

DATED

7 March

201

ARUN DISTRICT COUNCIL

- and -

WEST SUSSEX COUNTY COUNCIL

- and -

WEST SUSSEX COUNTY COUNCIL

DEED OF VARIATION

under Section 106A of the Town & Country Planning Act 1990 relating to Land
known as Angel's Nursery, on the South West side of Yapton Road, Barnham
in the County of West Sussex

Arun District Council
Arun Civic Centre
Maltravers Road
LITTLEHAMPTON
West Sussex
BN17 5LF

Ref: BN/42/18/PL

THIS DEED OF VARIATION is made the 7 day of March 2019

BETWEEN:

- (1) "the Council" Arun District Council of the Arun Civic Centre Maltravers Road Littlehampton West Sussex BN17 5LF and
- (2) "the Owner" West Sussex County Council of County Hall West Street Chichester PO19 1RQ
- (3) "the County Council" West Sussex County Council of County Hall West Street Chichester PO19 1RQ

NOW THIS DEED WITNESSES: as follows:-

1. Definitions and Interpretation

In this Deed:-

- 1.1. "the Land" means Land known as Angel's Nursery, on the South West side of Yapton Road Barnham, West Sussex
- 1.2. "the Original Deed " means the Deed made by way of unilateral undertaking given pursuant to Section 106 Town & Country Planning Act 1990 on 12 April 2017 given by the Owner to the Council and the County Council and attached to this Deed at Appendix 1 for ease of reference
- 1.3. "the First Deed of Variation" means the Deed of Variation made pursuant to S.106A of the Town & Country Planning Act 1990 on 22 September 2017 between the Owner to the Council and the County Council and attached to this Deed at Appendix 2 for ease of reference
- 1.4. Unless the context requires otherwise, all words and phrases defined in the Original Deed and First Deed of Variation shall have the same meaning in this Deed.
- 1.5. References to the Council and County Council includes their respective successors to their respective statutory functions.
- 1.6. References to the Owner includes their successors or permitted assigns.
- 1.7. Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8. Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

2. Recitals

- 2.1 This Deed is supplemental to the Original Deed and First Deed of Variation

- 2.2 The Owner is still the Owner of the Land as specified in the Original Deed as varied by the First Deed of Variation.
- 2.3 By the Original Deed as varied by the First Deed of Variation the development of the Land is regulated.
- 2.4 The Owner has now made an application to the Council given reference BN/42/18/PL ("the Revised Application") for variation condition 2 imposed under BN/43/16/PL relating to approved plans.
- 2.5 The Council has resolved to grant Planning Permission for the Revised Application upon the Owner entering into this Deed varying the Original Deed and First Deed of Variation in order that it shall relate and apply to the Application and the Revised Application depending upon implementation.
- 2.6 The Council is the Local Planning Authority as defined in the Town & Country Planning Act 1990 for the area within which the Land is situated for the purposes of this Deed and for the purposes of Section 106 and 106A of the Town & Country Planning Act 1990. The Council agrees to the Original Deed as varied by the First Deed of Variation being varied.
- 2.7 The County Council is a planning authority as defined in the Town & Country Planning Act 1990 for the area within which the Land is situated for the purposes of this Deed and for the purposes of Section 106 and 106A and agrees to the Original Deed as varied by the First Deed of Variation being further varied.
- 2.8 This Deed is intended to vary the Original Deed as varied by the First Deed of Variation as set out herein. Save where it is specifically varied herein, the Original Deed and First Deed of Variation shall continue in full force and effect and shall continue to be enforceable by both the Council and the County Council against the Owner or their successors in title to the Land.

3. Operative powers

The Council the County Council and the Owner enter into this Deed under the powers contained in S. 106 and S.106A of the Town and Country Planning Act 1990, S.111 of the Local Government Act 1972 and S.1 of the Localism Act 2011 and all other powers so enabling

4. Variation

4.1 The Council the County Council and the Owner AGREE that the Original Deed shall be varied as follows:

- 4.1.1 The existing definition of "the Application" on page 4 of the Original Deed shall refer to both the Application and the Revised Application and all references in the Original Deed as varied by the First Deed of Variation to Application shall be construed accordingly
- 4.1.2 the existing definition of "Planning Permission" on page 6 of the Original Deed shall mean both the planning permission granted pursuant to the Application and the planning permission to be granted pursuant to the Revised Application

4.2 The Original Deed as varied by the First Deed of Variation shall otherwise continue in full force and shall have the same legal effect as before this amendment or variation.

5. Local Land Charge

The Original Deed and First Deed of Variation is registered as a local land charge and this Deed shall be entered in the relevant register so as to record the variation

6. Council's Costs

The Owner shall pay to the Council on or before the date of completion of this Deed, the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this Deed.

7. Third Party Rights

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

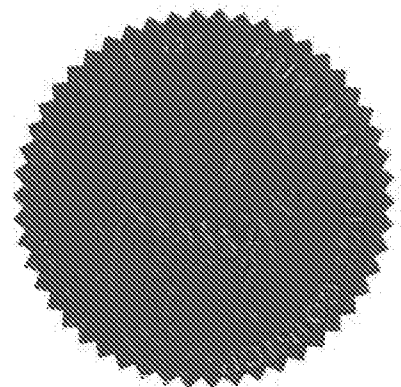
8. Governing Law

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

IN WITNESS whereof the Council the County Council and the Owner have hereunto caused their respective Common Seals to be affixed as a Deed the day and year first before written.

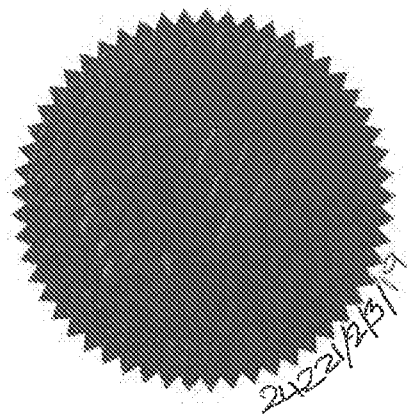
THE COMMON SEAL OF
ARUN DISTRICT COUNCIL
was hereunto affixed in the presence of:

AUTHORISED SIGNATORY: [REDACTED]
NAME EDWARD O'BRIEN
JOB TITLE PROPERTY LAWYER
SEAL BOOK No 48/2019



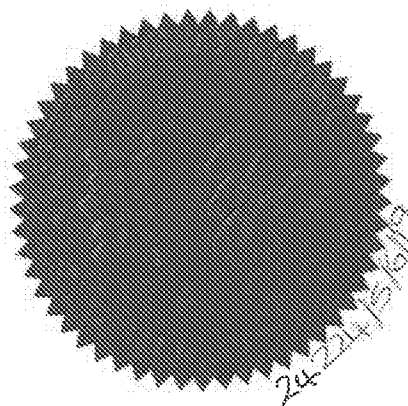
THE COMMON SEAL OF
WEST SUSSEX COUNTY COUNCIL
as Owner
was hereunto affixed in the presence of:

AUTHORISED SIGNATORY



THE COMMON SEAL OF
WEST SUSSEX COUNTY COUNCIL
as County Planning Authority
was hereunto affixed in the presence of:

AUTHORISED SIGNATORY



APPENDIX 1

Original Deed

Dated: 12th April 2017

BY:

(1) WEST SUSSEX COUNTY COUNCIL

TO:

(2) ARUN DISTRICT COUNCIL

(3) WEST SUSSEX COUNTY COUNCIL

UNILATERAL UNDERTAKING

under Section 106 of the Town & Country Planning Act 1990
and other powers

Land known as Angels Nursery, on the South West side of Yapton Road,
Barnham, West Sussex

West Sussex County Council
County Hall
West Street
Chichester
West Sussex
PO19 1RQ
DX: 157410 Chichester 8

Arun District Council Planning Application Reference: [BN/43/16/PL]

This Unilateral Undertaking is dated
given

12th April

2017 and is

By:

1. **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ (the "Owner")

To:

2. **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("ADC")
3. **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ ("WSCC")

1. **Background**

- 1.1 The Owner is the registered proprietor of the Land and hereby warrants that no person other than the Owner has any legal or equitable interest in the Land.
- 1.2 ADC is the local planning authority and authority responsible for housing and public open spaces including culture, leisure and sports facilities.
- 1.3 WSCC is the county planning authority, the highway authority, the education authority and the authority responsible for the provision of libraries and fire and rescue services.
- 1.4 The Owner has, by planning application number BN/43/16/PL applied to ADC for full planning permission to develop the Land for the Development.
- 1.5 ADC has not determined the application and nothing (contained or implied) in this Unilateral Undertaking shall fetter or restrict ADC's statutory rights, powers, discretions and responsibilities and the Owner acknowledges that nothing in this Unilateral Undertaking constitutes a planning permission or an obligation to grant planning permission or any other approval, consent or permission required from ADC

in the exercise of any other statutory function.

- 1.6 In order to secure the best use of the Land and a properly planned environment and adequate local infrastructure ADC and WSCC desire to bind the Land in the terms set out herein and to that end have requested that a variety of payments should be secured by way of certain binding planning obligations upon the Owner pursuant to section 106 of the Act.

- 1.7 The Owner has agreed to give this Unilateral Undertaking to give planning obligations to ADC and WSCC upon the terms and subject to the conditions herein.

2. Interpretation

In this Unilateral Undertaking:

- 2.1 Words importing the masculine include the feminine and vice versa.
- 2.2 Words importing the singular include the plural and vice versa.
- 2.3 Words importing persons include companies and corporations and vice versa.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.
- 2.5 Any reference to a clause or schedule or plan is to one in or attached to this Unilateral Undertaking.
- 2.6 Any reference to a colour or letter is to be on the plans attached to this Unilateral Undertaking.
- 2.7 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it.
- 2.8 References to any party to this Unilateral Undertaking shall include the successors in title to that party and to any deriving title through or under that party.

"the Act" means the Town & Country Planning Act 1990

"ADC Contributions" means the Community Facilities Contribution and the Public Open Space Maintenance Contribution

"Affordable Rented Dwellings" means dwellings let at a rent that is no more than 80% of the local market rent (including service charges, where applicable) and as defined in Annex 2 Glossary National Planning Policy Framework dated 27 March 2012 as amended from time to time.

"Affordable Rent" means a rent of no more than 80% of the local market rent (including service charges, where applicable).

"Affordable Housing" means affordable housing as defined in Annex 2 Glossary National Planning Policy Framework dated 27 March 2012 as amended from time to time).

"Affordable Housing Units" means twenty eight (28) of the Dwelling Units to be provided as Affordable Housing with a tenure split of :-

- Affordable Rented Dwellings - 14 (50%) (being 14 x 2 bed houses)
- Intermediate Affordable Housing – 14 (50%) (being 8 x 2 bed houses, 2 x 1 bed flats and 4 x studio flats)

in accordance with the terms of this Unilateral Undertaking

"Affordable Housing Standard" means the Housing Corporation building standard applicable at the date of Commencement of the Development or equivalent or replacement or successor Standard adopted by the successor body to the Housing Corporation

"Agreed" or "Approved" means agreed or approved in writing and such agreement or approval is given for the purpose of this Unilateral Undertaking

"the Application" means the planning application given ADC reference number BN/43/16/PL made by the Owner for full planning permission to develop the Land

"Commencement of Development" means the carrying out of a material operation as defined in section 56(4) of the Act in respect of the Development but excluding (for the purposes of this Unilateral Undertaking and for no other purpose) any operation relating to works of ground investigations or remedial action in respect of land contamination, enabling works, site clearance, archaeological investigations and digs, exploratory boreholes, operations permitted by the Town and Country Planning (General Permitted Development) Order 2015, the erection of hoardings and fencing, temporary diversion of services and signage (including the formation of temporary construction accesses) and "Commence Development" shall be accordingly construed

"Community Facilities Contribution" means the financial contribution of £147,354.50 being £1,551.10 per dwelling as a sum payable in accordance with paragraph 1 of Schedule 3 of this Unilateral Undertaking to be used for the purpose of play equipment for Barnham Parish Council specifically for the site known as Murrell's Field and indicated on the plan attached to this Deed outlined in blue

"the Development" means the development of the Land for residential development comprising up to 95 dwellings (with up to 30% Affordable Housing) pursuant to the Application or permitted by the Planning Permission or carried out substantially in accordance with the Planning Permission

"Dwelling" means any residential dwelling forming part of the Development and Dwellings and Dwelling Units shall be construed accordingly

"Fire and Rescue Contribution" means the sum of £2,766 (two thousand seven hundred and sixty six pounds) Index Linked being a financial contribution to be paid to WSCC and to be used for the provision of community fire link smoke detectors to vulnerable persons' homes within the parish of Barnham

"Index Linked" means indexed in accordance with Clause 8 of this Unilateral Undertaking.

"Intermediate Housing" means homes for sale and rent provided at a cost above Social rent but below market levels as defined in Annex 2 Glossary National Planning Policy Framework dated 27 March 2012 as amended from time to time.

"Intermediate Affordable Housing Units" means fourteen of the Affordable Housing Units to be provided as Intermediate Housing for shared equity ownership which could be under a starter home initiative or any other government initiative which is in place at the time.

"Land" means the land on the south west side of Yapton Road, Barnham, West Sussex, shown edged red on the Plan which is part of the land registered at the Land Registry under title number WSX259090.

"Library Contribution" means the sum of £33,963 (thirty three thousand nine hundred and sixty three pounds) Index Linked being a financial contribution to be paid to WSCC and to be used to support the expansion of 'tier 7' library services for Barnham

"Market Housing Units" means Dwelling Units within the Development which are not Affordable Housing Units"

"Occupation" means first 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 Occupy and Occupied shall be construed accordingly

"Plan" means the plans attached to this Unilateral Undertaking at Appendix 1

"Planning Permission" means the planning permission for the Development granted pursuant to the Application

"Primary Education Contribution" means the sum of £312,560 (three hundred and twelve thousand five hundred and sixty pounds) Index Linked being a financial contribution to be paid to WSCC to be used towards small scale improvements at Yapton Primary School

"Public Open Space" means that part of the Land referred to in Clause 1.1 of Schedule 3

"Public Open Space Maintenance Contribution" means a sum to be calculated at a rate of £13.51 per square metre of Public Open Space provided under clause 1 of Schedule 3

"Qualifying Occupiers" means persons who qualify for Affordable Housing within Schedule 4 to this Agreement and including residents of the Arun District who are unable to resolve their housing needs in the local private sector market because of the relationship between housing costs and income

"Affordable Housing Provider" means a body registered as a provider of social housing with the Social Housing Regulator under Part 2 of the Housing and Regeneration Act 2008 or such other class of body approved by ADC as may be constituted under any legislation equivalent to or replacing that provision including (but not restricted to) those appearing within the Arun District Council List of Approved Registered Providers attached or specifically approved in writing for the purposes of the present Unilateral Undertaking or an unregistered provider of social housing approved by ADC or such other body or organisation approved by ADC whose main objective is the provision of Affordable Housing Units.

"Specified Date" means the date upon which an obligation arising under this Unilateral Undertaking is to be carried out or due to be performed

"TRO Contribution" means the sum of £7,000 (seven thousand pounds) Index Linked being a financial contribution towards obtaining a traffic regulation order for waiting restrictions on Yapton Road if occupation of the development triggers on-street car parking

"WSCC Contributions" means the Fire and Rescue Contribution, the Library Contribution, the Primary Education Contribution and the TRO Contribution.

3. Enabling Provisions

- 3.1 This Unilateral Undertaking is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers whether listed in the Unilateral Undertaking or not.

3.2 The covenants, restrictions and obligations contained in this Unilateral Undertaking 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.

3.3 The covenants, restrictions and obligations contained in this Unilateral Undertaking are and shall be enforceable by ADC and WSCC in accordance with the provisions of Section 106 (3) of the Act.

4. Commencement

4.1 This Unilateral Undertaking shall come into effect upon the date of this Unilateral Undertaking but the obligations in clauses 5 6 7 and 8 are conditional upon the grant of the Planning Permission and shall become effective only upon the Commencement of Development or as otherwise specified in the Schedules to this Unilateral Undertaking.

4.2 Upon Commencement of Development the Owner will give to ADC and WSCC notice in writing of that Commencement in the form of The Commencement Notice annexed to this Unilateral Undertaking as Schedule 1 addressed to ADC's Head of Planning Services and WSCC's County Planning Officer or equivalent.

4.3 Prior to Occupation of Development the Owner will give to ADC and WSCC notice in writing of that Occupation, such notice to be addressed to ADC's Head of Planning Services and WSCC's County Planning Officer or equivalent.

5. Owner's Covenants in favour of ADC

5.1 The Owner covenants with ADC to observe, perform and comply with the obligations contained in Schedule 3 (Community Facilities Contribution and Public Open Space), Schedule 4 and Schedule 5.

5.2 The Owner covenants with ADC:

5.1 in accordance with Schedule 4 and 5 hereto to provide on the Land the Affordable Housing

5.2 not to Occupy or cause or allow to be Occupied more than 50% of the Market Housing Units in the Development until the Affordable Housing is provided on the Land in accordance with Schedules 4 and 5 hereto

6. Owner's Covenants in favour of WSCC and ADC

6.1 The Owner covenants with ADC and WSCC to comply with the provisions of Schedule 6 (WSCC Contributions)

6.2 In respect of the provisions of Schedule 4:

6.2.1 Until such time as the Owner has disposed of its interest in the Land the Council is the local planning authority responsible for enforcing the planning obligations herein contained

6.2.2 Upon disposal by the Owner of its interest or part of its interest in the Land WSCC shall become the local planning authority responsible for enforcing the planning obligations in Schedule 5

7. Certificates

The Owner covenants:

7.1 where this Unilateral Undertaking imposes a requirement for the making of a payment or the carrying out of an act or the cessation of an activity on a Specified Date the Owner shall give to ADC or WSCC notice of the Specified Date not less than seven working days in advance of such Specified Date;

8. Index Linking

8.1 Any sums payable by the Owner under this Unilateral Undertaking shall be increased by the application of the following formula:

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

where:

A is the sum actually payable on the Specified Date

B is the original sum provided for in this Unilateral Undertaking

C is the Building Cost Information Service National All-In Tender Price Index for the quarter preceding the Specified Date for the ADC Contributions and the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors for the quarter preceding the Specified Date for the WSCC Contributions

D is the Building Cost Information Service National All-In Tender Price Index for the quarter preceding the date of this Unilateral Undertaking for the ADC Contributions and the All In Tender Price Index published by the Buildings Costs Information Service of the Royal Institute of Chartered Surveyors for the quarter preceding the date of this Unilateral Undertaking for the WSCC Contributions

C

D is equal to or greater than 1

9. Interest

Interest will be paid on sums due to ADC and WSCC under this Unilateral Undertaking but not paid on the Specified Date from the Specified Date until actual payment. The rate of interest shall be the 4% above the Bank of England base rate from time to time.

10. Payment Notice

All payments due under this Unilateral Undertaking shall be forwarded to the payee and shall have attached to them a copy of the Payment Notice contained in Schedule 2 to this Unilateral Undertaking duly completed.

11. General

The Owner agrees that:

- 11.1 The obligations contained in Clauses 5 and 6 are planning obligations for the purpose of Section 106 of the Act.

- 11.2 This Unilateral Undertaking constitutes a deed.
- 11.3 This Unilateral Undertaking is enforceable by ADC as to Clause 5 and Schedules 3, 4 and 5 and by ADC and WSCC subject to clause 6.2 as to Clause 6 and Schedule 4.
- 11.4 Nothing in this Unilateral Undertaking confers or is intended to confer a benefit on a third party under the Contracts (Rights of Third Parties) Act 1999.
- 11.5 This Unilateral Undertaking shall apply to the Development as authorised by the Planning Permission issued pursuant to the Planning Application or to the Development after variation or renewal of the Planning Permission from time to time.
- 11.6 This Unilateral Undertaking is a Local Land Charge and may be registered as such.
- 11.7 This Unilateral Undertaking shall not be enforceable against residential owners or occupiers or tenants of Dwelling Units constructed pursuant to the Planning Permission or their mortgagees or any person deriving title from them.
- 11.8 The Owner shall not be liable for any breach of the restrictions and obligations set out in this Unilateral Undertaking where such breach arises after the Owner shall have parted with his entire interest in the Land or such part of the Land to which such breach relates save in respect of liability for any antecedent and subsisting breach of this Unilateral Undertaking.
- 11.9 The Owner shall not be liable for any breach of the restrictions and obligations set out in this Unilateral Undertaking in respect of any part of the Land in which he does not have a legal interest.
- 11.10 No covenants or obligations contained in this Unilateral Undertaking shall be binding upon any part of the Land that may in future be acquired by a statutory undertaker for the purposes of its Unilateral Undertaking or operational land as defined in Section 262 of the Act.
- 11.11 If any provision in this Unilateral Undertaking shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired.

11.12 This Unilateral Undertaking shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be 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 the Development.

11.13 Any notices required to be served under this Unilateral Undertaking shall be deemed to be validly served if sent by recorded delivery to the principal address or registered office of the relevant party.

11.14 Nothing in this Unilateral Undertaking shall prohibit or limit the right to develop the Land or 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 Unilateral Undertaking.

12. CIL Regulations and Severance

12.1 In the event that one or more of the obligations in this Unilateral Undertaking does not meet the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (SI 2010/948) then (without prejudice to the legal effect of the remainder of this Unilateral Undertaking) the relevant individual obligation shall not take effect.

12.2 In the event that one or more of the obligations in this Unilateral Undertaking does not meet the statutory tests set out in Regulation 123(3) of the Community Infrastructure Levy Regulations 2010 (SI 2010/948) then (without prejudice to the legal effect of the remainder of this Unilateral Undertaking) the relevant individual obligation shall not take effect.

12.3 In the event that ADC adopts a Charging Schedule under the Community Infrastructure Levy Regulations 2010 (SI 2010/948) prior to Planning Permission being granted, the Owner shall be released from one or more of the obligations in this Unilateral Undertaking that relate to an item or project included on ADC's Regulation 123 list of infrastructure.

13. Jurisdiction

This Unilateral Undertaking is governed by and interpreted in accordance with the law of England.

14. Delivery

The provisions of this Unilateral Undertaking shall be of no effect until it has been dated (apart from this clause which shall be of immediate effect).

15. Costs

The Owner shall as soon as possible following completion of this Deed pay the reasonable legal costs of ADC in the sum of £700 incurred in considering and checking this Deed

SCHEDULE 1

Commencement Notice

Pursuant to Clause 4.2 in Planning Obligation Described Below

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

Dated this ____ day of ____ 20

Signed _____

On Behalf Of: _____

To:	[1] Head of Planning Services, Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF (DX: 57406 Littlehampton) [2] Monitoring and Records Team, Local Development Division, West Sussex County Council, County Hall, West Street, Chichester, West Sussex, PO19 1RQ (DX: 157410 Chichester 8)
FROM:	
DEVELOPMENT AT:	
NATURE OF DEVELOPMENT:	
PLANNING PERMISSION DATE & REFERENCE	
PLANNING OBLIGATION DATE & PARTIES	
START DATE:	

SCHEDULE 2

Payment Notice

Payment of Monies due under a Section 106 Planning Obligation/Unilateral Undertaking

Please answer all the questions.

1. Payment to be made by/on behalf of
.....
2. Land at:
.....
3. Agreement dated:
.....
4. Planning application reference number [where applicable]
5. Obligation in Unilateral Undertaking

[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	

SCHEDULE 3
ADC CONTRIBUTIONS

The Owner covenants as follows to ADC:

Community Facilities Contribution

1. To pay to ADC on Occupation of the first Dwelling on the Development

1.1 the Community Facilities Contribution

2. It is acknowledged for the avoidance of doubt that the Community Facilities Contribution is paid to ADC on the understanding that:

- 2.1 it shall be used for their stated purpose only and for no other purpose;
- 2.2 that if any part of the Community Facilities Contribution paid to ADC has not been spent or committed within five years of the date on which the Community Facilities Contribution is paid, ADC will refund such sums and any interest accrued thereon to the paying party, within 28 days following receipt of a written request for repayment;

Provision of On-Site Public Open Space

- 3.1 to provide and lay out an area of open space situated as part of the Development within the area shown on Drawing 2124/127 attached hereto within and on the Land in accordance with a specification to be submitted to and approved by ADC and to be implemented to ADC's satisfaction which is to be given in writing.
- 3.2 to ensure that there is easy public access to the Public Open Space.
- 3.3 to complete the works of provision and laying out in accordance with Clause 3.1 and to make the Public Open Space available for use by the public no later than the First Occupation of the 26th dwelling forming part of the Development.
- 3.4 within two months of the completion of the works referred to in Clause 3.3 to transfer the Public Open Space to ADC or to such body as it may direct

through such transfer to ADC or its nominee for public use and for maintenance purposes but ADC may assume responsibility for the Public Open Space in advance of the formal transfer being completed but with no obligation on ADC to accept such earlier responsibility.

- 3.5 upon the handover or transfer referred to in Clause 3.4 to pay to ADC or its nominee the Public Open Space Maintenance Contribution.

SCHEDULE 4
ON-SITE AFFORDABLE HOUSING

The Owner covenants with ADC as follows:

1. Obligation to Provide Affordable Housing

- 1.1 The location of the Affordable Housing Units within the Development shall be as shown on a plan to be agreed in writing by the Owner and ADC prior to Commencement of Development;
- 1.2 To procure that the Affordable Housing Units are completed no later than the date on which the 45th Market Housing Unit is completed;
- 1.3 Unless otherwise agreed in writing by ADC 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 an Affordable Housing Provider on terms which ensure that the Affordable Housing Units are and remain bound by the obligations in this Schedule;
- 1.4 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. Mechanics and Terms of Transfer

FIRST OFFER

- 2.1 The Owner shall make an offer to an Affordable Housing Provider which offer shall include:-
 - (a) Sale of Land Contract;
 - (b) 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 made in accordance with the above 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 an Affordable Housing Land Sale 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").

PROVISIONS TO BE IMPLEMENTED IF FIRST AND SECOND OFFERS ARE NOT IMPLEMENTED

- 2.4 In the event that the second offer is not accepted within the second offer period then the Owner will either:
- (a) pay to ADC a sum £45,000 per Affordable Housing Unit to be provided on the Land, making a sum of £1,260,000.00 for the 28 Affordable Housing Units to be provided on the Land.; or
 - (b) dispose of all Affordable Housing Units to an Affordable Housing Provider as Intermediate units; or
 - (c) dispose of all Affordable Housing Units to buyers nominated through Help to Buy East or Help to Buy South East at a 20% discount to open market value; or
 - (d) dispose of all Affordable Housing Units to an Affordable Housing Provider or other investor (agreed with ADC to be let at open market rents); or
 - (e) dispose of all Affordable Housing Units under a starter home scheme initiative or such other tenure as NPPG directs from time to time
- and not to allow or permit the occupation of more than 75% of the Market Housing Units until the above is completed and complied with in full

- 2.5 If having exhausted all of the options for disposal of the Affordable Housing Units under 2.4 (a) to (e) the disposal of the Affordable Housing Units shall not have been secured then the Owner shall be entitled to dispose of the Affordable Housing Units on the open market and not to allow or permit the occupation of more than 75% of the Market Housing Units until the above is completed and complied with in full

NOMINATION RIGHTS

- 2.5 To procure that the Affordable Housing Provider grants nomination rights to ADC in relation to 100 % Occupation of the Affordable Rented Dwellings and nomination rights to 75% of all subsequent re-lets of the Affordable Rented Dwellings PROVIDED THAT if ADC do not accept such offer then the Affordable Housing Provider shall in seeking to allocate the Affordable Housing Units have regard as far as possible to the following criteria:

- 1 any family association in the said administrative area in accordance with relevant housing allocation policies;
- 2 any period of ordinary residence in the said administrative area not immediately before the date on which any unit of accommodation becomes vacant;
- 3 any employment opportunity in the locality;
- 4 any other connection with the locality

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

3. Further Provisions

- 3.1 Nothing in this Unilateral Undertaking shall be construed as imposing or otherwise implying any obligation on ADC to grant or make available any public subsidy or other financial support (or to assist the Owner in obtaining such public subsidy or other financial support) in respect of the Affordable Housing Units;

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

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

3.2.2 it shall have been sold under a shared ownership lease and the leaseholder (or its mortgagee) has stair-cased his ownership under the lease to 100 percent; and

3.2.3 in the event of any dispute as to whether any proposed occupier of any Affordable Housing Unit is a Qualifying Occupier the matter shall be determined by ADC (acting reasonably)

4. Mortgagee in Possession Clauses

4.1 In the event that any Affordable Housing Unit is the subject of a legal charge or mortgage and there is a default under any legal charge or mortgage of the Affordable Housing Units then any chargee or mortgagee ("the Chargee") shall be entitled to exercise its power of sale free from the restrictions set out in this Schedule provided that the Chargee shall first have followed the procedure set out below:

4.1.1 The Chargee shall give written notice ("the Sale Notice") to ADC of its intention to exercise its power of sale.

4.1.2 At the same time as giving the Sale Notice the Chargee shall make an offer ("the Offer") to sell the Affordable Housing Units to ADC for an amount to be agreed or determined in accordance with the provisions of clause 4.1.5.2. herein ("the Purchase Price")

4.1.3 ADC may notify the Chargee in writing within one month of the date of the Offer whether or not it wishes to accept the Offer (in the case of an acceptance such acceptance to be conditional upon the Purchase Price being acceptable to ADC)

4.1.4 If ADC shall notify the Chargee within the time specified in sub-paragraph 4.1.3 that it does not wish to accept the Offer ("the Refusal") ADC shall then have one month from the date upon which it notifies in writing its Refusal of the Offer within which to arrange for the transfer of the Affordable Housing

Units in consideration of the Purchase Price to an Affordable Housing Provider.

4.1.5 If ADC shall notify the Chargee within one month of the time specified within sub paragraph 4.1.3 that it wishes to accept the Offer or if within the time specified in sub-paragraph 4.1.4 ADC gives written notice to the Chargee that arrangements can be made in accordance with sub-paragraph 4.1.4 for the purchase of the Affordable Housing Unit by an Affordable Housing Provider then:

4.1.5.1 the Chargee shall co-operate with ADC to secure the transfer; and

4.1.5.2 ADC and the Chargee shall endeavour to agree the Purchase Price which shall represent the open market value of the Affordable Housing Units but subject to all or any tenancies of the Affordable Housing Units as may be subsisting at the date of the Sale Notice and disregarding the provisions of paragraph 4.1.4 of this Schedule AND in default of such agreement the Purchase Price shall be determined on the same basis of valuation by an independent surveyor ("the Surveyor") experienced in valuing residential land and property who shall act as an expert and whose costs shall be borne by ADC and the Chargee in equal shares and the Surveyor shall be appointed in default of agreement between the parties on the application of either party by or on behalf of the President for the time being of the Royal Institute of Chartered Surveyors (or successor organisation) and the Surveyor's determination shall be binding on both parties.

4.1.6 Subject to the provisions of sub-paragraph 4.1.7 any transfer to ADC or to an Affordable Housing Provider shall be completed within two months of the date the Purchase Price is agreed (or such longer period as may be agreed between the Chargee and ADC) ("the Completion Period).

4.1.7 If the Chargee does not wish to exercise its power of sale at any time after giving the Sale Notice or ADC does not wish to continue with the exercise of its power under the provisions of paragraph 4.1 that party shall give to the other not less than seven days' written notice of its intention to discontinue.

4.1.8 If either:

4.1.8.1 the ADC fails to give notification to the Chargee within the time specified in sub-paragraph 4.1.3 or

4.1.8.2 having given notification of refusal of the Offer in accordance with sub-paragraph 4.1.3 ADC fails to give notification to the Chargee within the time specified in sub-paragraph 4.1.4; or

4.1.8.3 ADC having complied with the time periods specified in sub-paragraph 4.1.3 and (in the case of a refusal of the Offer) sub-paragraph 4.1.4, the transfer to either ADC or to an Affordable Housing Provider shall not be completed within the Completion Period save that if the failure to complete the said transfer within the Completion Period is not caused by any fault or unreasonable delay on the part of ADC this sub-clause shall not apply and nor shall sub-clause 4.1.8.5; or

4.1.9 ADC shall in formulating or promoting any arrangements referred to in sub-paragraph 4 give consideration to protecting the interests of the Chargee in respect of monies outstanding under the charge or mortgage.

SCHEDULE 5

List of ADC Approved Registered Providers

Affinity Sutton

(Sunita Aujila)

Cams Hall

Cams Hill

Fareham

Hampshire

PO16 8AB



Guinness Hermitage

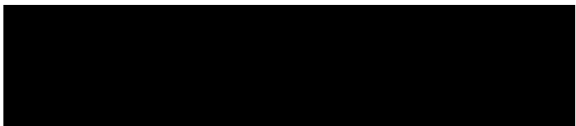
(Damian Haley)

Hermitage House

7 St Georges Walk

Waterlooville

Hants



Hyde Martlet

(John Martin)

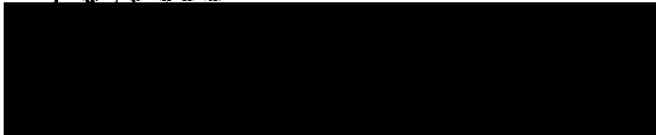
Martlett House

Southern Gate

Chichester

West Sussex

PO19 8SG



Hastoe Group

(Jane Gallifent)

Marina House

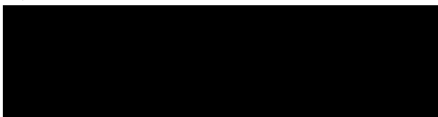
17 Marina Parade

Hampton House

Hampton Wick

Kingston upon Thames

KT1 4BH



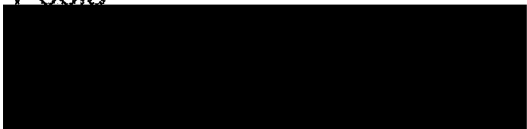
Worthing Homes

1 Chapel Road (Chris Pelling-Fulford)
Worthing
West Sussex



Stonewater Housing Association

(Jackie Burton)
2nd Floor Westover House
West Quay
Poole



Southern Housing Group

(Liz Hills)
Spire Court
Albion way
Horsham
West Sussex



SCHEDULE 6
WSSC CONTRIBUTIONS AND ESTATE ROADS

The Owner covenants as follows:

1. To pay to WSSC on Occupation of the first Dwelling on the Development
 - 1.1 the Fire and Rescue Contribution
 - 1.2 the Library Contribution
 - 1.3 the Primary Education Contribution
 - 1.4 the TRO Contribution
2. It is acknowledged for the avoidance of doubt that the WSSC Contributions are paid to WSSC on the understanding that:
 - 2.1 the relevant contributions shall be used for their stated purpose only and for no other purpose;
 - 2.2 that if any part of the WSSC Contributions paid to WSSC have not been spent or committed within ten years of the date on which the WSSC Contributions were paid, WSSC will refund such sums and any interest accrued thereon to the paying party, within 28 days following receipt of a written request for repayment;
3. Prior to the Commencement of Development to submit to WSSC 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, footpaths and cycleways that will be offered for adoption under S38 of the Highways Act 1980 and those to remain private). Any plan should also include details of surfacing, materials and construction of the Estate Roads.
4. Prior to the first occupation of a Dwelling to submit to WSSC:
 - 4.1 the name and contact details of the Management Company; and
 - 4.2 a schedule for approval of the street furniture that the Management Company will be responsible for maintaining and a regime of maintenance
5. The Owner covenants that all estate roads that are stated to be privately maintained by the Owner or the Management Company shall be:

- 5.1 constructed to a standard that is suitable for its intended use;
 - 5.2 maintained by the Owner or the management Company at their own expense in good and substantial repair and condition; and
 - 5.3 shall not be dedicated by the Owner or the Management Company as a public highway or become a private street) as defined in the new Roads and Street Works Act 1991)
6. Upon completion of the construction of the Estate Roads not being adopted under a Section 38 Agreement the Owner will provide a report to be prepared and signed by a Chartered Engineer at their own expense to confirm that the construction of the privately maintained Estate Roads have been designed and built to a suitable standard for their intended use.
 7. The privately maintained Estate Roads shall remain open and unobstructed at all times and available for use by both residents of the Development and members of the public on foot and by bicycle as appropriate and in the latter case without charge; and
 8. To erect and maintain signs in positions agreed with the 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 of the Highways Act 1980 or otherwise).

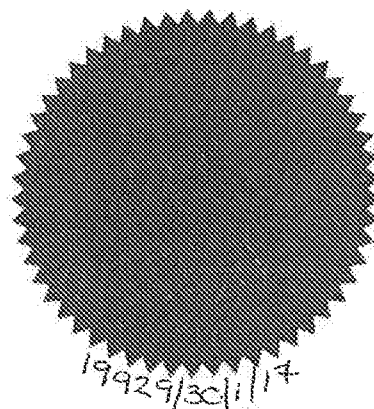
IN WITNESS whereof this Deed has been duly executed the day and year first hereinbefore mentioned

The Common Seal of
WEST SUSSEX COUNTY COUNCIL

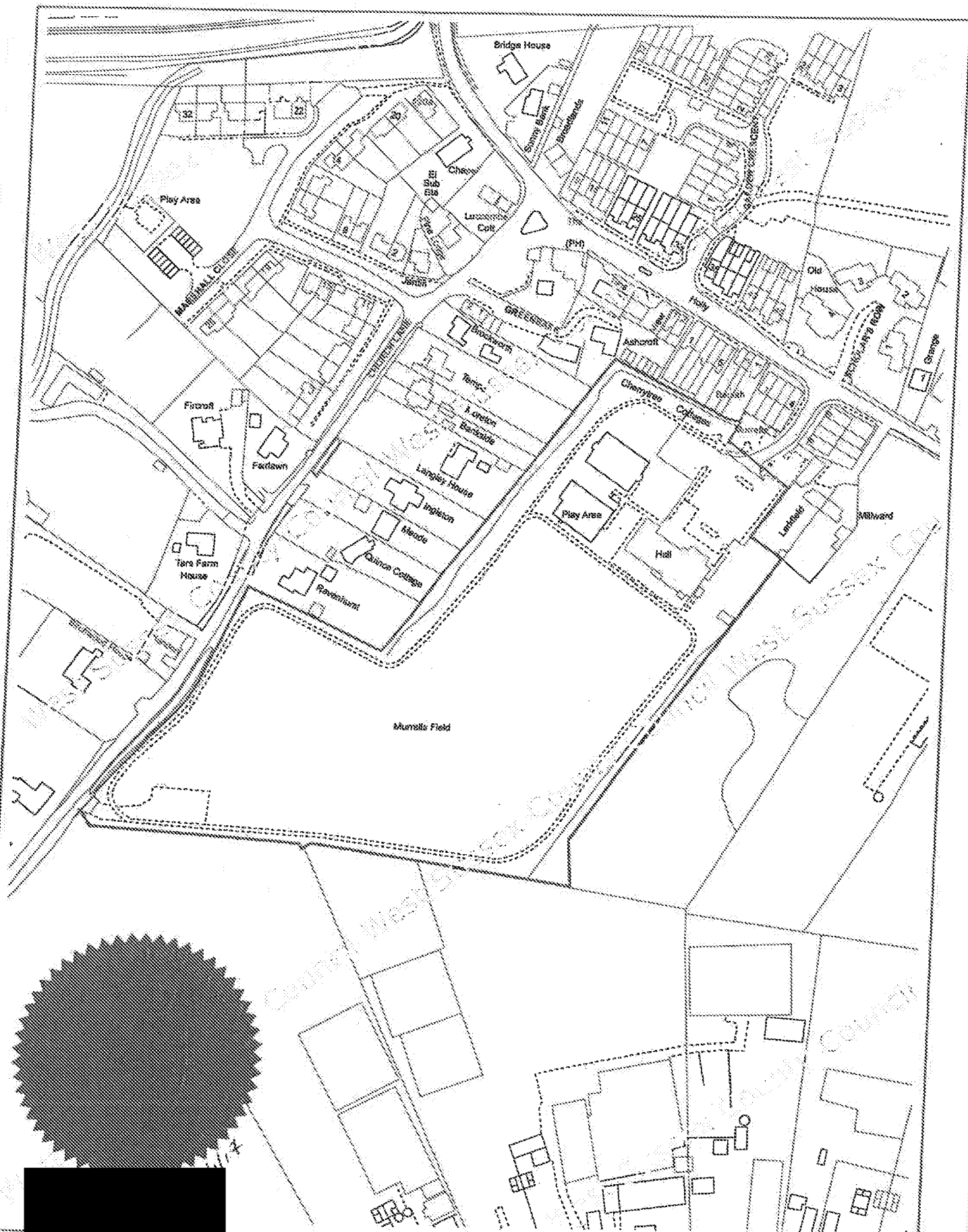
Was hereunto affixed

In the presence of


Authorised Signatory



APPENDIX 1
PLANS



Murrells Field, Barnham



Scale : 1:1500 @ A3

Plot Date : 25/08/2016

Produced by Land & Property Information

Economy, Planning & Place



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APPENDIX 2

First Deed of Variation

DATED

22 September

ARUN DISTRICT COUNCIL

- and -

WEST SUSSEX COUNTY COUNCIL

- and -

WEST SUSSEX COUNTY COUNCIL

DEED OF VARIATION

under Section 106A of the Town & Country Planning Act 1990 relating to Land
known as Angel's Nursery, on the South West side of Yapton Road, Barnham
in the County of West Sussex

Arun District Council
Arun Civic Centre
Maltravers Road
LITTLEHAMPTON
West Sussex
BN17 5LF
[☎ 01903 737737]
Ref: BN/43/16/PL

FINAL

22 September

THIS DEED OF VARIATION is made the _____ day of _____ 2017

BETWEEN:

- (1) "the Council" Arun District Council of the Arun Civic Centre Maltravers Road
Littlehampton West Sussex BN17 5LF and
- (2) "the Owner" West Sussex County Council of County Hall West Street
Chichester PO19 1RQ
- (3) "the County Council" West Sussex County Council of County Hall West Street
Chichester PO19 1RQ

NOW THIS DEED WITNESSETH: as follows:-

1. Definitions

In this Deed:-

- 1.1. "the Land" means Land known as Angel's Nursery, on the South West side of
Yapton Road Barnham, West Sussex
- 1.2. "the Original Deed " means the Deed made by way of unilateral undertaking given
pursuant to Section 106 Town & Country Planning Act 1990 on 12 April 2017 given
by the Owner to the Council and the County Council and attached to this Deed at
Appendix 1 for ease of reference

2. Recitals

- 2.1 This Deed is supplemental to the Original Deed
- 2.2 The Owner is still the Owner of the Land as specified in the Original Deed.
- 2.3 The Planning Permission was granted by the Council pursuant to the completion of
the Original Deed on 3 May 2017.
- 2.4 The Council is the Local Planning Authority as defined in the Act for the area within
which the Land is situated for the purposes of this Deed and for the purposes of
Section 106 and 106A of the Act and agrees to the Original Deed being varied.2.5
The County Council is a planning authority as defined in the Act for the area within
which the Land is situated for the purposes of this Deed and for the purposes of
Section 106 and 106A and agrees to the Original Deed being varied.
- 2.4 This Deed is intended to vary the Original Deed as set out herein. Save where it is
specifically varied herein, the Original Deed shall continue in full force and effect and
shall continue to be enforceable by both the Council and the County Council against
the Owner or their successors in title to the Land.

3. Operative powers

The Council the County Council and the Owner enter into this Deed under the powers contained in S.106A of the Town and Country Planning Act 1990, S.111 of the Local Government Act 1972 and S.1 of the Localism Act 2011 and all other powers so enabling

4. Variation

4.1 The Council the County Council and the Owner AGREE that the Original Deed shall be varied as follows:

4.1.1 The existing definition of "Community Facility Contribution" shall be deleted and replaced as follows:

"Community Facilities Contribution" means the financial contribution of £147,354.50 being £1551.10 per dwelling as a sum payable in accordance with paragraph 1 of Schedule 3 of this Unilateral Undertaking to be used for the purpose of the following works at Murrells Field, indicated on the plan attached to this Deed:-

1. Installation of sub-soil drainage system draining to existing surface water drainage and pipework systems
2. Grading and levelling across the whole field (3 – 4 ha)
3. Re-seeding with sports grass mix
4. Setting out pitches, goalposts etc to provide facilities for a wide range of sports
5. Creating access from the Land to Murrell's Field to enable the new residents to access the playground, trim trail, MUGA and hall"

4.2 The Original Deed shall otherwise continue in full force and shall have the same legal effect as before this amendment or variation.

5. Local Land Charge

The Original Deed is registered as a local land charge and this Deed shall be entered in the relevant register so as to record the variation

IN WITNESS whereof the Council the County Council and the Owner have hereunto caused their respective Common Seals to be affixed as a Deed the day and year first before written.

THE COMMON SEAL OF
ARUN DISTRICT COUNCIL
was hereunto affixed in the presence of:

AUTHORISED SIGNATORY:

NAM E

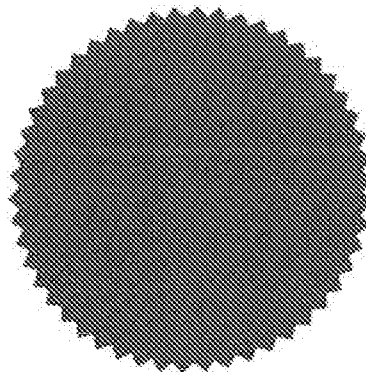
JOB TITLE

SEAL BOOK NO

379/2017



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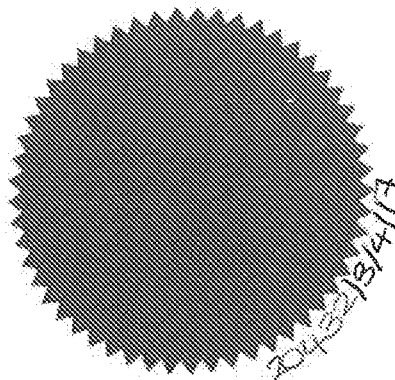


FINAL

THE COMMON SEAL OF
WEST SUSSEX COUNTY COUNCIL
as Owner
was hereunto affixed in the presence of:



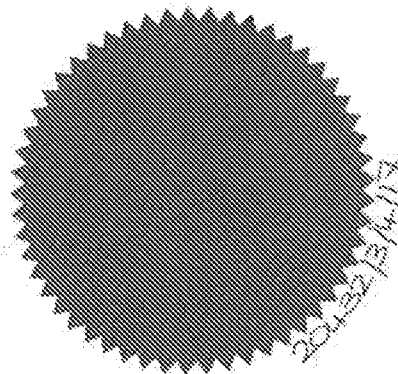
AUTHORISED SIGNATORY:



THE COMMON SEAL OF
WEST SUSSEX COUNTY COUNCIL
as County Planning Authority
was hereunto affixed in the presence of:



AUTHORISED SIGNATORY



FINAL

