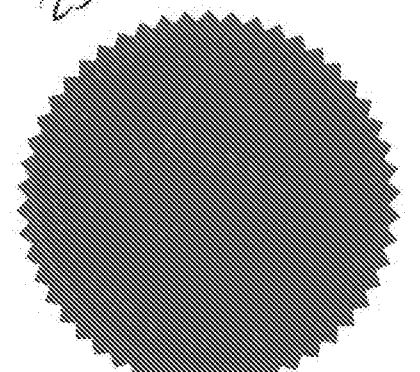
Proposed vehicular access

was per Lords Bank

PLAN 3

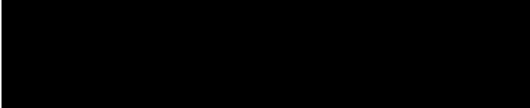


29



APPENDIX 2

ARUN DISTRICT COUNCIL APPROVED PROVIDERS

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

		BN11 1ER	
Stonewater	Jacqueline Burton, Development Officer 	Waverley House 115-118 Holdenhurst Road Bournemouth BH8 8DY	
Saxon Weald	Mona Johansson, Programme Manager 	Saxon Weald House 38-42 Worthing Road Horsham West Sussex RH12 1DT	
Hastoe Housing Association		Marina House 17 Marina Place Hampton Wick Kingston-Upon-Thames Surrey KT1 4BH	
Aster Group	Edward Till, Development Manager 		
Arun District Council	Satnam Kaur, Group Head of Residential Services	Civic Centre, Maltravers Rd,	

	Satnam.kaur@arun.gov.uk	Littlehampton, BN17 5LF	
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APPENDIX 3
DRAFT NOMINATIONS AGREEMENT

THIS AGREEMENT OF NOMINATION RIGHTS is made on

20[]

BETWEEN

- (1) NAME (COMPANY NO) (ADDRESS) "the Registered Social Landlord" "RSL"
- (2) ARUN DISTRICT COUNCIL of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN15 7LF.

In relation to the units at XXXX

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 XXXX as shown edged red on the attached plan.

"Rented Units" XX residential units in the form of flats and houses shown on the Accommodation Schedule attached and being plots XXXX at the Property

"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 Homes England.

"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.

"Working Day" means any day that is not a Saturday, Sunday, Bank Holiday or Public Holiday in England

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, Section 1 of the Localism Act 2011 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, with the exception of the duration of the Covid-19 Pandemic, during which this time period will be extended to 15 Working Days.

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 within five Working Days of the date the Nominee is deemed to have rejected the RSL's offer and 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 within 10 Working Days of the said notification.
- 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 Tenancy Agreement 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 First Class.

5 TRANSFERS TO OTHER REGISTERED SOCIAL LANDLORDS

The RSL shall use reasonable endeavours to ensure that any registered social landlord to which the Property and Rented Units erected thereon are transferred otherwise than by direction of the Homes England 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 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 Rented Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver
- Any tenant who has exercised the right to acquire or right to buy (including the preserved right to buy) pursuant to the Housing Act 1985/1996 or any other statutory provision for the time being in place in respect of a particular Rented Unit (or their mortgagees and successors in title)

7 DISPUTES

- 7.1 Where any matters fail to be agreed between the parties within 20 Working Days, then without prejudice to any parties right to seek a remedy through the Courts, the dispute shall be resolved on the application of either party for the determination by 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.
- 7.2 Where a dispute is referred to a single expert the parties involved in the dispute shall, unless the single expert determines otherwise, bear their own costs of the arbitration and pay an equal proportion of the single expert's costs.

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; and
- 9.3 nothing in this agreement shall confer any benefit on any person who is not a party to this agreement whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

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

The COMMON SEAL of

was hereunto affixed in the presence of:-

Authorised Signatory

Authorised Signatory

THE COMMON SEAL of ARUN)

DISTRICT COUNCIL)

was affixed to this deed in the)

presence of:)

Authorised Signatory:

Name:

Seal Book No. .

APPENDIX 4
COMMENCEMENT NOTICE

Pursuant to Clause [] in the Planning Obligation Described Below

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

Dated: this _____ day of _____ 20

Signed: _____

On Behalf of: _____

To:	(1) Group Head of Planning, Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF (DX: 57406 Littlehampton); (2) Monitoring and Records Team, Strategic Planning Division of County Hall, Chichester, West Sussex P019 1RQ (DX: 157410 Chichester 8)
From:	
Development At:	
Nature of Development:	
Planning Permission Date & Reference:	
Planning Obligation Date & Parties:	
Start Date:	

APPENDIX 5

(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 south of Barnham Station, Barnham

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