

DATED THIS 20 DAY OF September 2021		
(1)	ARUN DISTRICT COUNCIL	
(2)	B 5 LIMITED	
(3)	LLOYDS BANK PLC	
(4)	WEST SUSSEX COUNTY COUNCIL	
	<p>Agreement pursuant to Section 106 of the Town and Country Planning Act 1990 relating to land at The Beach Hotel, Waterloo Square, Bognor Regis PO21 1SU.</p> <p>Planning ref: BR/244/20/PL</p>	
	<p>Arun District Council The Civic Centre Maltravers Road LITTLEHAMPTON BN17 5LF</p> <p>DX 57406 LITTLEHAMPTON (Ref:8347)</p>	

Date: 20 September

2021

PARTIES:

1.	ARUN DISTRICT COUNCIL of The Civic Centre, Maltravers Road, LITTLEHAMPTON BN17 5LF ("the Council")
2.	B 5 LIMITED (Co. Regn. No. 02561658) of Tml House, 1a The Anchorage, Gosport, Hampshire, PO12 1LY ("the Owner")
3.	LLOYDS BANK PLC (Co. Regn. No. 2065) 3282 of Pendeford Securities Centre, Pendeford Business Park, Wobaston Road, Wolverhampton WV9 5HZ ("the Mortgagee")
4.	WEST SUSSEX COUNTY COUNCIL of County Hall, West Street, Chichester, PO19 1RQ ("the County Council")

WHEREAS

1.	The Council is the local planning authority, and the local authority responsible for public open space, equipped play space and sport and recreation facilities for the area in which the Land is situated.
2.	The County Council is the local education authority for the area in which the Land is situated.
3.	The Owner is the registered proprietor of the leasehold land registered at HM Land Registry under title number WSX180917 known as The Mud Club, Norfolk Street, Bognor Regis (PO21 1ND)
4.	The Council shall be responsible for enforcing this Agreement for all purposes.
5.	The County Council shall be responsible for enforcing this Agreement so far as education, library services, fire and rescue and highways matters are concerned.
6.	The Owner has made the Application and is proposing to carry out the Development.
7.	The Council has resolved that subject to the completion of this Agreement Planning Permission be granted subject to the conditions for the Development.
9.	This Agreement is made as a Deed.

NOW THIS AGREEMENT WITNESSETH as follows:

1. Interpretation:

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

"Access Management Contribution"	means the sum of £8,710.00 (EIGHT THOUSAND SEVEN HUNDRED AND TEN POUNDS) payable to the Council in accordance with paragraph 2 of the First Schedule towards the cost of delivery measures to avoid or mitigate to an acceptable level the harm caused to Pagham Harbour by the Development.
"Act"	means the Town and Country Planning Act 1990 as amended
"Agreed" or "Approved"	means agreed or approved in writing and given for the purpose of this Agreement.
"Application"	means an application in respect of the Land for the Development and given Council reference BR/244/20/PL
"CIL Regulations"	means the Community Infrastructure Regulations 2010 (as amended)
"Commencement"	means the carrying out of a material operation as defined in section 56(4) of the Act in respect of the Development but excluding for the purposes of this Agreement (and for no other purpose) any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof enabling works site clearance 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;
"Commencement Notice"	means notice in the form annexed to this Agreement as Appendix 1;
"Council Financial Contribution"	means one or more of the contributions referred to in the First Schedule. "Financial Contribution" and "Financial Contributions" shall be construed accordingly

"County Council Contribution"	means the Primary Education Contribution, Secondary Education Contribution and Sixth Form Education Contribution which are payable in accordance with Schedule 2 of this Deed
"County Council Monitoring Contribution"	means the total sum of £600 payable to the County Council for monitoring the delivery and performance of a County Council Contribution contained in this Deed over the lifetime of the Development
"Development"	means the re-development of the Land at The Beach Hotel, Former Mud Club, Waterloo Square, Bognor Regis PO21 1SU into 10 No.2 and 3 bed apartments and 2 No. commercial units (A1 Retail or A3 Restaurant/Café).
"Dwelling"	means a residential dwelling unit to be constructed on the Land pursuant to the Planning Permission
"Health and Fitness Contribution"	means a sum of £1,400.00 (ONE THOUSAND FOUR HUNDRED POUNDS) towards the community sports hub to be provided at West of Bersted payable to the Council in accordance with paragraph 6 of the First Schedule
"Highways England"	means the highways authority responsible for the maintenance of the A27
"Highways England Contribution"	means a sum of £4,359.20 (FOUR THOUSAND THREE HUNDRED AND FIFTY NINE POUNDS AND TWENTY PENCE) towards the mitigation scheme at the A27/A259 Bognor Road Roundabout as identified in the Enterprise Bognor Regis Transport 2017 Report payable in accordance with paragraph 19 of the First Schedule
"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
"Interest Rate"	Means: <ul style="list-style-type: none"> * In the case of the Council the rate 4% above the base rate from time to time of Lloyds Bank applicable at the Specified Date or the actual date on which the relevant obligation under this Agreement is paid whichever is the higher. * In the case of the County Council the interest at the rate of 4% above the Bank of England base rate applicable at the relevant payment date which shall be calculated on a day to day basis
"Land"	means the leasehold land at The Beach Hotel, Former Mud Club, Waterloo Square, Bognor Regis PO21 1SU shown for identification only on the Location Plan attached hereto as Appendix 3 and being registered at the Land Registry under the title numbers WSX180917

"Leisure Swimming Pool Contribution"	means a sum of £4,052.00 (FOUR THOUSAND AND FIFTY TWO POUNDS) towards swimming pool provisions at a new leisure centre for the District payable to the Council in accordance with paragraph 5 of the First Schedule
"Monitoring Fee"	means a sum of £5,400.00 (FIVE THOUSAND FOUR HUNDRED POUNDS) payable to the Council in accordance with paragraph 2 of the First Schedule in accordance with Regulation 122(2A) of CIL in respect of the cost of monitoring (including reporting under CIL) in relation to the delivery of these Planning Obligations.
"NPPF"	means the National Planning Policy Framework in force at the time that this Agreement is completed or at the time any appeal is determined
"Occupation"	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
"Open Space Contribution"	means a sum of £19,712.00 (NINETEEN THOUSAND SEVEN HUNDRED AND TWELVE POUNDS) towards improvements at Marine Park Gardens, Aldwick payable to the Council in accordance with paragraph 3 of the First Schedule
"Operative Date"	means the date the Development is Commenced
"Owner"	means B 5 Limited
"Pagham Harbour"	means a Special Protection Area also known as a Natura 2000 site, based in Pagham West Sussex in the District of Arun identified as being of international importance for the breeding, feeding, wintering or migration of rare and vulnerable species of European Union birds
"Payment Notice"	means a notice in the form annexed to this Agreement as Appendix 2;
"Plan"	means the plan annexed hereto as Appendix 3 and marked "Plan";
"Planning Condition"	means any condition subject to which the Planning Permission is granted.

"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;
"Planning Permission"	means a planning permission for the Development granted pursuant to the Application.
"Play Equipment Contribution"	means the sum of £17,303.00 (SEVENTEEN THOUSAND THREE HUNDRED AND THREE POUNDS) towards play equipment at West Park, Aldwick payable to the Council in accordance with paragraph 4 of the First Schedule
"Playing Pitch (Avisford Park) Contribution One"	means a sum of £1,084.00 (ONE THOUSAND AND EIGHTY FOUR POUNDS) towards improvements to the grass playing surface of football pitches at Avisford Park Recreation Ground, Bognor Regis payable to the Council in accordance with paragraph 8 of the First Schedule
"Playing Pitch (Avisford Park) Maintenance Contribution"	means the sum of £4,560 (FOUR THOUSAND FIVE HUNDRED AND SIXTY POUNDS) towards maintenance costs to the grass playing surface of football pitches at Avisford Park Recreation Ground, Bognor Regis payable to the Council in accordance with paragraph 9 of the First Schedule
"Playing Pitch (Avisford Park) Contribution Two"	means a sum of £2,958.00 (TWO THOUSAND NINE HUNDRED AND FIFTY EIGHT POUNDS) towards improvements to ancillary facilities at Avisford Park Recreation Ground, Bognor Regis payable to the Council in accordance with paragraph 10 of the First Schedule
"Playing Pitch (Rugby Club) Contribution One"	means the sum of £333.00 (THREE HUNDRED AND THIRTY THREE POUNDS) towards improvements to the grass playing surface of rugby pitches at Bognor Regis Rugby Club payable to the Council in accordance with paragraph 11 of the First Schedule
"Playing Pitch (Rugby Club) Maintenance Contribution"	means the sum of £1,420 (ONE THOUSAND FOUR HUNDRED AND TWENTY POUNDS) towards maintenance costs to the grass playing surface of the rugby pitches at Bognor Regis Rugby Club payable to the Council in accordance with paragraph 12 of the First Schedule
"Playing Pitch (Rugby Club) Contribution Two"	means the sum of £820.00 (EIGHT HUNDRED AND TWENTY POUNDS) towards improvements to ancillary facilities at Bognor Regis Rugby Club payable to the Council in accordance with paragraph 13 of the First Schedule
"Playing Pitch (Queensfield) Contribution One"	means the sum of £801.00 (EIGHT HUNDRED AND ONE POUNDS) towards improvements to the grass playing surface of cricket pitches at Queensfield, West Meads, Bognor Regis payable to the Council in accordance with paragraph 14 of the First Schedule

"Playing Pitch (Queensfield) Maintenance Contribution"	means the sum of £3,420 (THREE THOUSAND FOUR HUNDRED AND TWENTY POUNDS) towards maintenance costs to the grass playing surface of cricket pitches at Queensfield, Bognor Regis payable to the Council in accordance with paragraph 15 of the First Schedule
"Playing Pitch (Queensfield) Contribution Two"	means the sum of £937.00 (NINE HUNDRED AND THIRTY SEVEN POUNDS) towards improvements to ancillary facilities at the cricket pitches at Queensfield, Bognor Regis payable to the Council in accordance with paragraph 16 of the First Schedule
"Playing Pitch (3G) Contribution One"	means the sum of £830.00 (EIGHT HUNDRED AND THIRTY POUNDS) towards surfacing 3G pitches at the West Bersted strategic development site payable to the Council in accordance with paragraph 17 of the First Schedule
"Playing Pitch (3G) Maintenance Contribution"	means the sum of £580.00 (FIVE HUNDRED AND EIGHTY POUNDS) maintenance costs in surfacing 3G pitches at the West Bersted strategic development site payable to the Council in accordance with paragraph 18 of the First Schedule
"Playing Pitch (3G) Contribution Two"	means the sum of £288.00 (TWO HUNDRED AND EIGHTY EIGHT POUNDS) towards ancillary facilities at the West Bersted strategic development site payable to the Council in accordance with paragraph 19 of the First Schedule
"Primary School Contribution"	means the sum of £12,922.00 (TWELVE THOUSAND NINE HUNDRED AND TWENTY TWO POUNDS) which is calculated using current occupancy rates from census statistics published by the Office for National Statistics and payable in accordance with paragraph 1 of Second Schedule of this Agreement being a financial contribution towards the cost of providing the additional education infrastructure required to accommodate the extra demands for primary education services that would be generated by the Development and to be used towards additional facilities at Edward Bryant Primary School PROVIDED THAT should Commencement of Development take place after 2021, the sum shall be re-calculated using the latest published census statistics published by the Office for National Statistics;
"Recorded Delivery"	means post that when received must be signed for by the recipient
"RICS"	means the Royal Institute of Chartered Surveyors

"Secondary School Contribution"	means the sum of £16,851.00 (SIXTEEN THOUSAND EIGHT HUNDRED AND FIFTY ONE POUNDS) which is calculated using current occupancy rates from census statistics published by the Office for National Statistics and payable in accordance with Paragraph 2 of the Second Schedule of this Agreement being a financial contribution towards the cost of providing the additional education infrastructure required to accommodate the extra demands for secondary education services that would be generated by the Development and to be used towards Phase 1 of the new secondary school in Arun PROVIDED THAT should Commencement of Development take place after 2021, the sum shall be re-calculated using the latest published census statistics published by the Office for National Statistics;
"Section 278 Agreement"	means an agreement entered into under Section 278 of the Highways Act 1980
"Section 73 Consent"	means any approval or consent given by the Council under Section 73 of the Act.
"Sixth Form Contribution"	means the sum of £3,258.00 (THREE THOUSAND TWO HUNDRED AND FIFTY EIGHT POUNDS) which is calculated using current occupancy rates from census statistics published by the Office for National Statistics and payable in accordance with paragraph 3 of Second Schedule of this Agreement being a financial contribution towards the cost of providing the additional education infrastructure required to accommodate the extra demands for further secondary (sixth form) education services that would be generated by the Development and to be used towards additional equipment at Felpham Community College Sixth Form PROVIDED THAT should Commencement of Development take place after 2021, the sum shall be re-calculated using the latest published census statistics published by the Office for National Statistics;
"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

"Sports Hall/Flexible Activity Space Contribution"	means the sum of £3,767.00 (THREE THOUSAND SEVEN HUNDRED AND SIXTY SEVEN POUNDS) towards the community sports hub to be provided at West of Bersted payable to the Council in accordance with paragraph 7 of the First Schedule
"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 County Council the successors to its 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" includes email but not fax.
- 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.

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 enforceable by the Council and County Council as a local planning authority as appropriate against the Owner in accordance with Section 106 of the Act.

4. Conditionality

- 4.1 This Agreement is conditional upon:
- 4.1.1 the grant of Planning Permission
 - 4.1.2 the Commencement of the Development
- save that the provisions of clauses 2,3,4,11,13, 18, 19 and 20 which shall come into effect immediately upon completion of this Agreement
- 4.2 In the event that the Application or any Planning Condition is subject to an appeal then each Planning Obligation in this Agreement is also conditional upon:
- 4.2.1 The Secretary of State or the planning inspection deciding the appeal being satisfied that it is:
 - 4.2.1.1 necessary to make the Development acceptable in planning terms; and
 - 4.2.1.2 directly related to the Development; and

4.2.1.3 fairly and reasonably related in scale and kind to the Development; and

4.2.1.4 complies in all respects with the CIL Regulations

- 4.2.2 In the event that the Secretary of State or the planning inspector deciding the appeal expressly states in his decision letter that any individual Planning Obligation within the Agreement is not compliant with the CIL Regulations and/or the NPPF or is immaterial to the grant of the Planning Permission and that no weight has been given to the same in reaching his decision then that planning obligation or those planning obligations will cease to have effect and shall be void for the purposes of this Agreement and shall have no effect and the Owner shall not be obliged to comply with the terms of that obligation and the remaining clauses will remain in full force and effect provided that severance is achievable.

5. COVENANTS BY THE OWNER

- 5.1 The Owner covenants with the Council to observe and perform the Planning Obligations contained in this Deed.
- 5.2 The Owner covenants with the County Council to observe and perform the Planning Obligations contained in the Second Schedule of this Deed.

6. COVENANTS BY THE COUNCIL

- 6.1 The Council covenants with the Owner and County Council to observe and perform the Planning Obligations contained in the Third Schedule of this Deed.

7. COVENANTS BY THE COUNTY COUNCIL

- 7.1 The County Council covenants with the Owner and Council to observe and perform the Planning Obligations contained in the Fourth Schedule of this Deed.

8. Certificates

- 8.1 The Owner agrees with the Council and County Council:
- 8.1.1 To serve on the County Council within 14 days of the granting of Planning Permission a notice that Planning Permission has been granted "the Planning Permission Notice"
- 8.1.2 Not more than 7 (seven) days after the Development is Commenced the Owner shall serve on the Council & County Council a Commencement Notice in the form set out in Appendix 1 hereto.
- 8.1.2 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 & County Council (in relation to obligations to the County Council) notice of the Specified Date not more than seven days after such Specified Date; and
- 8.1.3 if the Owner fails to give the notice required under this Clause the Council and/ or 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

9. Miscellaneous

- 9.1 Nothing in this Agreement constitutes an obligation to grant planning permission
- 9.2 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.
- 9.3 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 up to a maximum of £1,000.
- 9.4 The Owner covenants to pay the County Council Monitoring Contribution on or before the completion of this Deed and for the avoidance of any doubt the costs referred to in this Clause do not constitute or purport to constitute planning obligations for the purposes of Section 106 of the Act

and are payable pursuant to the other statutory provisions referred to in Clause 3

- 9.5 No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 9.6 This Agreement shall be registered by the Council as a local land charge.
- 9.7 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the 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 one of the methods outlined in clause 18.1.
- 9.8 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall at the Owner's written request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.
- 9.9 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 9.10 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) if it is modified by any statutory procedure or expires prior to the Commencement of Development
- 9.11 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 9.12 Nothing contained or implied in this Agreement shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by laws statutory instruments orders and regulations in the exercise of their functions as a local authority

10. Payment Notice

- 10.1 All payments due under this Agreement shall be forwarded to the payee and shall have attached to them a copy of the Payment Notice duly completed.

11. Exclusion of liability

- 11.1 No person shall be liable for any breach of any of the Planning Obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Land, or such part of the Land to which the breach relates, but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 11.2 No person shall be liable for any breach of any of the Planning Obligations or other provisions of this Agreement which relate to a part of the Land in which it does not have an interest.
- 11.3 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 Land for the purpose of providing apparatus pursuant to its statutory undertaking for the Development or against Network Rail in the event that part of the Land is transferred to Network Rail pursuant to the provisions of this Agreement
- 11.4 The Planning Obligations in this Agreement shall not bind or be enforceable against any mortgagee or chargee or any successor in title to such mortgagee chargee or receiver unless in possession of the Land.
- 11.5 Any legal charge entered into in respect of the Land or any part of the Land after this Agreement has been completed shall take effect subject to this Agreement PROVIDED THAT the mortgagee under such a legal charge shall have no liability under this Agreement unless it causes the breach after it becomes a mortgagee in possession of the land comprised in the legal charge and the mortgagee shall not be liable for any breach of this Agreement that occurs prior to the mortgagee taking possession of the land

12. Waiver

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

13. Change in Ownership

13.1 The Owner agrees with the Council to give the Council written notice as soon as reasonably practicable following any change in ownership of any of its interests in the Land occurring before all the Planning Obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan provided that the Owner shall not be required to give notice to the Council of:

13.1.1 any change of ownership affecting a Dwelling; or

13.1.2 the grant of a lease or leases of any commercial unit forming part of the Development granted for a period of less than 21 years .

14. Future Section 73 Consents

14.1 Subject to clauses 14.2 to 14.5 below, if any Section 73 Consent is granted after the date of this Agreement:

14.1.1 the Planning Obligations in this Agreement shall relate to and bind such Section 73 Consent; and

14.1.2 the definitions of Application, Development and Planning Permission (other than for the purposes of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself;

14.2 nothing in this clause shall fetter the discretion of the Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;

14.3 to the extent that any of the Planning Obligations in this Agreement have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent;

14.4 the provisions of this clause 14 shall not apply to any Section 73 Consent which necessitates or requires amendments to the substantive terms or Planning Obligations of or contained within this Agreement;

14.5 the Council reserves the right to insist upon the completion of a separate Planning Obligation by Agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it necessary to do so

15. Index linked

- 15.1 Unless there is an express provision to the contrary the Owner agrees with the Council that any sum payable by the Owners 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

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

$$A = B \times C/D \text{ (C/D) is equal to or greater than 1}$$

where A is the sum actually payable on the date of payment

B is the original sum mentioned in this Deed

C is the BCIS Index for the quarter preceding the date of payment

D is the BCIS Index for the quarter preceding the date of this Deed

and Indexation shall be construed accordingly

- 15.2 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 advises the Owner in writing.

16. Interest

- 16.1 Interest will be paid on sums due to the Council and County Council on the Specified Date under this Agreement, but not paid on the Specified Date, from the Specified Date until the date of actual payment. The rate of interest shall be the Interest Rate.

17. VAT

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

18. Notices

- 18.1 A notice or other communication to be given under or in connection with this Agreement must be in writing and must be:
- 18.1.1 delivered by hand, or
 - 18.1.2 sent by Recorded Delivery post or other next working day delivery service, or
 - 18.1.3 in the case of the Council sent by email to planning@arun.gov.uk quoting the Application number and marked for the attention of the Group Head of Planning, or
 - 18.1.4 In the case of the County Council sent by email to planning.services@westsussex.gov.uk quoting the Application number and marked for the attention of the Planning Monitoring & Records Team
- 18.2 Any notice or other communication to be given under this Agreement must be sent to the relevant party as follows:
- 18.2.1 to the Council at: Arun Civic Centre Maltravers Road, Littlehampton, West Sussex BN17 5LF marked for the attention of the Planning Department and quoting the Application number or by email to planning@arun.gov.uk;
 - 18.2.2 to the Owner at: Tml House, 1a The Anchorage, Gosport, Hampshire, PO12 1LY marked for the attention of Mr Brooks
 - 18.2.3 to the County Council at: County Hall, West Street, Chichester, PO19 1RQ addressed to the Planning Monitoring & Records Team

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

- 18.3 Any notice or other communication given in accordance with clause 18.2.4 and clause 18.2 will be deemed to have been received:

18.3.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address provided that if delivery occurs before 9 am on a Working Day, the notice will be deemed to have been received at 9 am on that day, and if delivery occurs after 5 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9 am on the next Working Day;

18.3.2 if sent by Recorded Delivery or other next working day delivery service at 9 am on the second Working Day after posting;

18.3.3 If sent by email provided that if the delivery occurs before 9 am on a Working Day, the notice will be deemed to have been received at 9 am on that day, and if delivery occurs after 5 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9 am on the next Working Day

- 18.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19. Dispute Resolution

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

- 19.2 Failing the resolution of any such dispute disagreement or difference within twenty-eight days of the same arising it may be referred for expert determination in accordance with the provisions of this clause on the reference of any of the parties to the dispute.

- 19.3 In the case of any legal requirement or interpretation or other matter regarding this Agreement the same shall be referred to the decision of a single expert ("the Expert") to be agreed by the parties or failing agreement between them to be appointed by the Academy of Experts following a joint application by the parties each paying 50% of the costs of the appointment.

- 19.4 The determination of the Expert (including any determination as to the responsibility for the payment of his own costs and those of the parties)

shall be final and binding upon the parties and on any persons claiming through or under them.

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

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

19.5.2 the Expert shall allow the parties to the arbitration 14 days from the expiry date of the period referred to in 19.5.1 above to make counter representations

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

19.5.4 the Expert shall provide the parties with a written decision (including his reasons) within 28 days of the last date of receipt of counter representations and he shall be entitled to call for such independent expert as he shall think fit.

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

19.5.6 unless this Agreement has already been terminated each of the respective parties shall in every case continue to comply with its obligations under this Agreement regardless of the nature of the dispute for resolution pursuant to this clause 19.5.6 (but without prejudice to the rights and obligations of the respective parties in relation to the termination of the Agreement).

20. Jurisdiction

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

21. Delivery

- 21.1 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's Covenants with the Council		
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.
	1.2	Shall not cause or permit the Development to be Commenced until the Monitoring Fee has been paid to the Council.
2	ACCESS MANAGEMENT CONTRIBUTION	
	2.1	Prior to the Commencement of Development to pay to the Council the Access Management Contribution
	2.2	Shall not cause or permit the Development to be Commenced until the Access Management Contribution has been paid to the Council
3	OPEN SPACE CONTRIBUTION	
	3.1	Prior to the First Occupation to pay to the Council the Open Space Contribution
	3.2	Not to Occupy or cause or permit to be Occupied the first Dwelling of the Development before sums payable pursuant to 3.1 have been paid to the Council
4	PLAY EQUIPMENT CONTRIBUTION	
	4.1	Prior to the First Occupation to pay to the Council the Play Equipment Contribution
	4.2	Not to Occupy or cause or permit to be Occupied the first Dwelling of the Development before sums payable pursuant to 4.1 have been paid to the Council
5	LEISURE SWIMMING POOL CONTRIBUTION	
	5.1	Prior to the First Occupation to pay to the Council the Leisure Swimming Pool Contribution
	5.2	Not to Occupy or cause or permit to be Occupied the first Dwelling of the Development before sums payable pursuant to 5.1 have been paid to the Council

6		HEALTH AND FITNESS CONTRIBUTION
	6.1	Prior to the First Occupation to pay to the Council the Health and Fitness Contribution
	6.2	Not to Occupy or cause or permit to be Occupied the first Dwelling of the Development before sums payable pursuant to 6.1 have been paid to the Council
7		SPORTS HALL/FLEXIBLE ACTIVITY SPACE CONTRIBUTION
	7.1	Prior to the First Occupation to pay to the Council the Sports Hall/Flexible Activity Space Contribution
	7.2	Not to Occupy or cause or permit to be Occupied the first Dwelling of the Development before sums payable pursuant to 7.1 have been paid to the Council
8		PLAYING PITCH (AVISFORD PARK) CONTRIBUTION ONE
	8.1	Prior to the First Occupation to pay to the Council the Playing Pitch (Avisford Park) Contribution One
	8.2	Not to Occupy or cause or permit to be Occupied the first Dwelling of the Development before sums payable pursuant to 8.1 have been paid to the Council
9		PLAYING PITCH (AVISFORD PARK) MAINTENANCE CONTRIBUTION
	9.1	Prior to the First Occupation to pay to the Council the Playing Pitch (Avisford Park) Maintenance Contribution
	9.2	Not to Occupy or cause or permit to be Occupied the first Dwelling of the Development before the First Instalment payable pursuant to 9.1 has been paid to the Council
10		PLAYING PITCH (AVISFORD PARK) CONTRIBUTION TWO
	10.1	Prior to the First Occupation to pay to the Council the Playing Pitch (Avisford Park) Contribution Two
	10.2	Not to Occupy or cause or permit to be Occupied the first Dwelling of the Development before sums payable pursuant to 10.1 have been paid to the Council
11		PLAYING PITCH (RUGBY CLUB) CONTRIBUTION ONE

	11.1	Prior to the First Occupation to pay to the Council the Playing Pitch (Rugby Club) Contribution One
	11.2	Not to Occupy or cause or permit to be Occupied the first Dwelling of the Development before sums payable pursuant to 11.1 have been paid to the Council
12	PLAYING PITCH (RUGBY CLUB) MAINTENANCE CONTRIBUTION	
	12.1	Prior to the First Occupation to pay to the Council the Playing Pitch (Rugby Club) Maintenance Contribution
	12.2	Not to Occupy or cause or permit to be Occupied the first Dwelling of the Development before the First Instalment payable pursuant to 12.1 has been paid to the Council
13	PLAYING PITCH (RUGBY CLUB) CONTRIBUTION TWO	
	13.1	Prior to the First Occupation to pay to the Council the Playing Pitch (Rugby Club) Contribution Two
	13.2	Not to Occupy or cause or permit to be Occupied the first Dwelling of the Development before sums payable pursuant to 13.1 have been paid to the Council
14	PLAYING PITCH (QUEENSFIELD) CONTRIBUTION ONE	
	14.1	Prior to the First Occupation to pay to the Council the Playing Pitch (Queensfield) Contribution One
	14.2	Not to Occupy or cause or permit to be Occupied the first Dwelling of the Development before sums payable pursuant to 14.1 have been paid to the Council
15	PLAYING PITCH (QUEENSFIELD) MAINTENANCE CONTRIBUTION	
	15.1	Prior to the First Occupation to pay to the Council the Playing Pitch (Queensfield) Maintenance Contribution
	15.2	Not to Occupy or cause or permit to be Occupied the first Dwelling of the Development before the First Instalment payable pursuant to 15.1 has been paid to the Council
16	PLAYING PITCH (QUEENSFIELD) CONTRIBUTION TWO	
	16.1	Prior to the First Occupation to pay to the Council the Playing Pitch (Queensfield) Contribution Two

	16.2	Not to Occupy or cause or permit to be Occupied the first Dwelling of the Development before sums payable pursuant to 16.1 have been paid to the Council
17	PLAYING PITCH (3G) CONTRIBUTION ONE	
	17.1	Prior to the First Occupation to pay to the Council the Playing Pitch (3G) Contribution One
	17.2	Not to Occupy or cause or permit to be Occupied the first Dwelling of the Development before sums payable pursuant to 17.1 have been paid to the Council
18	PLAYING PITCH (3G) MAINTENANCE CONTRIBUTION	
	18.1	Prior to the First Occupation to pay to the Council the Playing Pitch (3G) Maintenance Contribution
	18.2	Not to Occupy or cause or permit to be Occupied the first Dwelling of the Development before the First Instalment payable pursuant to 18.1 has been paid to the Council
19	PLAYING PITCH (3G) CONTRIBUTION TWO	
	19.1	Prior to the First Occupation to pay to the Council the Playing Pitch (3G) Contribution Two
	19.2	Not to Occupy or cause or permit to be Occupied the first Dwelling of the Development before sums payable pursuant to 19.1 have been paid to the Council
20	HIGHWAYS ENGLAND CONTRIBUTION	
	20.1	That it shall prior to Commencement of Development enter into a Section 278 Agreement with Highways England to secure the Highways England Contribution
	20.2	The Section 278 Agreement entered into under clause 19.1 of this Agreement shall contain obligations as follows:
	20.2.1	Following Commencement of Development Highways England shall issue a payment notice to request payment of the Highways England Contribution (which shall be two months prior to the expected start of the design works relating to A27 improvements ("the Payment Notice") and the Owner shall pay to Highways England the Highways England Contribution no later than two months following the issue of the Payment Notice
	20.2.2	If by 31 December 2031 the Highways England Contribution or any part of it remains unspent Highways England will covenant to promptly return such unspent contribution to the Owner

SECOND SCHEDULE		
The Owner's Covenants with the County Council		
1.	PRIMARY SCHOOL CONTRIBUTION	
	1.1	Prior to Commencement of Development to pay to the County Council the Primary School Contribution
	1.2	Not to cause or permit the Commencement of Development until the Primary School Contribution has been paid to the County Council
2	SECONDARY SCHOOL CONTRIBUTION	
	2.1	Prior to Commencement of Development to pay to the County Council the Secondary School Contribution
	2.2	Not to cause or permit Commencement of Development until the Secondary School Contribution has been paid to the County Council
3.	SIXTH FORM CONTRIBUTION	
	3.1	Prior to Commencement of Development to pay to the County Council the Sixth Form Contribution
	3.2	Not to cause or permit the Commencement of Development until the Sixth Form Contribution has been paid to the County Council

THIRD SCHEDULE		
The Council's covenants with the Owner		
The Council covenants with the Owner as follows:		
1	REPAYMENT OF COUNCIL FINANCIAL CONTRIBUTIONS	
	1.1	To use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid
	1.2	To pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within 10 (TEN) years of the date of receipt by the Council of such payment together with interest for the period from the date of payment to the date of refund
	1.3	The Council shall within 30 working days of demand provide to the Owner such evidence, as the Owner shall reasonably require, in order to confirm the expenditure of the sums paid by the Owner under this Deed.

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

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

in the presence of

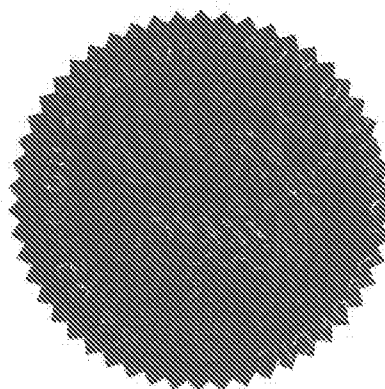


Authorised Signatory

Name: CAROLINE PERRY

Job Title: 208/2021 of INTERIM LEGAL SERVICES MANAGER

Seal Book Number. 208/2021



EXECUTED AS A DEED by affixing
the Common Seal of
WEST SUSSEX COUNTY COUNCIL

in the presence of

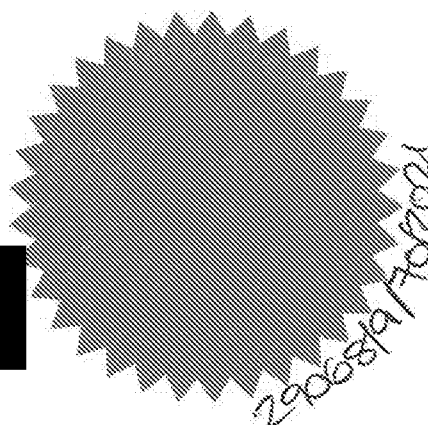


Authorised Signatory

Name:

Job Title:

Seal Book Number.



EXECUTED AS A DEED by

B 5 Limited

acting by a director and secretary or two directors

[REDACTED]

First Director *RICHARD BROOKS*

[REDACTED]

Second Director or Secretary

JEREMY BROOKS

SIGNED and delivered)
as a Deed on behalf of)
LLOYDS BANK Plc in)
the presence of:

Director / Authorised Attorney

Witness Signature:

Full Name:

Address:

Occupation:

EXECUTED AS A DEED
BY CARL HANBLER
an authorised signatory for
Lloyds Bank plc
in the presence of [REDACTED]

APPENDIX 1 (Commencement Notice)

Pursuant to Clause 8.1.1 in the Agreement Described Below

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

Dated: this _____ day of _____ 20

Signed: _____

On Behalf of: _____

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

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

From:

Development At:

Nature of Development:

Planning Permission Date & Reference:

Planning Obligation Date & Parties:

Start Date:

APPENDIX 2

(Payment Notice)

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

Dated: this _____ day of _____ 20

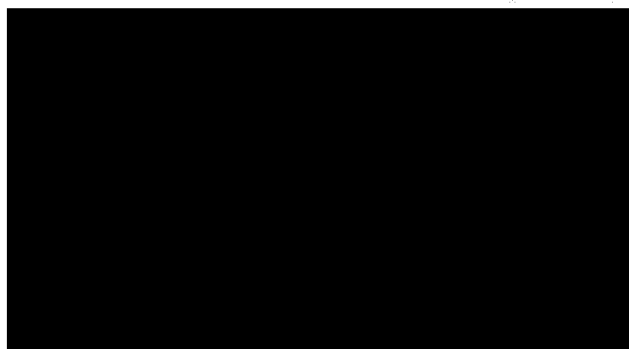
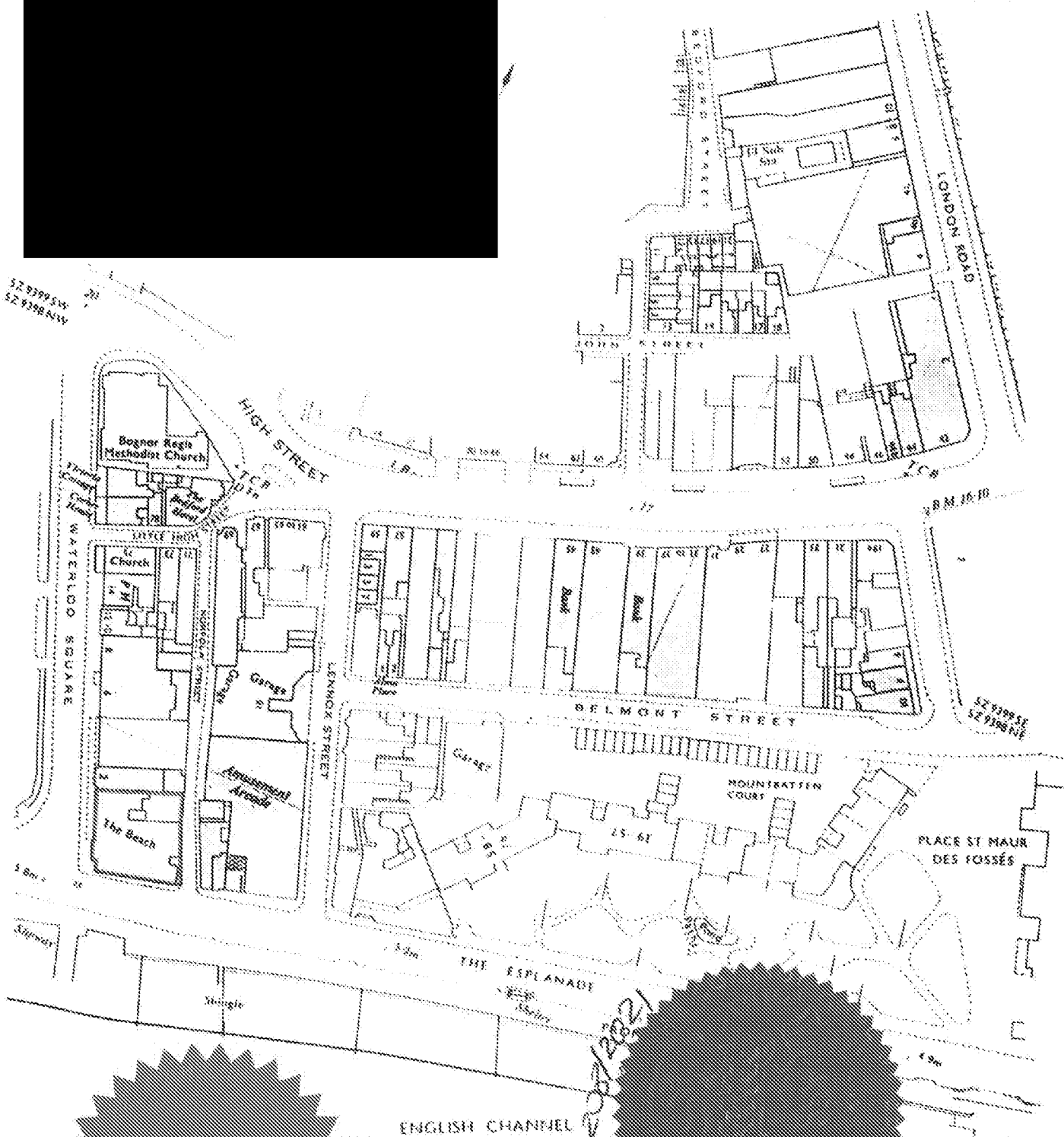
Please answer all the questions:

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

(a)	clause no.	
(b)	contribution towards	
(c)	amount of contribution due	
(d)	Date upon which contribution is due	
(e)	amount of contribution enclosed	
(f)	amount of monitoring sum	

APPENDIX 3 PLAN

H.M. LAND REGISTRY		TITLE NUMBER WSX 180917	
ORDNANCE SURVEY PLAN REFERENCE	52 9398	SECTION B	Scale 1/1250
COUNTY WEST SUSSEX	DISTRICT ARUN	© Crown copyright 1987	



29/06/19/70/202

20/12/2021

ENGLISH CHANNEL

