

DATED THIS 25 DAY OF February 2020

- (1) ARUN DISTRICT COUNCIL
- (2) WEST SUSSEX COUNTY COUNCIL
- (3) THE UNIVERSITY OF CHICHESTER
- (4) HSBC CORPORATE TRUSTEE
COMPANY (UK) LIMITED

Agreement pursuant to Section 106 of the
Town and Country Planning Act 1990
relating to Land to the east of University of
Chichester Upper Bognor Road Bognor Regis
PO21 1HR
Planning ref: BR/311/18/PL

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

THIS DEED is dated 25 February 2020

- (1) **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF (**"the Council"**)
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ (**"the County Council"**)
- (3) **THE UNIVERSITY OF CHICHESTER** incorporated and registered in England and Wales with company number 4740553 whose registered office is at Bishop Otter Campus College Lane Chichester West Sussex PO19 6PE (**"the Owner"**)
- (4) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED** incorporated and registered in England and Wales with company number 6447555 whose registered office is at 8 Canada Square London E14 5HQ (**"the Mortgagee"**)

BACKGROUND

- (A) The Council is the local planning authority, and the local authority responsible for housing, public open space, equipped play space and sport and recreation facilities for the area in which the Property is situated
- (B) The County Council is the local highway authority and the local authority responsible for providing education, libraries and fire rescue services for the purposes of the area in which the Property is situated.
- (C) The Owner is the freehold owner of the Property
- (D) The Mortgagee is the registered proprietor of the charge dated 14 November 2018 referred to in entry number C7 of the charges register of Title number WSX242360 and has agreed to enter into this Deed to give its consent to the terms of this Deed. The Planning Application was made by the Owner to the Council to develop the Property

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this Deed:

1.1 Definitions:

Base Rate: the higher of 5% and the base rate from time to time of Barclays Bank plc.

CIL Regulations: means the Community Infrastructure Regulations 2010 (as amended)

Commencement of Development: means the date that the Development is begun by the carrying out of a material operation on the Land pursuant to the Planning Permission within the meaning of section 56 of the Act and the terms “Commence”, “Commencement” and “Commenced” shall be construed accordingly save that for the purposes of this Agreement the Development shall not be considered to have been Commenced by virtue of operations consisting of site levelling stripping or clearance, demolition work, archaeological investigations, investigations for the purposes of assessing ground conditions, ecology investigation or monitoring and any ecological protection relocation or work to create or improve ecological habitats, remedial works in respect of any contamination or other adverse ground conditions, the diversion and laying of Services, the erection of any temporary means of enclosure the carrying out of any highway works outside the Land pursuant to any Highways Agreement or the temporary display of site notices or advertisements.

Commencement Date: the date Development Commences.

Default Interest Rate: 4% per annum above the Base Rate.

Dwelling Unit: means a unit of residential dwelling permitted by the Planning Permission and “Dwelling Units” shall be construed accordingly.

Development: the development of the Property authorised by the Planning Permission.

Index Linked: means indexation (which may increase or decrease) calculated by multiplying the relevant sum by

Final Index Figure

Base Index Figure

Where:

Base Index Figure equals the latest published figure in the Index at the date of this Agreement and

Final Index Figure equals the latest figure published in the index at the date of the relevant payment is made

Fire and Rescue Contribution: means the sum £2,640.00 and paid to the County Council in accordance with paragraph 1 of the Second Schedule to be used towards supply and installation of additional fire equipment to vulnerable persons homes in West Sussex Fire Rescue Services Southern Area serving Bognor Regis.

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

Plan: the plan attached as 0.

Planning Application: the application for full planning permission under reference number BR/311/18/PL.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application.

Property: the land to the east of University of Chichester Upper Bognor Road Bognor Regis PO21 1HR ,shown edged red on the Plan and comprising part of the land registered at HM Land Registry with absolute title under title number WSX242360.

Secretary of State: means the Secretary of State, minister or authority for the time being having or entitled to exercise the powers that are conferred upon the Secretary of State by sections 77 and 79 of the Town and Country Planning Act 1990;

Specified Date: means the date on which the payment is actually made

TCPA 1990: Town and Country Planning Act 1990.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England OR Wales and which does not include any day falling on or between 23 December in one year and 3 January the following year.

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 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.

- 1.9 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.
- 1.10 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11 A reference to **this Deed** or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this Deed.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 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.
- 1.15 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.

2. STATUTORY PROVISIONS

- 2.1 This Deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 and section 135 of the Local Government Act 1972, Section 1 Localism Act 2011 and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns. To the extent that they fall outside of the scope of Section 106 of the TCPA 1990 the covenants and obligations herein are entered into by the parties pursuant to Sections 111 and 135 of the Local Government Act 1972, Section 1 Localism Act 2011 and all other enabling powers.
- 2.3 The covenants, restrictions and obligations contained in this Deed are enforceable by the Council and the County Council in accordance with section 106 of the TCPA 1990.

3. COMMENCEMENT AND CONDITIONALITY

3.1 With the exception of clauses 2, 3, 7,10,11, 13, 16, 17, 19, 20, 21, 22, 23 and 24 (which take effect immediately), this Deed is conditional on:

3.1.1 the grant and issue of the Planning Permission, and

3.1.2 Commencement of Development.

3.2 In the event that the Planning Application or any planning condition is subject to an appeal then each planning obligation in this Deed is also conditional upon:

3.2.1 The Secretary of State or the planning inspector deciding the appeal being satisfied that it is:

3.2.1.1 Necessary to make the Development acceptable in planning terms; and

3.2.1.2 Directly related to the Development; and

3.2.1.3 Fairly and reasonably related in scale and kind to the Development; and

3.2.1.4 Complies, in all other respects with Regulation 122 of the CIL Regulations

3.2.2 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 this Deed 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 Deed 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.

3.3 In the event that the Council or the County Council adopt a charging schedule under the CIL Regulations prior to Planning Permission being granted, the Owners shall be released from any of the obligations in this Deed that relate to an item or project included on the Council and/or County Council's regulation 123 list of infrastructure.

4. THE OWNERS'S COVENANTS

- (a) The Owner covenants with the Council and the County Council so as to the bind the Property to observe and perform the covenants, restrictions and obligations contained in Schedule 1.

- (b) give at least 7 Working Days written notice to the Council and the County Council of the Commencement Date.

5. THE COUNTY COUNCIL'S COVENANTS

The County Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 2.

6. INDEXATION

- 6.1 Unless there is an express provision to the contrary the Owners agree with the County Council that any sum payable by the Owners and referred to in Schedule 2 shall be increased by the application of the following formula: $A = (B \times C)$ divided by D

A is the sum actually payable on the Specified Date

B is the original sum mentioned in this Deed

C is the Building Costs Information Service of the Royal Institution of Chartered Surveyors All-In Tender Price Index for the quarter preceding the specified date

D is the Building Costs Information Service of the Royal Institution of Chartered Surveyors All-In Tender Price Index for the quarter preceding the the date that Planning Permission is granted

C/D is equal to or greater than 1

- 6.2 Where reference is made to an index (including the Building Costs Information Service of the Royal Institution of Chartered Surveyors All-In Tender Price 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 Deed) or in the event the index is not replaced to an alternative reasonably comparable basis or index as the Council or the County Council (as applicable) shall advise the Owners in writing.

7. RELEASE

- 7.1 No person shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.
- 7.2 This Deed shall not be enforceable against i) statutory undertakers providing services to the Property or an area within the vicinity of the Property and ii) owners, occupiers or

tenants of the dwellings constructed on the Property pursuant to the Planning Permission nor against those deriving title from them.

8. DETERMINATION OF DEED

The obligations in this Deed (with the exception of clause 10) shall cease to have effect if before the Commencement of Development, the Planning Permission:

- (a) expires;
- (b) is varied, withdrawn or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.
- (d) is modified by any statutory procedure

9. LOCAL LAND CHARGE

This Deed is a local land charge and shall be registered as such by the Council.

10. COUNCIL'S COSTS

The Applicant shall pay to the Council on or before the date of this Deed:

- (a) the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed.
- (b) the County Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed.

11. INTEREST ON LATE PAYMENT

If any sum or amount has not been paid to the Council or the County Council (as the case may be) by the date it is due, the Owner shall pay to the Council or the County Council (as the case may be) interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

12. OWNERSHIP

- 12.1 The Owner warrants that no person other than the Owner and the Applicant has any legal or equitable interest in the Property.

- 12.2 Until the covenants, restrictions and obligations in Schedule 1 have been complied with, the Owner will give to the Council and the County Council within 5 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

13. REASONABLENESS

Where the agreement, approval, consent or expression of satisfaction is required by the Owners from the Council or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

14. CANCELLATION OF ENTRIES

- 14.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

- 14.2 Following the performance and full satisfaction of all the terms of this agreement or if this Deed is determined pursuant to clause 8 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this deed.

15. DISPUTES

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

16. NO FETTER OF DISCRETION

Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council or the County Council under all statutes by laws statutory instruments orders and regulations in the exercise of

their functions as a local authority. Obligations contained in this Deed are covenants for the purpose of section 33 of the Local Government (Miscellaneous Provisions) Act 1982.

17. WAIVER

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

18. FUTURE PERMISSIONS

Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the this Deed.

19. AGREEMENTS AND DECLARATIONS

The parties agree that:

- (a) nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this Deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

20. NOTICES

20.1 Any notice or other communication to be given under this Deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

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

- (a) to the Council at to the Council at: Arun Civic Centre Maltravers Road, Littlehampton, West Sussex BN17 5LF marked for the attention of the Planning Department and quoting the Planning Application number.

- (b) to the County Council at Monitoring and Records Team, Strategic Planning Division, County Hall, West Street, Chichester, West Sussex, PO19 1RQ quoting the Planning Application number.
 - (c) to the Owner at: Bishop Otter Campus College Lane Chichester West Sussex PO19 6PE quoting the Planning Application number.
- 20.3 Any notice or other communication given in accordance with clause 20.1 and clause 20.2 will be deemed to have been received:
 - (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 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 9.00 am on the next Working Day; or
 - (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.
- 20.4 A notice or other communication given under this Deed shall not be validly given if sent by e-mail.
- 20.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 21. 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.
- 22. VALUE ADDED TAX**
 - 22.1 Each amount stated to be payable by the Council or the Owner to the other under or pursuant to this Deed is exclusive of VAT (if any).
 - 22.2 If any VAT is at any time chargeable on any supply made by the Council or the Owner under or pursuant to this Deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

23. 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.

24. MISCELLANEOUS

Insofar as any clause or clauses of this Deed 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 Deed.

25. FUTURE TCPA 1990 SECTION 73 CONSENTS

25.1 Subject to clauses 25.2 to 25.5 below, if any section 73 consent is granted after the date of this Deed:

25.1.1 the obligations in this Deed shall relate to and bind such section 73 consent; and

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

25.2 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;

25.3 to the extent that any of the obligations in this Deed 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;

25.4 the provisions of this clause 25 shall not apply to any section 73 consent which necessitates or requires amendments to the substantive terms or obligations of or contained within this Deed; and

25.5 the Council reserves the right to insist upon the completion of a separate planning obligation by Deed of agreement in connection with any section 73 consent if the Council (acting reasonably) considers it necessary to do so.

26. MORTGAGEE'S CONSENT

- 26.1 The Mortgagee consents to the completion of this Deed and declares that its interest in the Property shall be bound by the terms of this Deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property.
- 26.2 The Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property.

Schedule 1 Covenants to the County Council

1.

1 FIRE RESCUE CONTRIBUTION

- 1.1 Prior to the First Occupation of the Dwelling Units to pay to the County Council the Fire Rescue Contribution.
- 1.2 Not to cause or allow First Occupation of the Dwelling Units to occur before the Fire Rescue Contribution has been paid to the County Council.

2. SCHEDULE 2 COVENANTS BY THE COUNTY COUNCIL

Fire Rescue Contribution

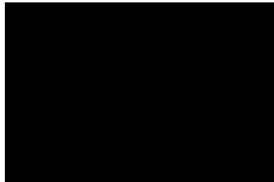
- 1.1 Upon receipt of the Fire Rescue Contribution under paragraph 1 of Schedule 1 it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Site.
- 1.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Fire Rescue Contribution to issue to the party that paid the Fire Rescue Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the Fire Rescue Contribution has been expended by the County Council.
- 1.3 If or to the extent that any of the Fire Rescue 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 Fire Rescue Contribution any unexpended part of any of Fire Rescue Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 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 Fire Rescue Contribution or part thereof for the

purposes specified in paragraph 1.1 then the County Council shall not be required to refund any part of the Fire Rescue Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Fire Rescue Contribution in the manner set out in paragraph 1.2 of this Schedule and refund any unexpended part of the Fire Rescue Contribution in the manner set out in paragraph 1.3 of this Schedule

Annex A. Plan

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED BY AFFIXING with the COMMON SEAL
of ARUN DISTRICT COUNCIL
in the presence of:



Seal Book No: 26/2020

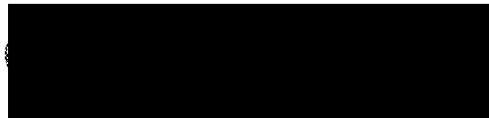
AUTHORISED SIGNATORY

PRINT NAME APRIL HEASMAN

JOB TITLE LAWYER

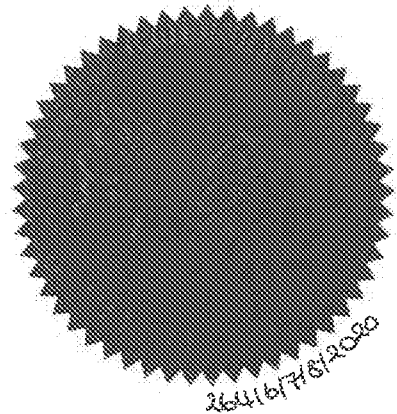


SEALED with the COMMON SEAL
of WEST SUSSEX COUNTY COUNCIL
in the presence of:



Seal Book No

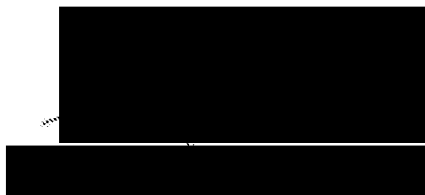
Authorised Signatory



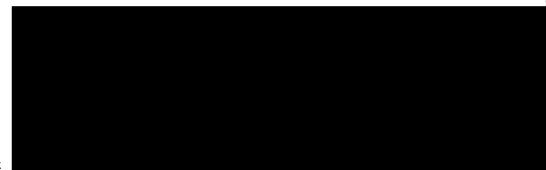
EXECUTED AS A DEED on behalf of
of University of Chichester
Acting through

A Director

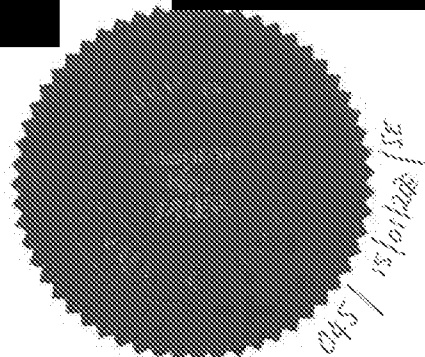
in the presence of:



Vice-Chancellor



Chair of Governors



Executed as a Deed by HSBC
CORPORATE TRUSTEE
COMPANY (UK) LIMITED by
affixing the Corporate Seal in the
presence of:



Simon Lazarus
Conseil Signatory

.....
[AUTHORISED SIGNATORY]