

Dated:  2010

Between:

- [1] Susan Mary Abbot, Andrew Brian Abbot and Graham John Abbot
[The Owners]
- [2] Brookworth Homes Limited [The Developer]
- [3] Arun District Council [ADC]
- [4] West Sussex County Council [WSCC]

AGREEMENT

under Section 106 of the Town & Country Planning Act 1990
and other powers
Land south of Burndell Road Yapton West Sussex

Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex BN17 5LF
DX 57406 LITTLEHAMPTON
Reference: F7/15/OUT

1 March

This Agreement is dated _____ 2018 and is made between:

- [1] Susan Mary Abbot of 4 West Avenue, Middleton-On-Sea, Bognor Regis, PO22 6EF and Andrew Brian Abbot of 14 Firs Avenue, Felpham, Bognor Regis, PO22 8PX and Graham John Abbot of 3 Westgrounds Cottages, Horsemere Green Lane, Climping, Littlehampton, BN17 5QZ ["the Owners"]
- [2] Brookworth Homes Limited (Company Regn. No. 07731151) registered at Millennium House, 99 Bell Street, Reigate, Surrey, RH2 7AN ["the Developer"]
- [3] Arun District Council of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ["ADC"]
- [4] West Sussex County Council of County Hall, West Street, Chichester, West Sussex, PO19 1RQ ["WSCC"]

1. Background

- 1.1 The Owners are the registered proprietor under title number WSX318640 of Land south of Bumdell Road Yapton West Sussex and shown for identification purposes only edged red on Plan 1 and hereinafter called "the Land"
- 1.2 ADC is the local planning authority and the local housing authority and the authority responsible for leisure services in the area of the Development
- 1.3 The WSCC is the Strategic Planning Authority, the local highway authority and the authority responsible for the provision of education library and fire and rescue services in the area of the Development
- 1.4 The Developer has entered into a promotion agreement with the Owners to secure the development of the Land and has by Planning Application number F/7/15/OUT

applied to ADC for outline Planning Permission to develop the Land by erecting thereon of 45 dwellings formation of access onto Burndell Road resubmission after ref F/9/14/PL the Application is a departure from the Development Plan

2. Interpretation

In this Agreement:

- 2.1 Words importing the masculine include the feminine and vice versa
- 2.2 Words importing the singular include the plural and vice versa
- 2.3 Words importing persons include companies and corporations and vice versa
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually
- 2.5 Any reference to a clause or schedule or plan is to one in to or attached to this Agreement
- 2.6 Any reference to a colour or letter is to be on the plans attached to this Agreement
- 2.7 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it
- 2.8 References to any party to this Agreement shall include that party's personal representatives, successors in title to that party or assigns and to any deriving title through or under that party and in the case of the WSCC and ADC the successors to their respective statutory functions
- 2.9 "the Act" means the Town & Country Planning Act 1990
- 2.10 "Affordable Housing" means affordable housing as defined in Annex 2 Glossary National Planning Policy Framework dated 27 March 2012 as amended from time to time (including Affordable Rented Homes or Intermediate Homes)

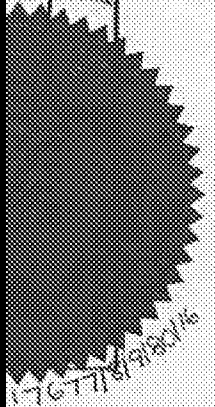
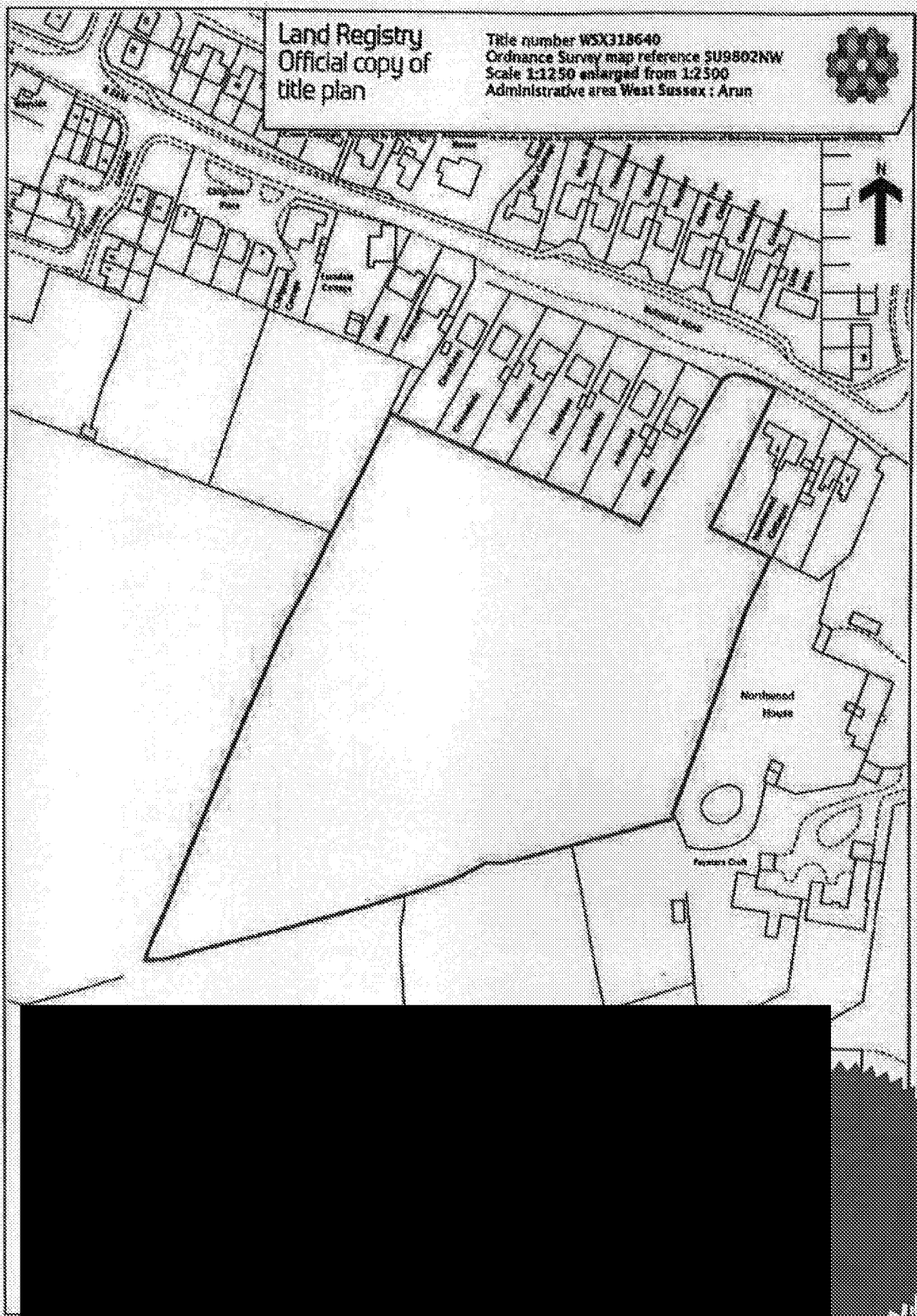
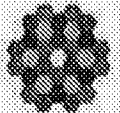
- 2.11 "Affordable Housing Units" means thirteen (13) of the Dwelling Units to be provided as Affordable Housing in accordance with the terms of this Agreement and with the following mix :-
6 Affordable Rented Homes
7 Intermediate Homes
Total 13 Affordable Housing Units of which 2 are to be provided in the form of bungalows
- 2.12 "Affordable Housing Standard" means the Housing Corporation building standard applicable at the date of Commencement of the Development or equivalent or replacement or successor Standard adopted by the successor body to the Housing Corporation
- 2.13 "Affordable Rented Homes" means housing that is let by local authorities or private registered providers to households who are eligible for social rented housing at a rent which is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable)
- 2.14 "agreed" or "approved" means agreed or approved in writing and given for the purpose of this Agreement
- 2.15 "the Application " means the planning application number F/7/15/OUT made to develop the Land
- 2.16 "Commencement of the Development" the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly
- 2.17 "the Development" means the development of the Land proposed by the Application or permitted by the Planning Permission or carried out substantially in accordance with the Planning Permission

- 2.18 "Dwelling Units" means any residential dwelling to be constructed under the Planning Permission as part of the Development. Dwelling and Dwellings shall be construed accordingly
- 2.19 "Education Contribution" means the contribution calculated in accordance with Clause 9.1 being the Primary Education Contribution, the Secondary Education Contribution and the Sixth Form Education Contribution together to be paid to WSCC in accordance with clause 9
- 2.20 "Estate Roads" means the proposed roads footways footpaths and cycleways of the Development (as applicable) indicatively shown on Plan 2
- 2.21 "Fire and Rescue Service Contribution" means the contribution calculated in accordance with Clause 11.1 to be paid to WSCC and to be used towards the supply and installation of additional fire safety equipment to vulnerable persons homes in the West Sussex Fire Rescue Service Southern area serving the parish of Ford
- 2.22 "Fire Hydrants" means the fire hydrants to be provided within the Development in accordance with the County Council Guidance Note
- 2.23 "Highways Contribution" means the contribution towards supporting sustainable access in the locality, specifically cycle infrastructure improvements of £10,000 and bus shelters with seating and real-time passenger information of £40,000 and referred to in Clause 8
- 2.24 "Intermediate Homes" means homes for sale and rent provided at a cost above social rent, but below market levels including shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing
- 2.25 "Library Contribution" means the contribution calculated in accordance with Clause 10.1 to be paid to WSCC and to be used to support the expansion of 'tier 7' library services for Yapton serving the Development
- 2.26 "Management Company" means the private limited company to be established (if applicable) by the Owners or Developer to be responsible for the maintenance and management of the Estate Roads unless otherwise agreed with the County Council (as appropriate) and responsible for the maintenance and management of the Managed Open Space unless otherwise agreed by ADC

- 2.27 "Managed Open Space" means the Public Open Space Child Play Area and Village Green described at Clauses 7.1
- 2.28 "Market Housing Units" means Dwelling Units within the Development which are not Affordable Housing Units
- 2.29 "Occupation" or "Occupy" or "occupied" shall mean occupy as a dwelling
- 2.30 "Open Space Works" means the works to be carried out for the laying out of the Managed Open Space and completed to the satisfaction of ADC in accordance with Clause 7.6 of this Deed
- 2.31 "Plan 1" the plan annexed hereto labelled "Plan 1"
- 2.32 "Plan 2" the plan annexed hereto labelled "Plan 2"
- 2.33 "Planning Permission" means the planning permission to be granted by ADC in respect of the Application
- 2.34 "Primary Education Contribution" means the financial contribution payable to WSCC towards additional equipment at Yapton Primary School and calculated in accordance with clause 9.1
- 2.35 "Public Open Space and Child Play Area " means the land described at Clause 7.1
- 2.36 "Qualifying Occupiers" means persons who qualify for Affordable Housing within Schedule 4 to this Agreement and including residents of the Arun District who are unable to resolve their housing needs in the local private sector market because of the relationship between housing costs and income
- 2.37 "Registered Provider " or "RP" means a provider of affordable housing registered with the Tenants Services Agency [TSA] or equivalent or replacement and appearing within the ADC List of Approved Registered Providers attached or specifically approved in writing for the purposes of the present Agreement
- 2.38 "Secondary Education Contribution" means the financial contribution payable to WSCC towards additional equipment at St Philip Howard Catholic School and calculated in accordance with clause 9.1

Land Registry
Official copy of
title plan

Title number WSX318640
Ordnance Survey map reference SU9802NW
Scale 1:1250 enlarged from 1:2500
Administrative area West Sussex : Arun



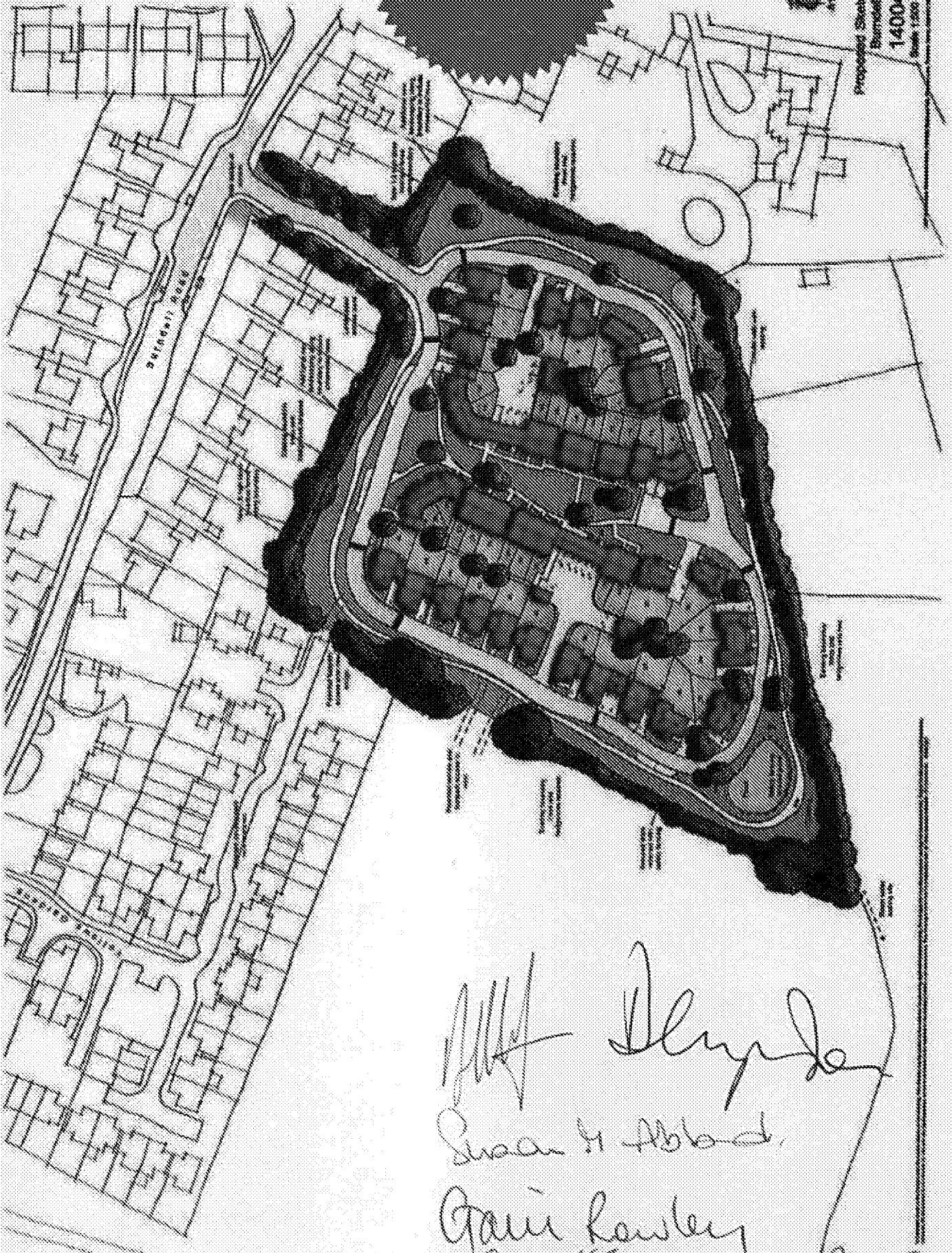
anl

D. Rowland



Proposed Sketch Layout Plan
Burndell Road, Vancou
14004 / C101D
Scale 1:200 @ A1 March 2015

17677/1819/2015



[Signature]

Susan H. Abbott

Gavin Rowley

Plan 2

2.39 "Sixth Form Education Contribution" means the financial contribution payable to WSCC towards additional equipment at St Philip Howard Catholic School and calculated in accordance with clause 8.1

2.40 "Specified Date" means the date upon which an Obligation arising under this Agreement is due to be performed

2.41 "Village Green" means an area of open space for the use of the local residents for sports and other pastimes

2.42 "Working Day" means a day (other than a Saturday, Sunday or public holiday) in England when banks in London are open for business

3. Enabling Provisions

3.1 This Agreement is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section of the 1 Localism Act 2011 and all other enabling powers

4. Conditionality

4.1 The covenants given on behalf of the Developer in this Deed are given subject to the Developer obtaining a freehold or leasehold interest in the Land and the Developer shall have no liability under this Deed save for clause 17 until such time as the Developer becomes a freehold or leasehold owner in the Land

5. Commencement

5.1 This Agreement shall come into effect upon the grant of the Application but the Obligations in Clauses 6, 7, 8, 9, 10, 11 and 12 shall become effective only on the Commencement of the Development in accordance with Section 56 of the Act

5.2 The Obligations contained in Clauses 6, 7, 8, 9, 10, 11 and 12 of this Deed are enforceable by ADC and WSCC as the case may be in accordance with Section 106 of the Act

5.3 On Commencement of the Development the Owners and the Developer will give to ADC and WSCC notice in writing of that commencement in the form of The Commencement Notice annexed to this Deed as Schedule 1 addressed to ADC's

Head of Planning Services or equivalent post and WSCC's Monitoring and Records Team or equivalent post

Covenants in Favour of ADC

6. Provision of Affordable Housing on the Land [13 Homes]

The Owners and the Developer covenant with ADC:

- 6.1 To provide on the Land the Affordable Housing Units in accordance with this Clause and Schedules 3 and 4
- 6.2 A total of 6 of the Residential Dwellings forming part of the Development shall be provided in the form of bungalows. 2 of the 6 bungalows will be provided as Affordable Housing Units in accordance with Clause 6.1 and Schedules 3 and 4
- 6.3 Not to occupy or allow to be occupied more than 25 of the Open Market Dwellings forming part of the Development before the provisions of this Clause and Schedules 3 and 4 have been complied with in full

7. On Site Public Open Space and Child Play Area Provision

The Owners and the Developer covenant with the ADC:

- 7.1 As part of the Development on the Land to provide the following Public Open Space and Child Play Area totalling no less than 6,070 square metres
 - 7.1.1 a landscaped public amenity space
 - 7.1.2 an open space area:
 - 7.1.3 an area of open space looping around the perimeter of the Development to and from Burndeil Road including winding hard footpath
 - 7.1.4 a children's playground with the size, layout and specification of such children's playground to be agreed with ADC (acting reasonably) prior to Commencement of the Development with child play equipment to a value of no less than £45,000

- 7.2 One of the areas of Public Open Space described at 7.1.1 or 7.1.2 is to be provided as a Village Green
- 7.3 Not to permit the Occupation of the final Dwelling without having first provided the Public Open Space described at 7.1
- 7.4 The ownership of the Public Open Space described at Clause 7.1 shall be Managed Open Space and shall be transferred by the Owners or Developer or his successors in title to the Management Company following completion of the Open Space Works to the satisfaction of the ADC and will be subject to the following provisions;
- 7.5 It shall be a term of the transfer to the Management Company that the Management Company will maintain and manage in perpetuity the Managed Open Space and only allow the use of the Managed Open Space for the public access and recreation and for no other purpose
- 7.6 Not to permit the Occupation of the final Dwelling without having first formed the Management Company and provided evidence of such formation to ADC (including a certified copy of the Memorandum and Articles of Association of the Management Company)
- 7.7 To ensure and procure that the sale contract of each Dwelling contains a provision that requires the buyer of such Dwelling to become a member of the Management Company as soon as reasonably practicable following the formation of the Management Company
- 7.8 To procure that the buyer of each Dwelling has entered into covenants direct with the Management Company under which the buyer shall covenant to pay to the Management Company a pro rata proportion (according to the number of Dwellings) of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining the Managed Open Space and covenant that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into the same direct covenants with the Management Company
- 7.9 To declare that pursuant to Section 31(6) Highways Act 1980 that the Managed Open Space has not been dedicated to the public nor is any use by the public of any part of the Managed Open Space to be taken in any way as an intention by the Owners, the Developer or their successors in title to dedicate the same as highway

7.10 Subject to Clause 7.8 to procure in either case that public access to the Managed Open Space but subject to the following provisions:

(a) Access shall be subject to such other requirements and regulations as may from time to time be imposed by the Owners or Developer or their successors in title having regard to overriding reasons of safety, security, and prudent building management PROVIDED THAT such requirements and regulations shall not be imposed without ADC's prior written approval

(b) The Owners or Developer or their successors in title may erect notices on the Managed Open Space and access to them will be denied by the Owners or Developer or his successors for one day each year in order to prevent public rights coming into being; and

(c) Access may be denied by the Owners or Developer or their successors for and during the maintenance, repair, cleaning or renewal of the Managed Open Space or for and during the construction of any building or land abutting it subject to the ADC's prior approval

7.11 The Owners or Developer or their successors may close the Managed Open Space or any part thereof for reasonable periods by reason of:

(a) Emergency

(b) Cleaning, maintenance and repair

(c) The Prevention of formation of public rights of way or common rights

7.12 The Owners or Developer or their successors will comply with the provisions set out in Clause 7.4 until such time as the Managed Open Space has been transferred to a Management Company

7.13 The Owners or Developer or their successors shall not wind up the Management Company nor alter the constitution of the Management Company without prior written consent of the ADC unless the whole of the Development shall have been demolished or unless otherwise first agreed in writing by ADC

- 7.14 The Owners shall retain a right of way for the benefit of the Owners' retained land to the West of the Land from the Western boundary of the land across the Public Open Space described at Clause 7.1.3 to and along the internal estate roads to be constructed within the Development so as to allow vehicular and pedestrian access between the Owners' retained land and Burndell Road

Covenants in Favour of WSCC

8. Highways Contribution

The Owners and the Developer covenant with WSCC:

- 8.1 On the Commencement of Development to pay to WSCC the Highways Contribution of £50,000 towards the provision of cycle infrastructure improvements and bus shelters with seating and real-time passenger information
- 8.2 Not to occupy or cause or allow to be occupied any Dwelling built on the Land before the Highways Contribution shall have been paid

9. Education Contribution

The Owners and the Developer covenant with WSCC:

- 9.1 On Commencement of Development to pay to WSCC the Education Contribution calculated in accordance with the following formula:

$$\begin{aligned} &\text{DfE Figure (Primary)} \times \text{ACP} = \text{Primary Education Contribution} + (\text{DfE Figure} \\ &\text{(Secondary)} \times \text{ACP} = \text{Secondary Education Contribution}) + (\text{DfE Figure (Sixth-Form)} \\ &\times \text{ACP} = \text{Sixth Form Education Contribution}) = \text{Education Contribution} \end{aligned}$$

where:

Note x = multiplied by.

ACP (Additional Child Product) = The estimated additional number of school age children likely to be generated by the development calculated by reference to the total number of dwellings, less any allowance for affordable dwellings relevant to the particular District, as approved by a subsequent reserved matters planning application. The following criteria are used to generate a child product:

Dwelling Size		Occupancy	
		House	Flat
1 bed	=	1.5	1.3
2 bed	=	1.9	1.9
3 bed	=	2.5	2.4
4+ bed	=	3.0	2.8

Using the above occupancy rates to determine an overall population increase the following factors will be applied: According to 2001 census data, there are

- * 14 persons per 1000 population in each school year group for houses; and
- * 5 persons per 1000 population in each school year group for flats.
- * There are 7 year groups for primary (years R to 6); and
- * 5 for secondary (years 7 to 11)

DfE Figure = Department for Education School building costs per pupil place (for pupils aged 4 to 18) as adjusted for the West Sussex area applicable at the date when the Education Contribution is paid (which for the financial year 2014/2015 is £13,980 for Primary Education, £21,064 for Secondary Education and £22,845 for Sixth Form Education), updated as necessary by the Royal Institute of Chartered Surveyors Building Cost Information Service All-In Tender Price Index.

- 9.2 Not to occupy or cause or allow to be occupied any dwelling forming part of the Development before the Education Contribution shall have been paid

10 Library Contribution

The Owners and the Developer covenant with WSCC:

- 10.1 On Commencement of Development to pay to WSCC the Library Contribution which shall be calculated in accordance with the following formula:

$$L \times AP = \text{Libraries Contribution}$$

where:

x = multiplied by

AP (Additional Persons) = The estimated number of additional persons generated by the development calculated by reference to the total number of dwellings, less any

allowance for affordable dwellings, as approved by a subsequent reserve matters planning application. The following figures are given as a guideline:

		Dwelling Size	Occupancy
		House	Flat
1 bed	=	1.5	1.3
2 bed	=	1.9	1.9
3 bed	=	2.5	2.4
4+ bed	=	3.0	2.8

L = Extra library space in sq.m. per 1,000 population x the library cost multiplier (which for the financial year 2014/15 are 30sq.m and £4,095 per sq.m respectively)

- 10.2 Not to occupy or cause or allow to be occupied any dwelling forming part of the Development before the Library Contribution shall have been paid

11. Fire and Rescue Contribution and provision of Fire Hydrants

The Owners and the Developer covenant with WSCC:

- 11.1 On Commencement of Development to pay to WSCC the Fire and Rescue Contribution which shall be calculated in accordance with the following formula:

$Y \times (Z / M) = \text{Fire and Rescue Infrastructure Contribution where:}$

Note: / = divided by, x = multiplied by.

Y = The estimated adjusted increase in population generated by the development using the following figures as a guideline:

		Dwelling Size	Occupancy
		House	Flat
1 bed	=	1.5	1.3
2 bed	=	1.9	1.9
3 bed	=	2.5	2.4
4+ bed	=	3.0	2.8

Z = the estimated costs of providing additional Fire and Rescue Infrastructure in the Southern Service Division of West Sussex at the time of payment (which, for information, for 2007/2008 was £5,530,000).

M = the projected population of the Fire and Rescue Service Southern Service Division of West Sussex in 2016 at the time of payment (which, for information, for the 2007/2008 financial year was 429,647).

- 11.2 Not to occupy or cause or allow to be occupied any dwelling forming part of the Development before the Fire and Rescue Contribution shall have been paid

11.3 Prior to Commencement of Development to submit to WSCC for its approval a proposal for:

11.3.1 the location and installation of two fire hydrants for the Development in accordance with the County Council Guidance Note; and

11.3.2 suitable access for fire brigade vehicles and equipment to the reasonable satisfaction of WSCC

11.4 Prior to Occupation the Owners and the Developer shall at their own expense install the fire hydrants in the approved location and arrange for their connection to a water supply which is appropriate in terms of both pressure and volume for the purposes of fire fighting

12. Estate Roads

The Owners and the Developer covenant with WSCC:

12.1 Prior to the Commencement Date to submit to the WSCC for approval a plan showing the intended status of the Estate Roads and associated footways footpaths and cycleways showing for the avoidance of doubt those roads footways footpaths and cycleways that will be offered for adoption under Section 38 of the Highways Act 1980 and those that will remain private. Any plan should also include details of surfacing, materials and construction of the Estate Roads

12.2 Prior to Occupation to submit to WSCC:

12.2.1 the name and contact details of the Management Company; and

12.2.2 a schedule for approval of any street furniture that the Management Company will be responsible for maintaining and a regime of maintenance

12.3 It is agreed with WSCC that all Estate Roads that are stated to be privately maintained by the Owners and the Developer or the Management Company shall be:

12.3.1 constructed to a standard that is suitable for its intended use;

12.3.2 maintained by the Owners and the Developer or the Management Company at their own expense in good and substantial repair and condition; and

12.3.3 shall not be dedicated by the Owners and the Developer or the Management Company as a public highway or become a private street as defined in the New Roads and Street Works Act 1991

12.4 Upon completion of the construction of the Estate Roads not being adopted by an agreement under Section 38 of the Highways Act 1980 the Owners and the Developer will provide a report to be prepared and signed by an appropriately qualified professional at its own expense to confirm that the construction of the privately maintained Estate Roads have been designed and built to a suitable standard for their intended use

12.5 The Owners and the Developer or the Management Company covenant with WSCC:

12.5.1 that the privately maintained Estate Roads shall remain open and unobstructed at all times and available for use by both residents of the Development and members of the public in the latter case without charge; and

12.5.2 subject to Clause 12.3.3 above to erect and maintain signs in positions agreed with WSCC advising the public that they are permitted to use the privately maintained Estate Roads on foot and by bicycle but that it is not a public highway so as to prevent the dedication of the privately maintained Estate Roads and to prevent any presumption of dedication (whether arising under Section 31 of the Highways Act 1980 or otherwise)

13. Certificates

The Owners and the Developer agree with WSCC and the ADC:

13.1 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 and the Developer shall give to the ADC and or WSCC notice of the Specified Date not more than seven days after such Specified Date

13.2 If the Owners and the Developer fails to give the notice required under this Clause the ADC or WSCC shall be entitled in its absolute discretion to determine the

Specified Date and shall give notice to the Owners and the Developer of that determination

14. Index Linking

- 14.1 The Owners and the Developer undertakes to ADC and WSCC that any sums payable by the Owners and the Developer under this agreement shall be increased by the application of the following formula:

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

where:

A is the sum actually payable on the Specified Date/ Payment Date

B is the original sum mentioned in this agreement

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

D is the Retail Price Index for the quarter preceding the date of this agreement in the case of ADC Contributions and the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors for the quarter preceding the Specified Date in the case of WSCC Contributions

C

D is equal to or greater than 1

- 14.2 The adjustment in sub Clause 14.1 shall only be made where the Specified Date is more than 6 months after the date of this undertaking

15. WSCC Covenants

- 15.1 WSCC covenants that upon receipt of the Highways Contribution, Education Contribution, Library Contribution, and Fire and Rescue Service Contribution as paid to WSCC in accordance with Clauses 8 to 11 of this Agreement it will hold them in a separately identified interest bearing section of WSCC's combined accounts and apply the same as specified in this Agreement

- 15.2 WSCC covenants upon written request on or after ten years of the date of receipt of the Highways Contribution, Education Contribution, Library Contribution and Fire and Rescue Service Contribution to issue to the party that paid the said contribution or its nominee an account certified by the Executive Director of Corporate Resources and Services for the time being of WSCC detailing how and on which scheme the respective contributions have been expended by WSCC
- 15.3 If or to the extent the Highways Contribution, Education Contribution, Library Contribution and Fire and Rescue Service Contribution shall not have been spent by WSCC at the end of the period referred to in Clause 15.2 above WSCC shall on such date refund to the party that paid the relevant contribution or its nominee any unexpended sum together with compound interest on such unexpended sum from the date of receipt of the said Contribution by WSCC 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
- 15.4 If at the end of the period referred to in Clause 15.2 above WSCC shall have entered into a contract or other legally binding obligation to expend the relevant contribution or part thereof for the purposes specified in this Agreement then WSCC shall not be required to refund any part of the relevant contribution required for that purpose but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the relevant contribution in the manner set out in Clause 15.2 above and refund any unexpended part of the relevant contribution in the manner set out in Clause 15.3 above
- 15.5 Any reference to a contribution under this Clause includes a part of that contribution

16. Interest

The Owners and the Developer agree with the ADC and WSCC to pay interest on sums due to ADC and WSCC under this Agreement but not paid on the Specified Date from the Specified Date until actual payment. The rate of interest shall be 4% above the Bank of England base rate from time to time

17. Legal and Administrative Costs

The Owners and the Developer agree with ADC and WSCC:

- 17.1 To pay on completion of this Agreement to the ADC and WSCC their respective legal costs incurred in preparing and entering into this Agreement as set out below:

Payee	Sum of Legal Costs
ADC	£1000
WSCC	£700

- 17.2 For the avoidance of doubt and in addition to the above charges ADC shall be entitled to utilise a proportion of any monetary payment specified in this Deed for related project costs up to a maximum of 5% of any payment or £15,000 which ever shall be the larger

- 17.3 For the avoidance of doubt the above charges are standard charges shall not preclude ADC from claiming and receiving any additional monitoring and legal or enforcement costs above and beyond these standard charges when circumstances require that they be incurred in pursuing full compliance with this Deed whether through the courts or otherwise

18. Payment Notice

- 18.1 The parties to this Agreement hereby agree that all payments due under this Agreement shall be forwarded to the ADC and WSCC and shall have attached to them a copy of the Payment Notice contained in Schedule 2 to this Agreement duly completed

19. General

The parties agree that:

- 19.1 Nothing in this Agreement constitutes an obligation to grant Planning Permission
- 19.2 Nothing in this Agreement grants Planning Permission or any other approval consent or permission required from WSCC or ADC in the exercise of any other statutory function
- 19.3 Nothing in this Agreement fetters or restricts the exercise by WSCC and ADC of any of their powers

19.4 The Obligations contained in Clauses 6, 7, 8, 9, 10, 11 and 12 of this Deed are planning obligations for the purpose of Section 106 of the Act [referred to as "Obligations" in this Deed, and "Obligation" shall be construed accordingly] and are entered into by the Owners and subject to obtaining a freehold or leasehold interest in the Land, the Developer with the intention that they bind the interests held by the Owners in the Property and their respective successors and assigns. Subject to the following proviso the Obligations shall take effect on the Specified Date but not otherwise and if the Planning Permission shall expire prior to the Specified Date then the provisions of this agreement shall cease to have further effect PROVIDED THAT the following shall be effective on the date of completion of this agreement:

19.4.1 The obligations as to costs contained in Clause 17.1

19.4.2 Any provision required to be performed prior to the Specified Date

19.5 If the Application is called in under Section 77 of the Act or becomes the subject of an appeal under Section 78 of the Act each Obligation in this agreement is also conditional upon:

(i) either a finding by the Secretary of State in respect of that Obligation, that it complies with Regulation 122 of the Community Infrastructure Levy Regulations 2010; or

(ii) no finding by the Secretary of State in respect of that Obligation, that it does not comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010

19.6 If ADC adopts a charging schedule, for the purposes of introducing the Community Infrastructure Levy, prior to Permission being granted, the Owners and the Developer shall be released from any Obligation in this Deed that relates to an item or project included on the ADC's Regulation 123 list of infrastructure

19.7 This Agreement constitutes a Deed

19.8 This Agreement is enforceable by ADC as to Clauses 6 and 7 and by the WSCC as to Clauses 8, 9, 10, 11 and 12

19.9 Nothing in this Agreement confers or is intended to confer a benefit on a third party under the Contracts [Rights of Third Parties] Act 1999 and no person other than a

party to this undertaking, and their respective successors and permitted assigns, and ADC and WSCC and the successors to their respective statutory functions shall have any rights to enforce any term of this Deed

19.10 This Agreement shall apply to the Development as authorised by the Planning Permission issued pursuant to the Application or to the Development after variation or renewal of the Planning Permission from time to time

19.11 This Agreement is a Local Land Charge and shall be registered as such

19.12 No covenants or obligations contained in this Deed shall be binding upon any part of the Land that may in future be acquired by a statutory undertaker for the purposes of its undertaking or operational Land as defined in the Section 262 of the Act

19.13 No person shall be required to comply with an obligation, restriction or covenant contained in this Deed nor shall it be liable for any breach of any of the Obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest

19.14 Without prejudice to liability for any subsisting breach no person shall be liable for breach of a Obligation contained in Clauses 6, 7, 8, 9, 10, 11 and 12 in relation to any part of the Property in which they do not hold a legal or beneficial interest

19.15 This Deed does not bind individual owner/occupier or tenants of any Dwelling Units constructed pursuant to the Planning Permission or their mortgagees or any person deriving title from them

19.16 Nothing in this Agreement shall prohibit or limit the right to develop the Land or any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this agreement

19.17 The provisions of this Agreement shall be of no effect until it has been dated (apart from this Clause which shall be of immediate effect)

20. Arbitration

20.1 Any dispute or difference arising between the parties with regard to their respective

rights and obligations as to any matter or thing arising out of or connected with this Deed shall be referred to the decision of a single arbitrator (acting as an expert and not as an arbitrator) to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force

21. Severability

21.1 The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. If any court or competent authority finds that any provision of this Deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions of this Deed shall not be affected. If any invalid, unenforceable or illegal provision of this Deed would be valid, enforceable and legal if some part of it were deleted, the parties shall amend such provision so that, as amended, it is legal, valid, and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention

22. Determination of Deed

22.1 This Deed shall be determined and have no further effect if the Planning Permission:

- (a) Expires before the Commencement of Development
- (b) Is varied or revoked other than at the request of the Owners and the Developer
- (c) Is quashed following a successful legal challenge

23. Notices

23.1 Any notice or other communication required to be given under this Deed shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice or communication as its address as set out below:

ADC: Director Planning or successor post Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF

WSCC: Monitoring and Records Team, Strategic Planning Division, West Sussex County Council of County Hall, West Street, Chichester, West Sussex, PO19 1RQ

Owners: Susan Mary Abbot, 4 West Avenue, Middleton-On-Sea, Bognor Regis, PO22 6EF and Andrew Brian Abbot of 14 Firs Avenue, Felpham, Bognor Regis, PO22 8PX and Graham John Abbot of 3 Westgrounds Cottages, Horsemere Green Lane, Climping, Littlehampton, BN17 5QZ

Developer: Managing Director Brookworth Homes Limited (Company Regn. No. 07731151) registered at Millennium House, 99 Bell Street, Reigate, Surrey, RH2 7AN

or as specified by the relevant person by notice in writing to each other person

23.2 Any notice or other communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause
- (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed

24. Requirement to be Reasonable

24.1 Where any agreement, certificate, consent, permission, expression of satisfaction or other approval is to be given by any person on behalf of any party hereto under this agreement the same shall not be unreasonably withheld or delayed

25. Governing Law

25.1 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

26. Indemnity

26.1 On acquiring a freehold or leasehold interest in the Land the Developer indemnifies Susan Mary Abbot and Andrew Brian Abbot and Graham John Abbot against all claims, costs charges expenses and liabilities arising out of or in connection with this Deed PROVIDING THAT Susan Mary Abbot and Andrew Brian Abbot and Graham John Abbot (or their agents or contractors) do not Commence Development

SCHEDULE 1

COMMENCEMENT NOTICE

PURSUANT TO CLAUSE 4.3 IN PLANNING OBLIGATION DESCRIBED BELOW

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

Dated this _____ day of _____ 200

Signed _____

On Behalf Of: _____

To:	[1] Head of Planning Services, Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF [DX: 57406] Littlehampton [2] Monitoring and Records Team, Strategic Planning Division West Sussex County Council, 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:	

SCHEDULE 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. 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	

SCHEDULE 3
LIST OF RPs APPROVED BY ADC

Affinity Sutton

(Sunita Aujla)
Cams Hall
Cams Hill
Fareham
Hampshire
PO16 8AB
sunita.aujla@affinitysutton.com
Tel: 01329 227555

Guinness Hermitage

(Damian Haley)
Hermitage House
7 St Georges Walk
Waterlooville
Hants
023 9271 4662
Damian.haley@guinness.org.uk

Hyde Martlet

(John Martin)
Martlett House
Southern Gate
Chichester
West Sussex
PO19 8SG
Tel: 01243 816960
John.martin@hyde-housing.co.uk

Hastoe Group

(Jane Gallifent)
Marina House
17 Marina Parade
Hampton House
Hampton Wick
Kingston upon Thames
KT1 4BH
Tel: 020 8973 0438
jgallifent@hastoe.com

Worthing Homes

1 Chapel Road (Chris Pelling-Fulford)
Worthing
West Sussex
Tel: 01903 703140
cpellingfulford@worthing-homes.org.uk

Raglan Housing Association

(Jackie Burton)

2nd Floor Westover House

West Quay

Poole

Jacqueline.burton@raglan.org

Tel: 01202 645973

Southern Housing Group

(Liz Hills)

Spire Court

Albion way

Horsham

West Sussex

Liz.hills@shgroup.org.uk

01403 224814

SCHEDULE 4

AFFORDABLE HOUSING PROVISION

The Owners and subject to obtaining a freehold or leasehold interest in the Land, the Developer agree with ADC that:-

1. Obligation to Provide Affordable Housing

- 1.1 The location of the Affordable Housing Units within the Development shall be as shown on a plan to be agreed in writing by the Owners and the Developer and ADC prior to implementation or commencement of the Development such agreement not to be unreasonably withheld or delayed
- 1.2 To procure that the Affordable Housing Units are completed no later than the date on which 60% of the Market Housing Units are completed
- 1.3 (Unless otherwise agreed in writing with ADC) not to occupy or permit or allow the occupation of more than 20% of the Market Housing Units without first having procured the disposal of the Affordable Housing Units (either freehold or leasehold for a period of not less than 165 years) to a Registered Provider on terms which ensure that the Affordable Housing Units are and remain bound by the obligations in this Schedule
- 1.4 Subject to paragraph 2 and paragraph 3.2 and paragraph 4 below with effect from the date on which they are completed the Affordable Housing Units shall not be occupied other than by Qualifying Occupiers and for the avoidance of doubt this restriction shall apply not just to the first occupier of any of the Affordable Housing Units but to all subsequent occupiers of them
- 1.5 Affordable Rented Homes shall be provided at no more than 80% of the local market rent (including service charges, where applicable) and ADC reserves the right to cap the affordable rent charged by RPs to a maximum of the Local Housing Allowance

2. Mechanics and Terms of Transfer

FIRST OFFER

- 2.1 The Owners and the Developer shall make an offer to a RP which offer shall include
 - (a) Sale of Land Contract
 - (b) A Draft Transfer

(c) A price reflecting no more than 60% market value at time of the Offer

- 2.2 Such offer shall remain open for acceptance for no less than 3 months ("the first offer period") from the date of the offer being made ("the offer date ")

SECOND OFFER

- 2.3 In the event that the first offer made in accordance with the above is not accepted within 3 months of the offer date then the Owners and the Developer shall make a second offer to another Registered Provider to enter into an Affordable Housing Land Sale Contract not later than three months after the expiry of the first offer period ("the second offer") and such offer shall consist of the same as the first offer subject to revisions necessitated by lapse of time and shall remain open for acceptance for no less than 3 months ("the second offer period") from the date of the offer being made ("the second offer date")

COMMUTED SUM PAYABLE IF FIRST AND SECOND OFFERS ARE NOT IMPLEMENTED

- 2.4 In the event the second offer not being accepted within the second offer period then the Owners and the Developer will pay to ADC a sum equivalent to the cost at that time of providing the Affordable Housing Units within the District of Arun and the Owners and the Developer may dispose of the Affordable Housing Units free from the restrictions of this Deed on the open market

NOMINATION RIGHTS

- 2.5 To procure that the Registered Provider grants nomination rights to ADC in relation to 100% of the first Occupation of the Affordable Housing Units and nomination rights to 75% of all subsequent relets Provided that if ADC do not accept such offer then the Registered Provider shall in seeking to allocate the Affordable Housing Units have regard as far as possible to the following criteria:
- 1 any family association in the said administrative area in accordance with relevant housing allocation policies;
 - 2 any period of ordinary residence in the said administrative area not immediately before the date on which any unit of accommodation becomes vacant;
 - 3 any employment opportunity in the locality;
 - 4 any other connection with the locality

but so that for the avoidance of doubt the satisfaction of such criteria hereof shall be determined by

the body responsible for the allocation of the Affordable Housing Units from time to time

3. Further Provisions

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

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

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 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 percent; and

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

4. Mortgagee in Possession Clauses

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

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

2 At the same time as giving the Sale Notice the Chargee shall make an offer ("the Offer") to sell the Affordable Housing Units to ADC for an amount to be agreed or determined ("the Purchase Price")

3 ADC may notify the Chargee in writing within one month of the date of the Offer whether or not it wishes to accept the Offer (in the case of an

acceptance such acceptance to be conditional upon the Purchase Price being acceptable to ADC)

4 If ADC shall notify the Chargee within the time specified in sub-paragraph 3 that it does not wish to accept the Offer ADC shall then have one month from the date upon which it notifies in writing its refusal of the Offer within which to arrange for the transfer of the Affordable Housing Units in consideration of the Purchase Price to a Registered Provider

5 If ADC shall notify the Chargee within one month of the time specified within sub paragraph 3 that it wishes to accept the offer or if within the time specified in sub-paragraph 4. ADC gives written notice to the Chargee that arrangements can be made in accordance with sub-paragraph 4. then:

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

2 ADC and the Chargee shall endeavour to agree the Purchase Price which shall represent the open market value of the Affordable Housing Units but subject to all or any tenancies of the Affordable Housing Units as may be subsisting at the date of the Sale Notice and disregarding the provisions of paragraph 4 of this Schedule AND in default of such agreement the Purchase Price shall be determined on the same basis of valuation by an independent surveyor ("the Surveyor") experienced in valuing residential land and property who shall act as an expert and whose costs shall be borne by ADC and the Chargee in equal shares and the Surveyor shall be appointed in default of agreement between the parties on the application of either party by or on behalf of the President for the time being of the Royal Institute of Chartered Surveyors (or successor organisation) and the Surveyor's determination shall be binding on both parties.

6 Subject to the provisions of sub-paragraph 7 the transfer to ADC or to a Registered Provider shall be completed within two months of the date the Purchase Price is agreed (or such longer period as may be agreed between

the Chargee and ADC) or determined in accordance with sub-paragraph 5.2 ("the Completion Period")

7 If the Chargee does not wish to exercise its power of sale at any time after giving the Sale Notice or the Council does not wish to continue with the exercise of its power under the provisions of paragraph 6 that party shall give to the other not less than seven days' written notice of its intention to discontinue

8 If either:

1 the District fails to give notification to the Chargee within the time specified in sub-paragraph 3; or

2 having given notification of refusal of the Offer in accordance with sub-paragraph 3. ADC fails to give notification to the Chargee within the time specified in sub-paragraph 3; or

3 ADC having complied with the time periods specified in sub-paragraph 3, and (in the case of a refusal of the Offer) sub-paragraph 4, the transfer to either ADC or to a Registered Provider shall not be completed within the Completion Period; or

4 ADC shall serve notice of its intention to discontinue under sub-paragraph 7

then the Chargee shall be under no obligation to sell the Affordable Housing Units either to ADC or to a Registered Provider and shall be entitled to exercise its powers of sale without any of the provisions of paragraph 4 of this Schedule being binding on the purchaser or purchasers of the Affordable Housing Units or any part thereof or any successor in title hereto.

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

IN WITNESS of which this document has been duly executed as a Deed and delivered on the date stated at the beginning of this document

SIGNED AND DELIVERED

Susan M Abbot

by Susan Mary Abbot
as his/her Deed in the
presence of:

Witness signature

Witness name

Witness address

SIGNED and D

by Andrew Brian
as his/her Deed
presence of:

Witness signature

Witness name

Witness address

SIGNED and D

by Graham John
as his/her Deed
presence of:

Witness signature

Witness name

Witness address

GA: 6041700_1

SIGNED as a Deed by
Brookworth Homes Limited
acting by
a director in the presence of ;

Witness signature

Witness name

Witness address 3 HUNTSMAN COURT, CATELHAM, SURREY, CR3 5NQ

SEALED with the COMMON SEAL
of ARUN DISTRICT COUNCIL
In the presence of:

Seal Book No: 51/2016

Authorised Signatory

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