

DATED THIS 31 DAY OF March 2020

- (1) ARUN DISTRICT COUNCIL
- (2) WEST SUSSEX COUNTY COUNCIL
- (3) REGENT PROPERTY HOLDINGS
LIMITED

Agreement pursuant to Section 106 of
the Town and Country Planning Act
1990 relating to land at The Hatters Inn,
2-10 Queensway, Bognor Regis, PO21
1QT
Planning ref: BR/50/19/PL

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

CMS 7648

Date: 31 March 2020

Parties:

1. **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("the Council")
2. **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ ("the County Council")
3. **REGENT PROPERTY HOLDINGS LIMITED (Company Registration Number 05734344)** of 93 Aldwick Road, Bognor Regis, West Sussex, PO21 2NW ("the Owner")

WHEREAS

1. The Council is the Local Planning Authority, for the purposes of the Act for the area in which the Land is situated and the authority responsible for the provision of housing, leisure and recreation services and is agent for the CCG and Sussex Police.
2. The County Council is a planning authority for the area in which the Land is situated and the authority responsible for the provision of education, library services, fire and rescue services and is the Local Highway Authority for the area in which the Land is situated.
3. The Council shall be responsible for enforcing this Agreement for all purposes.
4. The County Council shall be responsible for enforcing this Agreement so far as education, library services, fire and rescue and highways matters are concerned.
5. The Owner is the registered proprietor with Title Absolute of the land registered at HM Land Registry under Title Number(s) WSX87239 known as land 2-10(even), Queensway, Bognor Regis, PO21 1QT
6. The Owner has agreed to enter into this Agreement to give Planning Obligations to the Council and the County Council upon the terms and subject to the conditions herein.
7. 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:

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|-----|---|---|
| 1.1 | “Act” | means the Town and Country Planning Act 1990 as amended. |
| 1.2 | “Affordable Housing” | means any form of housing identified within legislation NPPF or a ministerial statement as meeting the requirements of affordable housing planning obligation under section 106 of the Act (or any successor legislation) or the provision of which would make such a planning obligation unnecessary and may include but is not limited to <ul style="list-style-type: none">• social rented housing• affordable rented housing• shared ownership housing• intermediate housing (including intermediate rent, shared equity and low cost homes for sale). |
| 1.3 | “Additional Affordable Housing Commuted Sum” | means a financial contribution calculated in accordance with paragraph 2.9 of the First Schedule. |
| 1.4 | “Affordable Housing Commuted Sum” | means a financial contribution of £16,000.00 towards off site provision of Affordable Housing. |
| 1.5 | “Affordable Housing Disposal” | means a disposal of the Affordable Dwelling Units and /or land upon which those units are to be constructed to an Approved Body whether by transfer of the freehold or the grant of a long lease for a term of at least 125 years. |
| 1.6 | “Affordable Housing Provider” | means either one or a combination of: <ul style="list-style-type: none">a. a Registered Provider who is on the Council list of Approved Affordable Providers (annexed as Appendix 5); or |

- b. any other provider of Affordable Housing who is approved by the Council in writing; or
 - c. such other body or organisation approved by the Council in writing whose main object is the provision of Affordable Housing.

- 1.7 **“Affordable Housing Provision”**

means 30% of the Dwellings on the Land (or the nearest full number) to be provided as Affordable Housing in accordance with this Agreement comprising a target tenure split of 5 Affordable Rented Units and 2 Intermediate Housing Units (unless the tenure target is varied in accordance with an Approved Affordable Housing Scheme and/or Reserved Matters Approval(s).

- 1.8 **“Affordable Housing Scheme”**

means a scheme drawn up by the Owner setting out, in relation to the Affordable Housing:

 - a. the tenure mix
 - b. the dwelling mix
 - c. the location.

- 1.9 **“Affordable Housing Unit”**

means any Dwelling that is a part of the Affordable Housing Provision.

- 1.10 **“Affordable Rented Units”**

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

- 1.11 **“Agreed” or “Approved”** means agreed or approved in writing and given for the purpose of this Agreement.
- 1.12 **“Application”** means an application in respect of the Land for the Development and given Council reference BR/50/19/PL.
- 1.13 **“CIL Regulations”** means the Community Infrastructure Regulations 2010 (as amended).
- 1.14 **“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.
- 1.15 **“Commencement Notice”** means a notice in the form annexed to this to this Agreement as Appendix 1.
- 1.16 **“CPI”** means the Consumer Price Index published from time to time by the Office of National Statistics.
- 1.17 **“the Development”** means the development of the Land by as Amendment to previously approved scheme (BR/266/17/PL) for 24 flats. This application may affect the setting of a listed building and may affect the character & appearance of The Steyne, Bognor Conservation Area.
- 1.18 **“Dwelling”** means a residential dwelling unit to be constructed on the Land pursuant to the Planning Permission.

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| 1.19 | “Fire and Rescue Contribution” | means a financial contribution of £549.00 (five hundred and forty-nine pounds) payable in accordance with paragraph 5 of the Second Schedule as a contribution towards the provision of smoke alarms for vulnerable persons serving Bognor Regis. |
| 1.20 | “Further Education Contribution” | means a financial contribution of £2,772.00 (two thousand seven hundred and seventy-two pounds) payable in accordance with paragraph 3 of the Second Schedule as a contribution towards additional equipment at Felpham Community College Sixth Form. |
| 1.21 | “Index” | means the “All Items” index figure of the Index of Retail Prices published by the Office for National Statistics or any successor government office, ministry or department. |
| 1.22 | “Index Linked” | <p>means indexation (which may increase or decrease) calculated by multiplying the relevant sum by $\frac{\text{Final Index Figure}}{\text{Base Index Figure}}$</p> <p>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.</p> |
| 1.23 | “Interest Rate” | means the rate 4% above the base rate from time to time of Lloyds Bank applicable at the Specified Date or the actual date on which the relevant obligation under this Agreement is paid whichever is the higher. |
| 1.24 | “Intermediate Housing Units” | means Affordable Housing, other than Affordable Housing for Rent, as defined in Annex 2 of the NPPF. |
| 1.25 | “Land” | means the land at The Hatters Inn, 2 to 10 Queensway, Bognor Regis, West |

Sussex, PO21 1QT shown for the purposes of identification outlined in red on the Plan attached hereto as Appendix 3 and being registered at the Land Registry under the title number(s) SX87239.

- 1.26 **"Library Contribution"** means a sum of £5,912.00 (five thousand nine and twelve pounds) payable in accordance with 4 of the Second Schedule as a contribution towards additional stock at Bognor Regis Library.
- 1.27 **"Monitoring Fee"** means a sum of £750.00 (seven hundred and fifty 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.
- 1.28 **"Nomination Agreement"** means a nomination agreement entered into by an Approved Body with the Council in respect of the Affordable Dwellings containing provisions substantially in the form set out in the Appendix 4 to this Agreement.
- 1.29 **"Nomination Rights"** means the right of the Council to nominate occupiers to the Affordable Dwelling Units in accordance with paragraphs 2.15 and 2.16 of the First Schedule to this Agreement.
- 1.30 **"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.
- 1.31 **"Occupation"** means occupation of the Development for the purposes of the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration marketing and display or security purposes and **"First Occupation"** and **"Occupiers"** and

		"Occupy" and "Occupied" shall be construed accordingly.
1.32	"Operative Date"	means the date the Development is Commenced.
1.33	"Owner"	means REGENT PROPERTY HOLDINGS LIMITED (Company Registration Number 05734344) of 93 Aldwick Road, Bognor Regis, West Sussex, PO21 2NW and includes their respective successors in title.
1.34	"Payment Notice"	means a notice in the form annexed as Appendix 2.
1.35	"Plan"	Means the plan annexed hereto as Appendix 3 and marked "Plan".
1.36	"Planning Authority"	means the Council and the County Council.
1.37	"Planning Condition"	means any condition subject to which the Planning Permission is granted.
1.38	"Planning Obligations"	means the obligations, conditions and stipulations set out in the First Schedule and the Second Schedule and "Planning Obligation" shall be construed accordingly.
1.39	"Planning Permission"	means a planning permission for the Development granted pursuant to the Application.
1.40	"Primary Education Contribution"	means a financial contribution of £10,994.00 (ten thousand nine hundred and ninety-four pounds) payable in accordance with paragraph 1 of the Second Schedule being a contribution towards additional equipment at Edward Bryant Primary School.
1.41	"Recorded Delivery"	means post that when received must be signed for by the recipient.
1.42	"Reserved Matters Approval(s)"	means approval by the Council of one or more matters reserved for approval by the Planning Permission.

- 1.43 **“Residents”** means the owners and occupiers of individual Dwellings to be constructed on the Land.
- 1.44 **“RICS”** means the Royal Institute of Chartered Surveyors.
- 1.45 **“Section 73 Consent”** means any approval or consent given by the Council under Section 73 of the Act.
- 1.46 **“Secondary Education Contribution”** means a financial contribution of £30,687.00 (thirty thousand six hundred and eighty-seven pounds) payable in accordance with paragraph 2 of the Second Schedule being a financial contribution towards phase 1 of the new Secondary School in Arun.
- 1.47 **“Specified Date”** means the date upon which a Planning Obligation arising under this Agreement is to be carried out or is due to be performed.
- 1.48 **“Working Days”** 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 vice versa.
- 2.5 Unless the context otherwise requires a reference to one gender shall include a reference to other genders.
- 2.6 A reference to any party shall include that party's representatives, successors and permitted assigns and

to any person deriving title through or under the party and in the case of the Council and the County Council the successors to their respective statutory functions.

- 2.7 Unless the context otherwise requires a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.8 Unless the context otherwise requires a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 2.9 A reference to “writing” and “written” does not include fax or email.
- 2.10 References to clauses and schedules are to the clauses and schedules of this Agreement.
- 2.11 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 2.12 Any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.13 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

3. Legal Basis

- 3.1 This Agreement is made under Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 The covenants, restrictions and requirements imposed upon the Owners under this Agreement create planning obligations under Section 106 of the Act and are enforceable by the Council and the County Council as local planning authorities as appropriate against the Owners in accordance with Section 106 of the Act.

4 Conditionality

- 4.1 This Agreement is conditional upon:

4.1.1 the grant of the Planning Permission

4.1.2 the Commencement of the Development,

save for the provisions of Clauses 2,3,4, 8,9,10,11,12,14,15,16,17 and 18 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 inspector deciding the appeal being satisfied that it is:

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

4.2.1.2 Directly related to the Development; and

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

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

4.2.2 In the event that the Secretary of State or the planning inspector deciding the appeal expressly states in his 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.

4.3 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 Agreement that

relate to an item or project included on the Council and/or County Council's charging schedule..

5 The Owner's Covenants

- 5.1 The Owners covenant with the Council so as to bind the Land to perform the Planning Obligations as set out in First Schedule.
- 5.2 The Owners covenant with the County Council so as to bind the Land to perform the Planning Obligations as set out in Second Schedule.

6 The County Council's Covenants

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

7 Certificates

- 7.1 The Owners agree with the Council and the County Council
 - 7.1.1 Not more than 7(seven) days after the Development is Commenced the Owner shall serve on the Council and the County Council a Commencement Notice in the form set out in Appendix 1 hereto;
 - 7.1.2 where this Agreement imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Specified Date the Owners shall give the Council or the County Council notice of the Specified Date not more than seven days after such Specified Date; and
 - 7.1.3 if the Owners fail to give the notice required under this Clause the Council or the County Council shall acting reasonably be entitled in their absolute discretion to determine the Specified Date and shall give notice to the Owners of that determination.

8 Miscellaneous

- 8.1 Nothing in this Agreement constitutes an obligation to grant planning permission.
- 8.2 The Owners shall pay to the Council on completion of this Agreement the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of

this Agreement in the sum of £ 1,000.00 (one thousand pounds).

- 8.3 The Owners shall pay to the County Council on completion of this Agreement the reasonable legal costs of the County Council incurred in the negotiation, preparation and execution of this Agreement.
- 8.4 No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.5 This Agreement shall be registered by the Council as a local land charge.
- 8.6 Where the Agreement, approval, consent or expression of satisfaction is required by the Owners from the Council or the County Council under the terms of this Agreement such Agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any notices shall be deemed to have been properly served if sent by Recorded Delivery to the principal address or registered office (as appropriate) of the relevant party.
- 8.7 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall at the Owners' written request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.
- 8.8 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 8.9 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 8.10 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

- 8.11 Nothing contained or implied in this Agreement shall prejudice or affect the rights discretions powers duties and obligations of the Council or the County Council under all statutes by laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 8.12 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.

9

Exclusions of Liability

- 9.1 No person shall be liable for any breach of any of the Planning Obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Land, or such part of the Land to which the breach relates, but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 9.2 No person shall be liable for any breach of any of the Planning Obligations or other provisions of this Agreement which relate to a part of the Land in which it does not have an interest.
- 9.3 This Agreement shall not be enforceable against any owner, occupier or tenant of any Dwelling constructed pursuant to the Planning Permission, or their mortgagees, nor against those deriving title from them.
- 9.4 Notwithstanding any other provision of this Agreement the Planning Obligations under this Agreement shall not be binding or enforceable against:
- 9.4.1 Any mortgagee of any tenant or person to whom an Affordable Housing Provider grants a shared ownership lease or any receiver appointed by such mortgagee or any person deriving title through any such mortgagee or receiver;
 - 9.4.2 Any person to whom a shared ownership lease of an Affordable Dwelling is granted;
 - 9.4.3 Any person who has acquired a either a reversionary interest or a new lease in an Affordable Dwelling pursuant to the terms of a shared ownership lease;

9.4.4 Any Affordable Housing Provider

- 9.5 The Planning Obligations in this Agreement shall not bind or be enforceable against any statutory undertaker who has or takes in future an interest in the 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;
- 9.6 The Planning Obligations in this Agreement shall not bind or be enforceable against any mortgagee, chargee or receiver of an Affordable Housing Provider or any successor in title to such mortgagee chargee or receiver.
- 9.7 Any legal charge entered into in respect of the Land or any part of the Land after this Agreement has been completed shall take effect subject to this Agreement PROVIDED THAT the mortgagee under such a legal charge shall have no liability under this Agreement unless it causes the breach after it becomes a mortgagee in possession of the land comprised in the legal charge and the mortgagee shall not be liable for any breach of this Agreement that occurs prior to the mortgagee taking possession of the land;

10 Waiver

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

11 Change in Ownership

The Owners agree with the Council to give the Council and County Council immediate written notice of 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 Owners shall not be required to give notice to the Council and County Council of any change of ownership affecting a Dwelling.

12 Future Section 73 Consents

- 12.1 Subject to clauses 12.2 to 12.5 below, if any Section 73 Consent is granted after the date of this Agreement:

12.1.1 the obligations in this Agreement shall relate to and bind such Section 73 Consent; and

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

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

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

12.4 the provisions of this clause 12 shall not apply to any Section 73 Consent which necessitates or requires amendments to the substantive terms or obligations of or contained within this Agreement;

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

13 Index linked

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

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

Where A is the sum actually payable on the Specified Date

B is the original sum mentioned in this Agreement.

- C is the RPI Index for the month two months before the Specified Date.
- D is the RPI Index for the month two months before the date that Planning Permission is granted.
- C/D is equal to or greater than 1.

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

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

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

13.3 Where reference is made to an index (including the RPI Index and the BCIS Index) and that index ceased to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Agreement) or in the event the index is not replaced to an alternative reasonably comparable basis or index as the Council or the County Council (as applicable) shall advise the Owners in writing.

14 Interest

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

15 VAT

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

16 Notices

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

16.1.1 delivered by hand; or

16.1.2 sent by Recorded Delivery post or other next working day delivery service.

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

16.2.1 to the Council at: Arun Civic Centre
Maltravers Road, Littlehampton, West Sussex
BN17 5LF marked for the attention of the
Planning Department and quoting the
Application number;

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

16.2.3 to the Owner at: 93 Aldwick Road, Bognor
Regis, West Sussex, PO21 2NW

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

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

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

16.3.2 if sent by pre-paid first class post or other next working day delivery service at 9 am on the second Working Day after posting.

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

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

17 Jurisdiction

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

18 Delivery

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

19 Counterparts

19.1 This deed may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

19.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) OR the executed signature page of a counterpart of this agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

19.3 No counterpart shall be effective until each party has executed at least one counterpart

FIRST SCHEDULE

The Owners 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 AFFORDABLE HOUSING

- 2.1 Prior to the Commencement of the Development to pay to the Council the Affordable Housing Commuted Sum.
- 2.2 Shall not cause or permit the Development to be Commenced until the Affordable Housing Commuted Sum has been paid to the Council.
- 2.3 That 7 of the Dwellings shall be provided as Affordable Dwellings to be provided in accordance with the Affordable Housing Scheme.
- 2.4 Not to Commence the construction of any Dwellings until an Affordable Housing Scheme has been submitted (whether or not as part of an application for Reserved Matters Approval) to and approved in writing by the Council.
- 2.5 To provide the Affordable Housing Units in accordance with the Planning Permission, Reserved Matters Approval(s) and an approved Affordable Housing Scheme (subject to any amendments agreed by the Council in writing from time to time)
- 2.6 Subject to the provisions of this paragraph 2 the Affordable Dwellings shall only be disposed of by an Owner to an Affordable Housing Provider save by way of mortgage or charge.
- 2.7 Not to Occupy or cause or permit the Occupation of more than:
 - a. 25% of the Market Housing Units (or such other number as may be agreed in writing by the Council) until the Owners have entered into a legally binding contract with an Affordable Housing Provider for the Disposal of the Affordable Housing Units (either freehold or leasehold for a period of not less than 125 years on terms which ensure that the Affordable Housing Units are and remain bound by the obligations in this Schedule (unless otherwise agreed in writing by the Council))

- b. fifty percent (50%) of the Market Housing Units (or such other number of Market Housing units as may be agreed in writing by the Council) unless and until the Affordable Housing Units have been constructed and are ready for Occupation

2.8 Subject to paragraph 1.X.X of this Schedule, with effect from the date on which they are completed the Affordable Housing Units shall not be Occupied other than by a Qualifying Occupier and for the avoidance of doubt this restriction shall apply not just to the first Occupier of any of the Affordable Housing Units but to all subsequent occupiers of the Affordable Housing Units.

2.9 **Mechanics of Transfer**

2.9.1 The Owner shall offer the Affordable Housing Units to an Affordable Housing Provider ("First Offer") by provision of:

2.9.1.1 A contract for the sale of land; and

2.9.1.2 A draft transfer which shall include the provisions set out in paragraph 2.10 below.

2.9.2 The First Offer shall remain open for acceptance for no less than three (3) months from the date of the First Offer being made ("First Offer Period").

2.9.3 In the event that the First Offer made in accordance with paragraph 2.9.1 above is not accepted within the First Offer Period then the Owners shall make a second offer to transfer the Affordable Dwellings to an Affordable Housing Provider ("Second Offer") by provision of:

2.9.3.1 A contract for the sale of land; and

2.9.3.2 A draft transfer which shall include the provisions set out in paragraph 1.10 below.

2.9.4 The Second Offer shall consist of the same terms as the First Offer subject to revisions necessitated by the lapse of time

2.9.5 The Second Offer shall be made not later than one (1) month after the expiry of the First Offer Period.

2.9.6 The Second Offer shall remain open for acceptance for no less than three (3) months from the date of the Second Offer being made ("Second Offer Period").

2.10 The Owners covenant with the Council that any transfer of Affordable Housing Units to an Affordable Housing Provider will contain the following provisions:

- 2.10.1 The grant by the Owners of all rights and access and passage of services and other rights reasonably necessary to the beneficial enjoyment of those Affordable Housing Dwellings;
 - 2.10.2 A reservation of all rights and access and passage of services and other rights reasonably necessary for the benefit of the remainder of the Dwellings, estate infrastructure, and public areas on the Site; and
 - 2.10.3 The imposition of such covenants as the Owners shall reasonably require and are consistent with the sale of any Open Market Dwellings
- 2.11 the Owners covenant with the District Council:
- 2.11.1 to take all reasonable and prudent steps within its power to avert the repossession of the Affordable Housing Units by any Chargee of the Affordable Housing Provider or the exercise by any such Chargee of a power of sale and for these purposes in the event of a default under the security or likely default to cooperate fully with the Council to assist in arranging the transfer of the Affordable Housing Units with sitting tenants to another Affordable Housing Provider or, at the Council's option, to the Council;
 - 2.11.2 in the event that the Owners become aware that the Affordable Housing Provider has received notification from any Chargee of any breach or alleged breach by the Affordable Housing Provider of any of its obligations under its security, to notify the Council of this as soon as reasonably practicable; and
 - 2.11.3 in the event that the Owners become aware of any notice, order or direction having been served, made or given under the Housing Act 1996 Schedule 1 Part IV that relates to the Affordable Housing Units, to notify the Council of this as soon as reasonably practicable
- 2.12 the Owners and the Council hereby agree that subject to and without prejudice to the powers and requirements of the Homes England under the Housing Act 1996 in the event of a default under any security referred to in paragraph 1.9 the disposal of any interest in the Affordable Housing Dwellings by the Chargee in the exercise of its power of sale will not be prevented.

Additional Affordable Housing Commuted Sum Payable if the First and Second Offer are not implemented

2.13 In the event that the Second Offer is not accepted within the Second Offer Period then the Owners may:

2.13.1 on or before the occupation of 10 of the Market Dwellings pay to the Council the Affordable Housing Commuted Sum whereupon once such sum has been paid to the Council the Owners and any successors in title shall be released from the provisions of this paragraph 1 insofar as it relates to the Affordable Dwellings and the Affordable Dwellings may be sold on the open market as Market Dwellings; or

2.13.2 Dispose of all or any of the Affordable Dwellings as Intermediate Units to an Affordable Housing Provider; or

2.13.3 Dispose of all or any of the Affordable Dwellings to purchasers nominated through Help to Buy South East at a discount of 20% of the open market value (such discount to be secured in perpetuity).

Provided that:

2.13.4 the Owner shall have provided the Council with written evidence of their Reasonable Endeavours to dispose of the Affordable Housing Units to an Affordable Housing Provider; and

2.13.5 The Council shall, acting reasonably, have confirmed in writing that such Reasonable Endeavours were reasonable or an expert shall have determined that such Reasonable Endeavours were reasonable; and

2.13.6 the Owners shall pay to the Council the Affordable Housing Commuted Sum for each of the Affordable Housing Units in relation to which the First and Second Offers have not been accepted within 20 working days of the end of the Second Offer Period

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

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

Where:

$X = \text{£}80,000.00$

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

Nomination Rights

2.15 To procure that the Registered Provider grants Nomination Rights to the Council to the first Occupation of the Affordable Housing Units PROVIDED THAT if the Council do not accept such offer then the Registered Provider shall in seeking to allocate the Affordable Dwelling units have regard as far as possible to the following criteria:

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

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

2.15.3 Any employment opportunity in the District of Arun;

2.15.4 Any other connection with the District of Arun

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

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

2.16.1 The grant by the Owners of all rights of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of those Affordable Dwellings;

2.16.2 A reservation of all rights of access and passage of services and other rights reasonably necessary for the benefit of the remainder of the Dwellings on the Site; and

2.16.3 The imposition of such covenants as the Owners shall reasonably require and are consistent with the sale of any Market Unit.

2.16.4 A Condition that the Registered Provider shall within 3 months of the legal completion of the transfer, or such other period as may be agreed with the Council in writing, enter into a Nominations Agreement (in like terms to that in the Draft Nominations Agreement is Appendix 4 with the Council

2.17 the Owner covenants with the Council:

2.17.1 in the event of the Owner becomes aware that the Affordable Housing Provider has received notification from any chargee of any breach or alleged breach by the Affordable Housing Provider of any of its obligations under its security, to notify the Council of this as soon as reasonably practicable; and

2.17.2 in the event of the Owner becomes aware of any notice, order or direction having been served, made or given under

the Housing Act 1996 Schedule 1 Part IV that relates to the Affordable Dwellings, to notify the Council of this as soon as reasonably practicable.

2.18 the Owner covenants with the Council:

- 2.18.1 in the event of a default under any security referred to in paragraph 2.14 or in other circumstances warranting the intervention of Homes England (whether under the Housing Act 1996 or otherwise) nothing in this paragraph 1 the transfer of the freehold of the Affordable Dwellings or any part of them to another Affordable Housing Provider will not be prevented;
- 2.18.2 subject to and without prejudice to the powers and requirements of Homes England under the Housing Act 1996 that in the event of a default under any security referred to in paragraph 2.14 the disposal of any interest in the Affordable Dwellings by the Chargee in the exercise of its power of sale will not be prevented.

2.19 Future Provisions

- 2.19.1 Nothing in this Agreement shall be construed as imposing or otherwise implying any obligation on the Council to grant or make available any public subsidy or other financial support (or to assist the Owners in obtaining such public subsidy or other financial support) in respect of the Affordable Housing Units.
- 2.19.2 The provisions of this [] Schedule shall cease to bind any of the Affordable Dwellings if in relation to that Affordable Housing Unit:
 - 2.19.2.1 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
 - 2.19.2.2 it shall have been sold under a shared ownership lease and the leaseholder (or its mortgagee) has staircased his ownership under the lease to 100%.
- 2.19.3 In the event of any dispute as to whether any proposed occupier of any Affordable Dwelling is a Qualifying Occupier the matter shall be determined by the Council (acting reasonably).

2.20 Mortgagee in Possession

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

2.20.1.1 such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and ;

2.20.1.2 if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Agreement which provisions shall determine absolutely

SECOND SCHEDULE

The Owner's Covenants with the County Council

1 PRIMARY EDUCATION CONTRIBUTION

- 1.1 Prior to the Commencement of the Development to pay to the County Council the Primary Education Contribution Index Linked.
- 1.2 Not to cause or allow the Development to be Commenced before the Primary Education Contribution has been paid to the County Council.
- 1.3 If the Primary Education Contribution is not paid to the County Council on or before the relevant payment date to pay to the County Council in addition Interest from the relevant payment date until the actual date of payment and any such interest shall be treated as part of the Primary Education Contribution.

2 SECONDARY EDUCATION CONTRIBUTION

- 2.1 Prior to the Commencement of the Development to pay to the County Council the Secondary Education Contribution Index Linked.
- 2.2 Not to cause or allow the Development to be Commenced before the Secondary Education Contribution has been paid to the County Council.
- 2.3 If the Secondary Education Contribution is not paid to the County Council on or before the relevant payment date to pay to the County Council in addition Interest from the relevant payment date until the actual date of payment and any such interest shall be treated as part of the Secondary Education Contribution.

3 FURTHER EDUCATION CONTRIBUTION

- 3.1 Prior to the Commencement of the Development to pay to the County Council the Further Education Contribution Index Linked.
- 3.2 Not to cause or allow the Development to be Commenced before the Further Education Contribution has been paid to the County Council.
- 3.3 If the Further Education Contribution is not paid to the County Council on or before the relevant payment date to pay to the County Council in addition Interest from the relevant payment

date until the actual date of payment and any such interest shall be treated as part of the Further Education Contribution.

4 LIBRARY CONTRIBUTION

- 4.1 Prior to the Commencement of the Development to pay to the County Council the Library Contribution Index Linked.
- 4.2 Not to cause or allow the Development to be Commenced before the Library Contribution has been paid to the County Council.
- 4.3 If the Library Contribution is not paid to the County Council on or before the relevant payment date to pay to the County Council in addition Interest from the relevant payment date until the actual date of payment and any such interest shall be treated as part of the Library Contribution.

5 FIRE AND RESCUE CONTRIBUTION

- 5.1 Prior to the Commencement of the Development to pay to the County Council the Fire and Rescue Contribution Index Linked.
- 5.2 Not to cause or allow the Development to be Commenced before the Fire and Rescue Contribution has been paid to the County Council.
- 5.3 If the Fire and Rescue Contribution is not paid to the County Council on or before the relevant payment date to pay to the County Council in addition Interest from the relevant payment date until the actual date of payment and any such interest shall be treated as part of the Fire and Rescue Contribution.

THIRD SCHEDULE

County Council Covenants

The County Council covenants with the Owner as follows:

2 PRIMARY EDUCATION CONTRIBUTION

- 2.1 Upon receipt of the Primary Education Contribution under paragraph 1 of Schedule 2 it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Agreement in the vicinity of the Land.
- 2.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Primary Education Contribution to issue to the party that paid the Primary Education Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the Primary Education Contribution has been expended by the County Council.
- 2.3 If or to the extent that any of the Primary Education Contribution shall not have been spent by the County Council by the end of the period referred to in paragraph 2.2 above the County Council shall on such date refund to the party that paid the Primary Education Contribution any unexpended part of any of Primary Education Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 2.4 If at the end of the period referred to in paragraph 2.2 of this Schedule the County Council shall have entered into a contract or other legally binding obligation to expend the Primary Education Contribution or part thereof for the purposes specified in paragraph 2.1 then the County Council shall not be required to refund any part of the Primary Education Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Primary Education Contribution in the manner set out in paragraph 2.2 of this Schedule and refund any unexpended part of the Primary Education Contribution in the manner set out in paragraph 2.3 of this Schedule

3 SECONDARY EDUCATION CONTRIBUTION

- 3.1 Upon receipt of each instalment of the Secondary Education Contribution under paragraph 2 of Schedule 2 it will hold it in a separately identified interest-bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Agreement in the vicinity of the Land.
- 3.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Secondary Education Contribution to issue to the party that paid the Secondary Education Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the Secondary Education Contribution has been expended by the County Council.
- 3.3 If or to the extent that any of the Secondary Education Contribution shall not have been spent by the County Council by the end of the period referred to in paragraph 3.2 above the County Council shall on such date refund to the party that paid the Secondary Education Contribution any unexpended part of any of Secondary Education Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 3.4 If at the end of the period referred to in paragraph 3.2 of this Schedule the County Council shall have entered into a contract or other legally binding obligation to expend the Secondary Education Contribution or part thereof for the purposes specified in paragraph 3.1 then the County Council shall not be required to refund any part of the Secondary Education Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Secondary Education Contribution in the manner set out in paragraph 3.2 of this Schedule and refund any unexpended part of the Secondary Education Contribution in the manner set out in paragraph 3.3 of this Schedule.

4 FURTHER EDUCATION CONTRIBUTION

- 4.1 Upon receipt of the Further Education Contribution under paragraph 3 of Schedule 2 it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing

on it for the purpose specified by this Agreement in the vicinity of the Land.

- 4.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Further Education Contribution to issue to the party that paid the Further Education Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the Further Education Contribution has been expended by the County Council.
- 4.3 If or to the extent that any of the Further Education Contribution shall not have been spent by the County Council by the end of the period referred to in paragraph 4.2 above the County Council shall on such date refund to the party that paid the Further Education Contribution any unexpended part of any of Further Education Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 4.4 If at the end of the period referred to in paragraph 4.2 of this Schedule the County Council shall have entered into a contract or other legally binding obligation to expend the Further Education Contribution or part thereof for the purposes specified in paragraph 4.1 then the County Council shall not be required to refund any part of the Further Education Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Further Education Contribution in the manner set out in paragraph 4.2 of this Schedule and refund any unexpended part of the Further Education Contribution in the manner set out in paragraph 4.3 of this Schedule.

5 LIBRARY CONTRIBUTION

- 5.1 Upon receipt of the Library Contribution under paragraph 4 of the Second Schedule it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Agreement in the vicinity of the Land.
- 5.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Library Contribution to issue to the party that paid the Library Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing

how the Library Contribution has been expended by the County Council.

- 5.3 If or to the extent that any of the Library Contribution shall not have been spent by the County Council by the end of the period referred to in paragraph 5.2 above the County Council shall on such date refund to the party that paid the Library Contribution any unexpended part of any of Library Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 5.4 If at the end of the period referred to in paragraph 5.2 of this Schedule the County Council shall have entered into a contract or other legally binding obligation to expend the Library Contribution or part thereof for the purposes specified in paragraph 5.1 then the County Council shall not be required to refund any part of the Library Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Library Contribution in the manner set out in paragraph 5.2 of this Schedule and refund any unexpended part of the Library Contribution in the manner set out in paragraph 5.3 of this Schedule.

6 FIRE AND RESCUE CONTRIBUTION

- 6.1 Upon receipt of the Fire and Rescue Contribution under paragraph 5 of the Second Schedule it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Agreement in the vicinity of the Land.
- 6.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Fire and Rescue Contribution to issue to the party that paid the Fire and Rescue Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the Fire and Rescue Contribution has been expended by the County Council.
- 6.3 If or to the extent that any of the Fire and Rescue Contribution shall not have been spent by the County Council by the end of the period referred to in paragraph 6.2 above the County Council shall on such date refund to the party that paid the Fire and Rescue Contribution any unexpended part of any of Fire and Rescue Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County

Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.

- 6.4 If at the end of the period referred to in paragraph 6.2 of this Schedule the County Council shall have entered into a contract or other legally binding obligation to expend the Fire and Rescue Contribution or part thereof for the purposes specified in paragraph 5.1 then the County Council shall not be required to refund any part of the Fire and Rescue Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Fire and Rescue Contribution in the manner set out in paragraph 6.2 of this Schedule and refund any unexpended part of the Fire and Rescue Contribution in the manner set out in paragraph 6.3 of this Schedule.

APPENDIX 1
(Commencement Notice)

Pursuant to Clause 8.1 in the Planning Agreement Described Below

Section 106 Agreement date [] in respect of Land at Hatters Inn, 2 to 10
Queensway, Bognor Regis PO21 1TQ.

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

Dated: this _____ day of _____ 20

Signed: _____

On Behalf of: _____

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

(2) Monitoring and Records Team, Strategic Planning Division of County Hall,
Chichester, West Sussex PO19 1RQ (DX: 157410 Chichester 8)

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

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. Planning 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

NATIONAL GRID PLAN

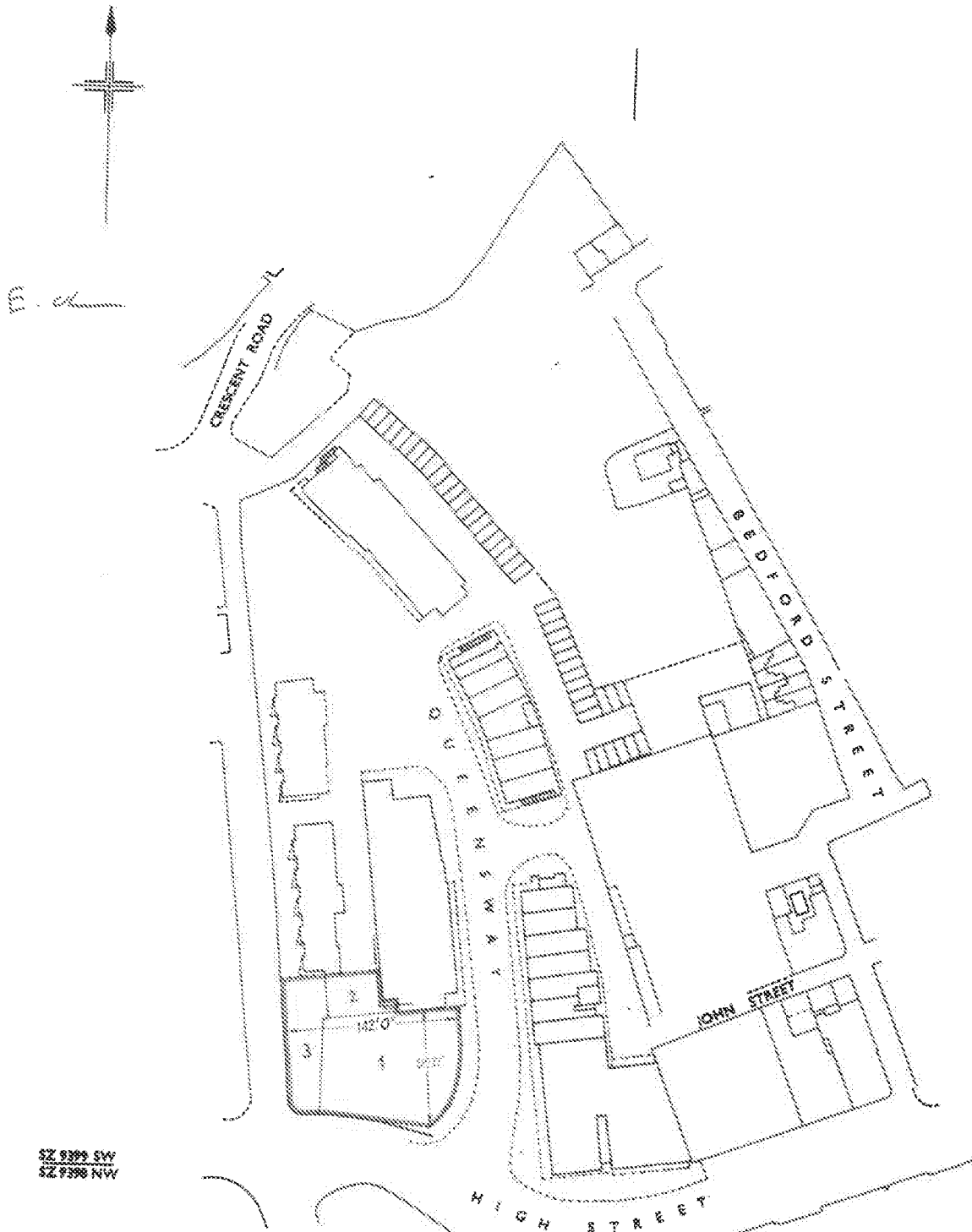
SZ 9399

SECTION A

~~SUSSEX~~

Scale 1/1250

COUNTY OF WEST SUSSEX
ARUN DISTRICT



SZ 9399 SW
SZ 9398 NW

SZ 9399 SE
SZ 9398 NE

Old Reference SUSSEX LXXIV 6

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General of the Ordnance Survey,
Chislehurst, Surrey, 1965 for HMLR
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Filed Plan of Title No. **SX87239**

APPENDIX 4
DRAFT NOMINATIONS AGREEMENT

DATED

20[]

(1) [·][]

AND

(2) ARUN DISTRICT COUNCIL

AGREEMENT OF NOMINATION

relating to
rented units at

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THIS AGREEMENT OF NOMINATION RIGHTS is made on

20[]

BETWEEN

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

1 DEFINITIONS

In this Agreement :

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

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

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

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

“Rented Units” residential units in the form of houses.

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

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

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

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

- (a) moved to other accommodation either by transfer or decant provided by the RSL;
- (b) moved to other accommodation under a reciprocal arrangement provided by another registered social landlord registered with the Housing Corporation under the Housing Act 1996.

“Void Notice” means a written notice given by the RSL to the Council (in a form to be agreed between the RSL and the Council within five weeks from the date of this Agreement) the function of such a notice being the notification to the Council of a Void.

2 ENABLING PROVISIONS

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

3 PROCEDURE

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

Initial Lets

- 3.1 The RSL shall give the Council not less than eight weeks written notice of the date when the Initial Let units will be ready for occupation.
- 3.2 The RSL shall serve on the Council a Vacancy Notice in respect of each Rented Unit not less than four weeks prior to such newly constructed and previously unoccupied Rented Unit becoming available for occupation.
- 3.3 The Council shall within 10 working days of receipt of a Vacancy Notice serve upon the RSL the Nomination List setting out a list of Nominees.
- 3.4 The Nomination List to be served by the Council under clause 3.3 shall:
 - 3.4.1 specify the appropriate category of Rented Unit to which it relates; and
 - 3.4.2 indicate the priority for the housing of the Nominees.
- 3.5 The RSL shall have the right to let the Initial Let in respect of the Rented Units to persons of its own choosing in the event of the Council's failure to serve the Nomination List referred to in clause 3.3 within the period of 10 working days of receipt of the Vacancy Notice.
- 3.6 The RSL shall within five working days of the date of receipt of the Nomination List referred to in clause 3.3 select a Nominee from the Nomination List in priority order and shall use its reasonable endeavours to arrange viewing of the relevant Rented Unit and offer a Tenancy Agreement to such selected Nominee.
- 3.7 If the selected Nominee fails to enter into a Tenancy Agreement within five working days of receipt of the RSL's offer of a Tenancy Agreement such selected Nominee shall be deemed to have rejected the RSL's offer

and the RSL shall select another Nominee whereupon the procedure set out in clause 3.6 and this clause shall be repeated.

- 3.8 In the event of the second selected Nominee failing to accept the RSL's offer of a Tenancy Agreement within the time prescribed by clause 3.7 then the RSL shall make an offer to a third Nominee and the procedure set out in clauses 3.6 and 3.7 shall apply but in the event of such third selected Nominee failing to accept the RSL's offer of a Tenancy Agreement within the prescribed time limits the RSL shall not be bound to make any further offers of accommodation to Nominees in respect of such vacancy of the Rented Unit but shall be entitled to let the Rented Unit to a tenant of its own choosing.
- 3.9 The RSL's obligations under clauses 3.1 to 3.8 shall cease when all of the Rented Units have been offered to Nominees in accordance with clauses 3.6 to 3.8.

Voids

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

Provision of information and alteration of lists

- 3.14 The RSL shall give notification to the Council of the occurrence of the following events within five working days of their occurrence:
- 3.14.1 a Nominee or Subsequent Nominee failing to view a Rented Unit within 10 working days of an offer being made;

- 3.14.2 a Nominee or Subsequent Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Agreement;
- 3.14.3 a Nominee or Subsequent Nominee accepting an offer of a Tenancy Agreement;
- 3.14.4 a person accepting an offer of a tenancy from the RSL;
- 3.14.5 the RSL rejecting a Nominee or Subsequent Nominee in accordance with clause 3.20.
- 3.15 In the event of a notice being served pursuant to clause 3.14 then the name of such Nominee or Subsequent Nominee shall be removed from the Nomination List.
- 3.16 Within 10 working days of the Council receiving notice served in accordance with clause 3.14 above save for notice under 3.14.4 the Council shall serve upon the RSL the name and address of a Nominee or Subsequent Nominee to add to the Nomination List such notice to include the information set out in clause 3.4.
- 3.17 If the Council shall within the period mentioned in clause 3.16 notify the RSL that the Council then has no suitable Nominee or Subsequent Nominee the Council shall advise the RSL of a suitable replacement Nominee or Subsequent Nominee as soon as reasonably practicable.
- 3.18 The RSL shall have the right to let a Rented Unit to a person of its choosing if the Council's failure to provide a Nominee or Subsequent Nominee creates a Void in respect of that Rented Unit.
- 3.19 On 1 April, 1 July, 1 October and 1 January in each year the RSL shall serve the Council with details of the letting activities of the Rented Units in a format to be agreed between the RSL and the Council.
- 3.20 The RSL shall have the right to interview and make enquiries of each Nominee or Subsequent Nominee and by serving written notice upon the Council to that effect to reject any Nominee or Subsequent Nominee if in the opinion of the RSL the grant of an Assured Tenancy to such Nominee would be in contravention of the RSL's registered rules or its letting criteria.
- 3.21 The Council shall immediately notify the RSL in writing if any Nominee or Subsequent Nominee is withdrawn from the Nomination List.
- 3.22 When calculating percentage for the purposes of this Agreement percentage equal to or in excess of 0.5 shall be rounded up and percentages less than 0.5 shall also be rounded up.

3.23 The Council and the RSL agree that the nomination ;rights contained in this Agreement may be varied from time to time but only by Agreement in writing by the parties.

4 NOTICES

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

5 TRANSFERS TO OTHER REGISTERED SOCIAL LANDLORDS

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

6 MORTGAGEES IN POSSESSION

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

7 DISPUTES

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

8 COSTS

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

9 AGREEMENTS AND DECLARATIONS

The parties agree:

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

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

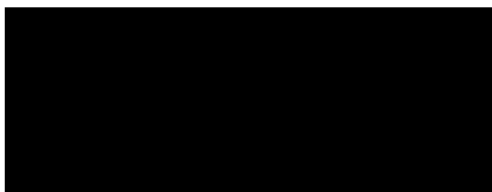
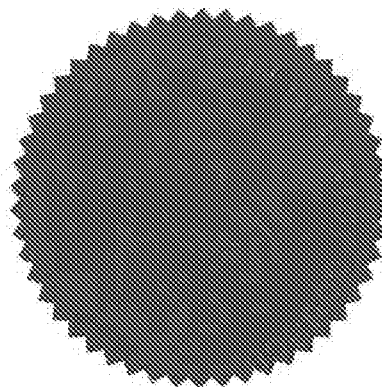
APPENDIX 5
ARUN DISTRICT COUNCIL APPROVED PROVIDERS

Provider	
Clarion Housing Group	
The Guinness Partnership	
The Hyde Group	
Worthing Homes	
Stonewater	
Saxon Weald	
Hastoe Housing Association	

Aster Group	
Arun District Council	

IN WITNESS whereof the parties hereto have executed and delivered this document as a Deed in the presence:

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



Authorised Signatory

Seal No. 112 / 2020

THE COMMON SEAL of)
 WEST SUSSEX COUNTY COUNCIL)
 was hereunto affixed in the)
 presence of:)

Authorised Signatory

Seal No.

EXECUTED as a DEED)

by REGENT PROPERTIES)

HOLDINGS LIMITED)

acting by

Director:

Secretary: