

DATED THIS 1 DAY OF December 2022

- (1) ARUN DISTRICT COUNCIL
- (2) JONATHAN BRUCE LOVEYS
ANGELA MARY CLEANTHI
ANTHONY BRIAN LOVEYS
SIMON DAVID FOTHERGILL
- (3) HALLAM LAND MANAGEMENT
LIMITED

Agreement pursuant to Section 106 of
the Town and Country Planning Act 1990
relating to land at West of Pagham Road,
Pagham, West Sussex
Planning Application ref: P/178/21OUT
Appeal ref: APP/C3810/W/22/3302023

Arun District Council
Maltravers Road
Littlehampton
West Sussex
BN17 5LF
DX 57406 LITTLEHAMPTON
Legal Ref: LS/9327

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DATED:

1 December

2022

PARTIES:

1. **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF (the "**Council**")
2. **JONATHAN BRUCE LOVEYS** of 6 Filmer Road, Bridge, Canterbury Kent CT4 5NB, **ANGELA MARY CLEANTHI** of Tollers Farm, Drive Road, Coulsdon Surrey CR5 1BN, **ANTHONY BRIAN LOVEYS** of Am Anger 8, 6170 Zirl, Austria and **SIMON DAVID FOTHERGILL** of West House, West Square, Maldon Essex CM9 6HA (the "**Owners**").
3. **HALLAM LAND MANAGEMENT LIMITED** incorporated and registered in England and Wales with company number 2456711 whose registered office is at Banner Cross Hall, Ecclesall Road South, Sheffield, S11 9PD (the "**Applicant**")

RECITALS

1. The Council is the local planning authority, and the local authority responsible for housing, public open space, equipped play space and sport and recreation facilities for the area in which the Land is situated.
2. The Owners are registered as freehold proprietors of the land at Hook Lane, Pagham, shown for identification purposes only edged red on the Plan (hereinafter called "**the Land**") as are registered at HM Land Registry under title number WSX417944
3. The Owners and the Applicant have entered into a promotion agreement dated 25 November 2020 ("**Promotion Agreement**") for the development of the Land.
4. The Applicant has the benefit of a registered charge over the Land dated 25 November 2020 over title number WSX417944 and recorded on the Charges Register for that title.
5. The Planning Application was made by the Applicant to the Council to develop the Land
6. On 19th May 2022 the Council refused the Planning Application and the Applicant has submitted the Appeal.
7. This Agreement is made as a deed and the Council, the Owners, and the Applicant have agreed to enter into this agreement pursuant to the operative powers described in clause 3 for the purpose of regulating the Development and use of the Land in the event that the Permission is granted pursuant to

determination of the Appeal.

NOW THIS AGREEMENT WITNESSETH as follows:

1. Interpretation

In this Agreement:

- 1.1 Clause headings shall not affect the interpretation of this Agreement.
- 1.2 A reference to a "person" includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- 1.3 A reference to a "company" shall include any company, corporation or other body corporate, where and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.5 Unless the context otherwise requires a reference to one gender shall include a reference to other genders.
- 1.6 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.
- 1.7 Unless the context otherwise requires a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 Unless the context otherwise requires a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 A reference to "writing" and "written" does not include fax or email.
- 1.10 References to clauses and Schedules are to the clauses and schedules of this Agreement.
- 1.11 Any reference to a colour of letter is to be on the plans attached to this Agreement.
- 1.12 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 Any words following the terms "including", "include", "in particular",

"for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- 1.14 Subject to clause 12 where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually

2. DEFINITIONS

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

- 2.1 **"the Act"** means the Town and Country Planning Act 1990 as amended
- 2.2 **"Additional Affordable Housing Contribution"** means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 4.8, 4.9 or 6 of the Second Schedule, the lower of the following two amounts:
- a. 30% of the proceeds of sale; and
 - b. the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home
- and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner

as a result of the disposal of the First Home other than as a First Home;

2.3 “Affordable Housing”

means any form of housing identified within the definition of affordable housing set out in the NPPF providing housing for those whose needs are not met by the market and may include but is not limited to:

- social rented housing
- affordable rented housing
- shared ownership housing
- intermediate housing (including intermediate rent, shared equity)
- discounted market sales;
- first homes; and
- starter homes as specified in Sections 2 and 3 of the Housing and Planning Act 2016.

2.4 “Affordable Housing Commuted Sum”

means the sum calculated in accordance with paragraph 2.4 of the First Schedule

2.5 “Affordable Housing Provider”

means either one or a combination of:

- A a registered provider of Affordable Housing registered under the Housing and Regeneration Act 2008 with Homes England who is either on the Council list of Approved Affordable Providers (annexed as Appendix 2) or other registered provider who is either specifically approved by the Council or who may be added to the list of Approved Affordable Housing; 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 objectives include the provision of Affordable Housing

2.6 “Affordable Housing Scheme”

means a scheme for the provision of Affordable Housing for a Housing Phase which includes a plan and accommodation schedule showing the location dwelling type and tenure mix of the Affordable Housing Units for the relevant Housing Phase to be submitted to and approved in writing by the Council pursuant to paragraph 1.2 of the First Schedule and any amendment or replacement to that Scheme which the Council may approve from time to time

2.7 “Affordable Housing Land”

means the land on which the Affordable Housing Units are to be constructed

2.8 “Affordable Housing Units”

means 30% (thirty percent) of the Dwellings within the Development (rounded up to the nearest whole dwelling number) to be provided (subject to the terms of this Agreement) as Affordable Housing with a tenure split of:
67% (sixty-seven percent) of Affordable Housing Units within each Housing Phase to be Affordable Rented Housing;
25% (twenty-five percent) of the Affordable Housing Units to be First Homes; and
8% (eight per cent) of the Affordable Housing Units to be Intermediate Housing

(or in each case the nearest whole dwelling number or rounded up to the nearest whole dwelling number where necessary in order to achieve the total number of Affordable Housing Units required) or such other type of housing or tenure split which the Owners may propose and the Council may approve and which Affordable Housing is to be provided in accordance with the terms of this Agreement unless the Owners are required by law pursuant to any legislation enacted subsequent to the date hereof to provide alternative forms of housing

2.9 “AHP Affordable Housing Units”

means those Affordable Housing Units which are to be transferred to an Affordable Housing Provider (being the Affordable Rent Units and the Intermediate Units) subject to the provisions of paragraphs 1.9 and 2.4 of the First Schedule

2.10 “Affordable Rented Housing”

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 otherwise at a rent level or increase in accordance with statutory requirements or Government rent policy for affordable rent housing applicable at the relevant time. “Affordable Rent Unit” and “Affordable Rent” shall be construed accordingly

2.11 “agreed” or “approved”

means agreed or approved in writing and given for the purpose of this Agreement

2.12 “All Requisite Consents”

means all requisite consents orders agreements authorisations licences and permissions required to implement a scheme

- 2.13 **“Armed Services Member”** means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service
- 2.14 **“Base Rate”** means the base rate from time to time of Bank of England
- 2.15 **“BCIS Index”** means the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors BCIS All Tender Index
- 2.16 **“Chargee”** means any mortgagee or chargee of the Affordable Housing Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925
- 2.17 **“CIL Regulations”** means the Community Infrastructure Regulations 2010 (as amended)
- 2.18 **“Commencement of Development”** means the date that the Development is begun by the carrying out of a material operation on the Land pursuant to the Planning Permission within the meaning of section 56 of the Act and the terms **“Commence”**, **“Commencement”** and **“Commenced”** shall be construed accordingly save that for the purposes of this Agreement the Development shall not be considered to have been Commenced by virtue of operations consisting of site levelling stripping

	or clearance, demolition work, archaeological investigations, investigations for the purposes of assessing ground conditions, ecology investigation or monitoring and any ecological protection relocation or work to create or improve ecological habitats, remedial works in respect of any contamination or other adverse ground conditions, the diversion and laying of Services, the erection of any temporary means of enclosure, the carrying out of any highway works outside the Land pursuant to any highways agreement or the temporary display of site notices or advertisements	
2.19	“Commencement Date”	means the date of Commencement of Development
2.20	“Commencement Notice”	means the written notice confirming the Commencement Date served in accordance with clause 4.2
2.21	“Compliance Certificate”	means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 4.2 of the Second Schedule applies the Eligibility Criteria (Local)
2.22	“Council Contributions”	means the contributions contained in the First Schedule
2.23	“CPI”	means the Consumer Price Index published from time to time by the Office of National Statistics or any successor Government agency or ministry
2.24	“Development”	means the construction of up to 106 new homes, the formation of access onto Pagham Road, new pedestrian and cycle links, the laying out of open space, new strategic landscaping, habitat creation,

drainage features and associated ground works and infrastructure pursuant to the Planning Permission

2.25 "Discount Market Price"

means a sum which is the Market Value discounted by at least 30%

2.26 "Disposal"

means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:

- a. a letting or sub-letting in accordance with paragraph 5 of the Second Schedule;
- b. a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner;
- c. an Exempt Disposal

and "Disposing" and "Disposed" shall be construed accordingly

2.27 "Dwelling "

means any house, flat, maisonette or other residential unit to be provided as part of the Development

2.28 "Eligibility Criteria (National)"

means criteria which are met in respect of a purchase of a First Home if:

- a. the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and
- b. the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National)

2.29 "Eligibility Criteria (Local)"

means criteria (if any) published by the Council at the date of the

relevant disposal of a First Home which are met in respect of a disposal of a First Home if:

(a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local) (if any); and

(b) any or all of criteria (i) (ii) and (iii) below are met:

(i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or

(ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or

(iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker

it being acknowledged that at the date of this Agreement the Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Home

2.30 "Exempt Disposal"

means the Disposal of a First Home in one of the following circumstances:

- a. a Disposal to a spouse or civil partner upon the death of the First Homes Owner;
- b. a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner;
- c. Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or

civil partnership or the making of a nullity, separation or presumption of death order;

- d. Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 6 of the Second Schedule shall apply to such sale),

provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 5 of the Second Schedule

2.31 "First Homes"

means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price cap and "First Homes" shall be construed accordingly

2.32 "First Homes Owner"

means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

- a. the Owners; or
- b. another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or
- c. the freehold a tenant or sub-tenant of a permitted letting under paragraph 5 of the Second Schedule

2.33 "First Time Buyer"

means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003

- 2.34 "Homes England"** means Homes England or any body agency undertaking the existing functions of the Homes England or those functions within the Homes & Community Agency within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement, or re-enactment of such act)
- 2.35 "Housing Phase"** means (as applicable) either the whole Development or if the Development is to be phased then a phase of housing development shown in the approved phasing plan which is included in a Reserved Matter Application
- 2.36 "Income Cap (Local)"** means such local income cap as may be published from time to time by the Council and is in force at the time of the relevant disposal of the First Home it being acknowledged that at the date of this Agreement the Council has not set an Income Cap (Local)
- 2.37 "Income Cap (National)"** means eighty thousand pounds (£80,000) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home
- 2.38 "Index Linked"** means an adjustment made in accordance with clause 9
- 2.39 "Intermediate Housing"** means homes for sale and rent provided at a cost above social rented housing but below open market levels and that fall within the definition of Affordable Housing which is Shared Ownership and shared equity low cost homes for sale, intermediate rent (not Affordable Rent) or such other products as may be agreed with the Council and which may include

	shared equity loans and discount market sale housing
2.40 "Intermediate Units"	means Affordable Dwellings to be provided as Intermediate Housing
2.41 "Interest"	means interest at 4% per cent above the Base Rate applicable at the Specified Date
2.42 "Key Worker"	means such categories of employment as may be designated and published by the Council from time to time as the "First Homes Key Worker criteria" and are in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Key Worker" criteria which shall apply to that disposal it being acknowledged that at the date of this Agreement the Council has not designated any categories of employment as Key Worker
2.43 "Land"	means the land against which this Agreement may be enforced as shown edged red on the Plan and registered at the Land Registry under title number as part of title numbers WSX417944
2.44 "Local Connection Criteria"	means such local connection criteria as may be designated and published by the Council from time to time as its "First Homes Local Connection Criteria" and which are in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such criteria or replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Local Connection Criteria" which shall apply to that disposal it being acknowledged that at the date of this Agreement the

Council has not designated any criteria as Local Connection Criteria

2.45 “Market Units”

means Dwellings within the Development which are not Affordable Housing Units

2.46 “Market Value”

means the open market value as assessed by a Valuer of Dwelling as confirmed to the Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation

2.47 “Mortgagee”

means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari’ah compliant finance for the purpose of acquiring a First Home

2.48 “Nomination Agreement”

means a nomination agreement to be entered into by an Affordable Housing Provider with the Council in respect of the Affordable Rent Units substantially in the form set out in the Appendix 3 to this Agreement or in such other form as is agreed between the Council and the Affordable Housing Provider

2.49 “Nomination Rights”

means the right of the Council to nominate occupiers to the Affordable Rent Units in accordance with paragraphs 2.6 and 2.7 of the First Schedule to this Agreement

2.50 “NPPF”

means the National Planning Policy Framework published by the Ministry of Housing Communities and Local Government in force at the time that the Planning

	Permission is granted or any revision or replacement of the Framework or replacement planning policy or guidance published by a Government Department or Ministry in force from time to time in force
2.51 “Occupation”, “Occupied” and “Occupy”	means first occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
2.52 “Occupation Date”	means the date of Occupation of any Dwelling constructed as part of the Development (or as the case may be the first Dwelling within a Housing Phase)
2.53 “Open Market Value”	means open market value assessed in accordance with the Appraisal and Valuation Manual of the RICS (the Red Book) or any successor publication in force at the time of the valuation is concluded
2.54 “Pagham Harbour”	means a Special Protection Area, known as a Natura 2000 site, situated in Pagham, West Sussex, identified as being of international importance for the breeding, feeding, wintering or migration of rare and vulnerable species of European Union birds
2.55 “Plan”	means the plan annexed hereto with drawing reference P21-2766_05 Rev D which shows the boundary of the Land
2.56 “Planning Application”	means the application for outline planning permission for the Development validated by the Council on 11 January 2022 with reference number P/178/21/OUT
2.57 “Planning Authority”	means the Council

- 2.58 **“Planning Inspector”** means the planning inspector appointed by the Secretary of State to determine the planning appeal
- 2.59 **“Planning Permission”** means the planning permission granted by the Council for the Development pursuant to the Planning Application
- 2.60 **“Price Cap”** means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State
- 2.61 **“Protected Occupier”** means any person who:
- (a) has exercised a right to buy or acquire their Affordable Housing Unit; or
 - (b) has accomplished final staircasing in accordance with the terms of a Shared Ownership lease relating to an Affordable Housing Unit; or
 - (c) has purchased an Intermediate Unit
- 2.62 **“Provide”** means in the case of Affordable Housing Unit to design and construct such units for habitation in accordance with the Affordable Housing Scheme and “Provided” shall be construed accordingly
- 2.63 **“Reserved Matters”** means any matters reserved for later approval by virtue of a condition imposed in the Planning Permission
- 2.64 **“Reserved Matters Application”** means an application for Reserved Matters for any part of the

	Development and shall include any amendment to it or fresh application for Reserved Matters made in substitution therefore or an alternative application for Reserved Matters Approval
2.65 "Reserved Matters Approval"	means an approval to Reserved Matters pursuant to a Reserved Matters Application
2.66 "Residents"	means the owners and occupiers of individual Dwellings to be constructed on the Land
2.67 "RICS"	means the Royal Institution of Chartered Surveyors
2.68 "RPI Index"	means the Retail Price Index All Items Index Published by the Office for National Statistics or any successor organisation
2.69 "SAMM Contribution"	means the sum of £871.00 (eight hundred and seventy-one pounds) per Dwelling within the Development Index Linked to be used to fund a package of management measures to mitigate any impacts of residential development on Pagham Harbour including but not limited to wardening, a dog project, website information, signage and monitoring as part of the Pagham Harbour Strategic Access management and monitoring project with the maximum financial contribution for the Development being in the sum of £92,326 Index Linked (based on 106 Dwellings)
2.70 "SDLT"	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
2.71 "Secretary of State"	means the Secretary of State for Levelling Up, Housing, and Communities or any other minister

	of state who inherits his responsibilities or portfolio
2.72 "Section 73 Consent"	means a planning permission granted under section 73 of the Act
2.73 "Service Media"	means all media for the supply and removal of the Services and all structures machinery and equipment ancillary to those media
2.74 "Services"	means gas water sewage surface water drainage electricity energy telecommunications television data data communication and all other services utilities and transmission
2.75 "Shared Ownership"	means a shared ownership scheme provided by an Affordable Housing Provider which allows a purchaser to buy a share of the Affordable Housing Unit under a form of Shared Ownership Lease
2.76 "Shared Ownership Lease"	means the appropriate form of model lease for a Shared Ownership flat or house published by Homes England (as may be amended from time to time) and which lease provides for a term of 125 years from the date of grant and with no unusual or otherwise unduly burdensome covenants on the lessee
2.77 "Specified Date"	means the date upon which a financial obligation is required to be paid pursuant to this Agreement
2.78 "Travel Plan Contribution"	means the sum of £3,500 (three thousand five hundred pounds) Index Linked to be paid to the Council for onward transfer to West Sussex County Council for the purposes of monitoring and auditing the travel plan associated with the Development
2.79 "Valuer"	means a Member or Fellow of the Royal Institution of Chartered

Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity

2.80 "Whyke Junction Contribution"

means a sum of £850 (eight hundred and fifty pounds) per Dwelling within the Development Index Linked to be paid to Highways England pursuant to the Whyke Junction Contribution Agreement to be entered into in accordance with paragraph 7 of the First Schedule for use towards works to improve capacity at the A27 Whyke junction through the provision of an additional lane for through traffic in both directions

2.81 "Whyke Junction Contribution Agreement"

means a Highways Agreement under section 38 and/or section 278 of the Highways Act 1980 or such other enabling powers as may be appropriate having regard to the item of highways works in question which secures the payment of the Whyke Junction Contribution to Highways England

2.82 "Working Day"

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

In relation to the above definitions any derivative word or expression shall have a comparable meaning.

3. ENABLING PROVISION

- 3.1 This Agreement is made pursuant to Section 106 of the Act and to the extent that they fall within the scope of Section 106 of the Act the obligations set out herein are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as appropriate in accordance with Section 106 of the Act as local planning authorities against the Owners.
- 3.2 To the extent that they fall outside of the scope of Section 106 of the Act the covenants and obligations herein are entered into by the parties pursuant to Sections 111 and 135 of the Local Government Act

1972, Section 1 Localism Act 2011 and all other enabling powers.

4 COMMENCEMENT AND CONDITIONALITY

- 4.1 This Agreement shall come into effect upon the date hereof but the obligations in clauses 5 to 6 and the First Second and Third Schedules shall be conditional upon and only enforceable upon the occurrence of both the grant of the Planning Permission and the Commencement of the Development .
- 4.2 On Commencement of the Development and on the Commencement of each Housing Phase the Owners will give to the Council notice in writing of that commencement in the form of The Commencement Notice annexed to this Agreement as the Fourth Schedule addressed to the Council's Head of Planning Services at the address given herein or equivalent successor posts.
- 4.3 In the event that the Secretary of State or the Planning Inspector deciding the planning appeal expressly states in his Decision Letter that any individual planning obligation within this Agreement is not compliant with the CIL Regulations and/or the NPPF or is immaterial to the grant of 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 Owners 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.
- 4.4 In the event that the Council adopt a charging schedule under the CIL Regulations prior to Planning Permission being granted, the Owners shall be released any of the obligations in this Agreement that relate to an item or project included on the Council's regulation 123 list of infrastructure.

5 THE OWNERS' COVENANTS

- 5.1 The Owners covenant with the Council so as to bind the Land to perform the obligations as set out in First Schedule and the Second Schedule.

6 THE COUNCIL'S COVENANTS

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

7 Consent

- 7.1 The Applicant, as the holder of a charge over the Land, consents to the Owners entering into this Agreement and acknowledges that this Agreement is binding over the Land. The Applicant shall, in its capacity as the holder of a charge over the Land, only be liable for any breach of this Agreement if it has itself caused the breach whilst in possession of the Land and it shall not be liable for any pre-existing breach.

8 CERTIFICATES

The Owners agree with the Council:

- 8.1 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 shall give to the Council notice of the Specified Date not more than seven days after such Specified Date.
- 8.2 If the Owners fail to give the notice required under this clause the Council shall be entitled in its absolute discretion to determine the Specified Date and shall give notice to the Owners of its determination

9 INDEX LINKING

- 9.1 The parties agree that any sums which are Index Linked and payable by the Owners to the Council under the First Schedule of this agreement shall be increased or decreased by the application of the following formula:

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

Where:

- A is the sum actually payable on the Specified Date
- B is the original sum mentioned in this Agreement
- C is the RPI Index figure for the month two months preceding the Specified Date or in relation to the Whyke Junction contribution is the RPI Index figure for March 2016
- D is the RPI Index figure for the month two months preceding the date of this Agreement

- 9.2 The adjustment in this clause 9 shall only be made where the

Specified Date is more than 6 months after the date of this Agreement

- 9.3 Where reference is made to an index (including the RPI 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 shall advise the Owners in writing.

10 LEGAL AND ADMINISTRATIVE COSTS

- 10.1 The Applicant agrees with the Council to pay 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 £2,500.
- 10.2 For the avoidance of doubt the above charges are standard charges and shall not preclude the Council from claiming and receiving any legal enforcement costs above and beyond these standard charges when circumstances require that they are properly payable in connection with in pursuing full compliance with this Agreement whether through the courts or otherwise

11 GENERAL

- 11.1 nothing in this Agreement constitutes an obligation to grant planning permission.
- 11.2 nothing in this Agreement grants planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function
- 11.3 nothing in this Agreement fetters or restricts the exercise by the Council of any of their powers
- 11.4 the obligations contained in clauses 5 to 6 and the First Second and Third Schedules are planning obligations for the purpose of Section 106 of the Act.
- 11.5 this Agreement constitutes a deed.
- 11.6 this Agreement is enforceable by Council as to clause 5 and the First and Second Schedules
- 11.7 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

- 11.8 This Agreement shall be registrable as a local land charge by the Council.
- 11.9 Where the agreement, approval, consent or expression of satisfaction is required by the Owners from the Council under the terms of this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 11.10 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall at the Owners' request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.
- 11.11 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.
- 11.12 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.
- 11.13 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 11.14 Nothing contained or implied in this Agreement shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by laws statutory instruments orders and regulations in the exercise of their functions as a local authority
- 11.15 All payments due under this Agreement (except for the legal costs due under clause 10.1) shall be forwarded to the payee and shall be accompanied by a copy of the Payment Notice duly completed in the form of the draft in the Fifth Schedule

12 EXCLUSIONS OF LIABILITY

- 12.1 No covenants or obligations contained in this Agreement shall be binding upon:

- 12.1.1 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 S262 of the Act
- 12.1.2 any chargee or mortgagee who subsequent to the date hereof acquires an interest in the Land solely by virtue of their charge or mortgage unless said chargee or mortgagee becomes a chargee or mortgagee in possession; or
- 12.1.3 any individual Owners or Occupier of a completed Dwelling within the Development.
- 12.2 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 that part of the Land in relation to which such breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest and where any obligation herein is expressed to relate to or be performed in relation to a specific Housing Phase of the Development it shall be enforceable only against those persons with an interest in that Housing Phase as at the time the relevant obligation is triggered and falls to be performed.
- 12.3 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

13 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.

14 CHANGE IN OWNERSHIP

The Owners agree with the Council to give the Council immediate written notice of any change in Ownership of any of its interests in the Land occurring before all the 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 of any change of Ownership affecting a Dwelling.

15 FUTURE SECTION 73 CONSENTS

15.1 Subject to clauses 15.2 to 15.5 below, if any Section 73 Consent is granted after the date of this Agreement:

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

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

15.2 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;

15.3 to the extent that any of the 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;

15.4 the provisions of this clause 15 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; and

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

16 INTEREST

The Owners agree with the Council to pay Interest on sums due to the Council under this Agreement but not paid on the Specified Date from the Specified Date until actual payment.

17 VAT

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

18 NOTICES

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

18.1.1 delivered by hand; or

18.1.2 sent by pre paid first class post or other next working day delivery service.

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

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

18.2.2 to the Owners at: care of Bright and Sons Solicitors, West Square, Maldon, Essex CM9 6HA;

18.2.3 to the Applicant at: Banner Cross Hall, Ecclesall Road South, Sheffield, S11 9PD;
or at such other address as the relevant party shall specify by notice to the other parties.

18.3 Any notice or other communication given in accordance with clause 18.1 and clause 18.2 will be deemed to have been received:

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

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

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

18.5 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.

19 ARBITRATION

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 Agreement 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.

20 SEVERABILITY

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.

21 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.

22 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.

FIRST SCHEDULE
The Owners Covenants with the Council

The Owners agree with the Council as follows:

1 TO PROVIDE ON-SITE AFFORDABLE HOUSING

- 1.1 Not less than 30% of the Dwellings shall be Affordable Dwellings to be provided in accordance with this First Schedule
- 1.2 To prepare an Affordable Housing Scheme for each Housing Phase and submit the same to the Council for approval.
- 1.3 Not to Commence the construction any Housing Phase at the Development until the Affordable Housing Scheme for that Housing Phase has been approved by the Council.
- 1.4 To provide Affordable Housing in a Housing Phase in accordance with the approved Affordable Housing Scheme for that Housing Phase.
- 1.5 Not to Occupy more than 50% (fifty percent) of the Market Units in a Housing Phase of the Development until 50% (fifty percent) of the AHP Affordable Housing Units for that Housing Phase have been Provided on that Housing Phase in accordance with the Affordable Housing Scheme and this First Schedule.
- 1.6 Not to Occupy more than 80% (eighty percent) of the Market Units in a Housing Phase of the Development until the remaining 50% (fifty percent) of the AHP Affordable Housing Units have been Provided on that Housing Phase in accordance with the Affordable Housing Scheme and this First Schedule
- 1.7 To procure that all of the AHP Affordable Housing Units are disposed of (either freehold or leasehold for a period of not less than 125 years) to an Affordable Housing Provider except for any mortgage or charge
- 1.8 With effect from the date on which they are completed (and subject to paragraphs 2.4, 3.2 and 4 below) the AHP Affordable Housing Units shall not be Occupied other than for Affordable Housing and for the avoidance of doubt this restriction shall apply not just to the first occupier of any of the AHP Affordable Housing Units but to all subsequent occupiers of them
- 1.9 It is hereby agreed between the Council and the Owners that in the event that the Council approves (or the Owners are legally required to procure) the provision of any new form of affordable supply and/or low cost affordable Ownership housing introduced pursuant to any consequential amendments to the NPPF or statute as part of the Intermediate Housing element of the Affordable Housing for the purposes of this Agreement those specific Affordable Housing Units can be provided by the Owners

(or their successor in title) rather than through a Affordable Housing Provider then any such offer pursuant to paragraph 2 below shall not include said units and any such units do not need to be disposed of to an Affordable Housing Provider pursuant to paragraph 1.7 but the requirement to complete those Affordable Housing Units prior to the trigger set out in paragraphs 1.5 and 1.6 shall continue to be of full force and effect and apply

2 Mechanics of Transfer

- 2.1 in respect of the AHP Affordable Housing Units in each Housing Phase the Owners shall make an offer to an Affordable Housing Provider which offer shall include
 - (a) a draft Sale of Land Contract
 - (b) a Draft Transfer
- 2.2 Such offer shall remain open for acceptance for no less than 3 months ("the first offer period") from the date of the offer being made ("the offer date")
- 2.3 In the event that the first offer made in accordance with the above is not accepted (through the Affordable Housing Provider entering into a binding contract) within 3 months of the offer date then the Owners shall make a second offer to another Affordable Housing Provider to enter into a contract for the sale of the AHP Affordable Housing Units not later than one month after the expiry of the first offer period ("the second offer") and such offer shall consist of the same as the first offer subject to revisions necessitated by lapse of time and shall remain open for acceptance for no less than 3 months ("the second offer period") from the date of the offer being made ("the second offer date ")

COMMUTED SUM PAYABLE IF FIRST AND SECOND OFFER ARE NOT IMPLEMENTED OR OTHER OUTCOME

- 2.4 In the event that the Second Offer is not accepted (through the Affordable Housing Provider entering into a binding contract) within the Second Offer Period that the Owners may:
 - 2.4.1 on or before the Occupation of 10 of the Market Units on a Housing Phase 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 Schedule insofar as it relates to all or any of the AHP Affordable Housing Units in that Housing Phase and the AHP Affordable Housing Units may be sold on the open market as Market Units; or
 - 2.4.2 Dispose of all or any of the AHP Affordable Housing Units in that Housing Phase as Intermediate Units to an Affordable Housing Provider; or

- 2.4.3 Dispose of all or any of the AHP Affordable Housing Units in that Housing Phase 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)
- 2.5 The Affordable Housing Commuted Sum shall be calculated in accordance with the following formula:
- X multiplied by Y = the Affordable Housing Commuted Sum
- Where:
- X= £80,000; and
- Y= the number of AHP Affordable Housing Units which will not be provided on the Site as part of that Housing Phase of the Development in accordance with the terms of this Agreement.

NOMINATION RIGHTS

- 2.6 To procure that the Affordable Housing Provider grants Nomination Rights to the Council in relation to the first Occupation of 100% (one hundred percent) the Affordable Rent Units and Nomination Rights to 75% (seventy-five percent) of all subsequent relets of Affordable Rent Units PROVIDED THAT if the Council do not accept such offer then the Affordable Housing Provider shall in seeking to allocate the Affordable Rent Units have regard as far as possible to the following criteria:
- 2.6.1 any family association in the District of Arun in accordance with any relevant housing allocation policy;
- 2.6.2 Any period of ordinary residence in the District of Arun not immediately before the date on which any Affordable Housing Unit becomes vacant;
- 2.6.3 Any employment opportunity in the District of Arun;
- 2.6.4 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 body responsible for the allocation of the Affordable Rent Units from time to time.
- 2.7 To procure that any transfer or lease of an AHP Affordable Housing Unit to an Affordable Housing Provider will contain the following provisions:
- 2.7.1 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 AHP Affordable Housing Units;

- 2.7.2 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
- 2.7.3 The imposition of such covenants as the Owners shall reasonably require and are consistent with the sale of any Market Unit.
- 2.7.4 A Condition that on a disposal of Affordable Rent Units the Affordable Housing Provider shall within 3 months of the legal completion of the transfer of lease, or such other period as may be agreed with the Council in writing, enter into a Nominations Agreement with the Council on terms consistent with paragraph 2.6 above

3 Further Provisions

- 3.1 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 or Applicant in obtaining such public subsidy or other financial support) in respect of the Affordable Housing Units;
- 3.2 the provisions of this Schedule above shall cease to bind any of the Affordable Housing Units if in relation to that Affordable Housing Unit:
 - 3.2.1 a statutory right to acquire pursuant to the Housing Act 1985 or Housing Act 1996 (or any statutory re-enactment amendment or replacement thereof) has been exercised; or
 - 3.2.2 it shall have been sold under a shared ownership lease and the leaseholder (or its mortgagee) has staircased his ownership under the lease to 100 percent; and

4 Mortgagee in Possession Clause

- 4.1 The obligations in this Schedule will not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver")) of the whole or any part of the AHP Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
 - 4.1.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the AHP Affordable Housing Units and shall have used reasonable endeavours over a period of 3 (three) months from the date of the written notice to complete a disposal of the AHP 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

- 4.1.2 if such disposal has not completed within the 3 (three) month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the AHP Affordable Housing Units free from the obligations in this Schedule which provisions shall determine absolutely

5 TRAVEL PLAN CONTRIBUTION

- 5.1 The Owners covenant with the Council on or before the Occupation of the first Dwelling to pay to the Council the Travel Plan Contribution
- 5.2 The Owners covenant with the Council not to Occupy or cause or allow to be Occupied any Dwelling unless or until the Travel Plan Contribution has been paid to the Council.

6 SAMM CONTRIBUTION

- 6.1 The Owners covenant with the Council on or before the Occupation of the first Dwelling to pay to the Council the SAMM Contribution
- 6.2 The Owners covenant with the Council not to Occupy or cause or allow to be Occupied any Dwelling unless or until the SAMM Contribution has been paid to the Council

7 WHYKE JUNCTION CONTRIBUTION

- 7.1 Subject to paragraph 7.2 not to Occupy any Dwelling at the Development unless the Whyke Junction Contribution Agreement has been entered into with Highways England
- 7.2 If the Owners prove to the reasonable satisfaction of the Council that they have made reasonable endeavours to enter into the Whyke Junction Contribution Agreement with Highways England but despite using such reasonable endeavours, the Owners have not been able to enter into the Whyke Junction Contribution Agreement the Council shall waive the requirement in paragraph 7.1 and the restriction on Occupation of any Dwelling under this paragraph shall cease to apply but the Owners shall continue to use reasonable endeavours to enter in the Whyke Junction Contribution Agreement as soon as reasonably practicable

SECOND SCHEDULE

FIRST HOMES

The Owners covenant with the Council as follows:-

1. OBLIGATIONS

- 1.1 Unless otherwise agreed in writing by the Council, the Owners for and on behalf of themselves and their successors in title to the Land with the intention that the following provisions shall bind the Land and every part of it into whosoever's hands it may come covenants with the Council as below save that:
- 1.1.1 paragraphs 2 and 3 shall not apply to a First Homes Owner;
- 1.1.2 paragraphs 4 and 5 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner; and
- 1.1.3 paragraph 6 applies as set out therein.

2. QUANTUM OF FIRST HOMES

- 2.1 No less than 25% of the Affordable Housing Units shall be identified reserved and set aside as First Homes in accordance with the approved Affordable Housing Scheme and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule.

3. TYPE AND DISTRIBUTION

- 3.1 The mix of First Homes provided within the Land shall be in accordance with the approved Affordable Housing Scheme.

4. DELIVERY MECHANISM

- 4.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:
- 4.1.1 the Eligibility Criteria (National); and
- 4.1.2 the Eligibility Criteria (Local) (if any).
- 4.2 If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 4.1.2 shall cease to apply.
- 4.3 Subject to paragraphs 4.6 to 4.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee.

4.4 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

4.4.1 The Council has been provided with evidence that:

4.4.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 4.2 applies meets the Eligibility Criteria (Local) (if any)

4.4.1.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price and

4.4.1.3 the transfer of the First Home includes:

a) a definition of the "Council" which shall be as set out at page 2 of this Agreement

b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in paragraphs 4.1 – 4.8 of the Second Schedule of the S106 Agreement a copy of which is attached hereto as the Annexure."

c) A definition of "S106 Agreement" in the following terms:

"the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between (1) the Council, (2) Jonathan Bruce Loveys, Angela Mary Cleanthi, Anthony Brian Loveys and Simon David Fothergill (3) Hallam Land Management Limited"

d) a provision that the property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the property or any part of it other than in accordance with the First Homes Provisions

e) a copy of the First Homes Provisions in an Annexure

4.4.2 The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 4.3 and 4.4.1 have been met.

4.5 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by [Local Authority] of [address] or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

- 4.6 The owner of a First Home (which for the purposes of this paragraph shall include the Owners and any First Homes Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:
- 4.6.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with paragraphs 4.1 and 4.2 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 4.3 and 4.4.1; or
 - 4.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 4.6.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship.
- 4.7 Upon receipt of an application served in accordance with paragraph 4.6 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price.
- 4.8 If the Council is satisfied that either of the grounds in paragraph 4.6 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 4.6 that the relevant Dwelling may be Disposed of:
- 4.8.1 to the Council at the Discount Market Price; or
 - 4.8.2 (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home,
- and on the issue of that written confirmation the obligations in this Agreement which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 4.10 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home.
- 4.9 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 4.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 4.6 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 4.6 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.
- 4.10 Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 4.8 or 4.9 above the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.
- 4.11 Upon receipt of the Additional First Homes Contribution the Council shall:
- 4.11.1 within 5 Working Days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 4.5 where such restriction has previously been registered against the relevant title;

4.11.2 apply all monies received towards the provision of Affordable Housing.

- 4.12 Any person who purchases a First Home free of the restrictions this Schedule pursuant to the provisions in paragraphs 4.9 and 4.10 shall not be liable to pay the Additional First Homes Contribution to the Council.

5. USE

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Agreement PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 5.1 – 5.4 below.

- 5.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.
- 5.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:
- a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
 - b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
 - c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
 - d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
 - e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
 - f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 5.3 A letting or sub-letting permitted pursuant to paragraph 5.1 or 5.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 5.4 Nothing in this paragraph 5 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

6. MORTGAGEE EXCLUSION

The obligations in paragraphs 1 - 5 of this Schedule in relation to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:

- 6.1 such Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and
- 6.2 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Council the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 6.3;
- 6.3 following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution; and
- 6.4 following receipt of notification of the Disposal of the relevant First Home the Council shall:
 - 6.4.1 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 6.5; and
 - 6.4.2 apply all such monies received towards the provision of Affordable Housing.

THIRD SCHEDULE		
Council Covenants		
1	SAMM CONTRIBUTION	
1.1	The Council covenants that it will apply the SAMM Contribution for the purpose for which it was paid as set out in this Agreement.	
1.2	The Council covenants that upon receipt of the SAMM Contribution under paragraph 6 of the First Schedule it will hold it in a separately identified interest bearing section of the Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Agreement in connection with Pagham Harbour.	
1.3	The Council covenants upon written request on or after ten (10) years of the date of receipt of the SAMM Contribution to issue to the party that paid the SAMM Contribution an account certified by the Director of Finance for the time being of the Council detailing how the SAMM Contribution has been expended by the Council.	
1.4	If or to the extent that any of the SAMM Contribution shall not have been spent by the Council by the end of the period referred to in paragraph 1.3 above the Council shall on such date refund to the party that paid the SAMM Contribution any unexpended part of any of SAMM Contribution together with compound interest on the unexpended part(s) from the date of receipt by the Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis	
1.5	If at the end of the period referred to in paragraph 1.3 of this Schedule the Council shall have entered into a contract or other legally binding obligation to expend the SAMM Contribution or part thereof for the purposes specified in paragraph 1.1 then the Council shall not be required to refund any part of the SAMM 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 SAMM Contribution in the manner set out in paragraph 1.3 of this Schedule and refund any unexpended part of the SAMM Contribution in the manner set out in paragraph 1.4 of this Schedule.	
2	TRAVEL PLAN CONTRIBUTION	
2.1	The Council covenants that upon receipt of the Travel Plan Contribution under paragraph 5 of the First Schedule it will hold it in a separately identified interest bearing section of the Council's combined accounts and transfer it to West Sussex County Council to apply for the purposes specified by this Agreement	

FOURTH SCHEDULE

Commencement Notice

Pursuant to Clause 4.2 in Planning Obligation Described Below

I advise you that the [Development][Housing Phase [] of the Development] described below was commenced on the Start Date stated in this Notice.

Dated this ____ day of ____ 20

Signed _____

On Behalf Of: _____

To:	Head of Planning Services, Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF [DX: 57406] Littlehampton
FROM:	
DEVELOPMENT AT:	
NATURE OF DEVELOPMENT:	
PLANNING PERMISSION DATE & REFERENCE	
PLANNING OBLIGATION DATE & PARTIES	
START DATE:	
NUMBER OF DWELLINGS IN HOUSING PHASE	
NUMBER OF AFFORDABLE /SOCIAL RENTED AND 1 BEDROOM DWELLINGS IN HOUSING PHASE	
CONTRIBUTION AMOUNTS DUE	

FIFTH SCHEDULE

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:

.....

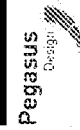
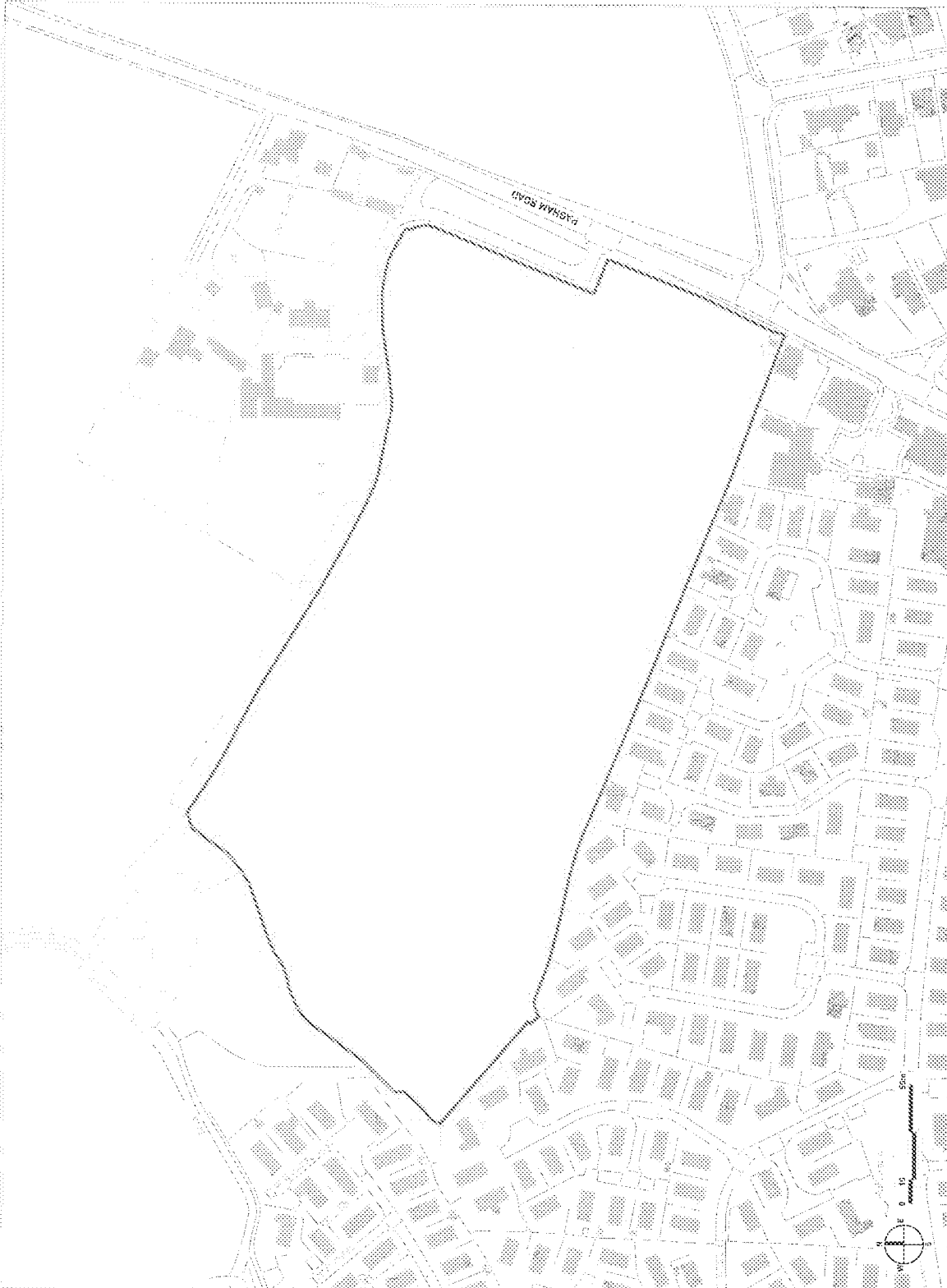
4. Planning application reference number [where applicable]

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	

APPENDIX 1 PLAN

SITE BOUNDARY



LAND WEST OF PAGHAM ROAD - SITE BOUNDARY PLAN

P21-2766-05 | DATE: 10/12/2021 | SCALE: 1:1250 @ A2 | DRWG: P21-2766_05 | SHEET NO. 2 REV. 0 | CLIENT: HALLAM LAND MANAGEMENT

APPENDIX 2

ARUN PREFERRED REGISTERED PARTNERS

Provider	Contact and email	Address	Tel. No
Arun District Council	Moh Hussein Group Head of Residential Services [REDACTED]	Civic Centre Maltravers Road Littlehampton BN17 5LF	[REDACTED]
The Guinness Partnership	Claudette Rawlinson Claudette.rawlinson@guinness.org.uk	33 East Street Havant Hampshire PO9 1AA	
The Hyde Group	John Martin [REDACTED]	Telecom House 125 – 135 Preston Road Brighton West Sussex BN1 6AF	
Worthing Homes	Damian Haley [REDACTED]	Davison House North Street Worthing West Sussex BN11 1ER	
Stonewater	Jackie Burton [REDACTED]	Waverley House 11-118 Holdenhurst Road Bournemouth BH8 8DY	
Saxon Weald	Mona Johansson [REDACTED]	Saxon Weald House 38-42 Worthing Road Horsham West Sussex RH12 1DT	
Sovereign	Liz Evans	Sovereign House	

		Basing View Basingstoke RG21 4FA	
Aster Group	Edward Till 		
Clarion Housing Group	Liz Hills 	Upton House 7 Perrymount Road Haywards Heath West Sussex RH16 3TN	

APPENDIX 3
DRAFT NOMINATIONS AGREEMENT

DATED

20[]

(1) [•][]

AND

(2) ARUN DISTRICT COUNCIL

DEED OF NOMINATION

relating to
rented units at

CONTENTS

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7	DISPUTES6
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9	AGREEMENTS AND DECLARATIONS.....6

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 three 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

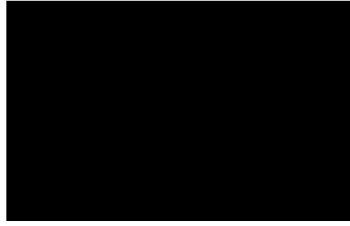
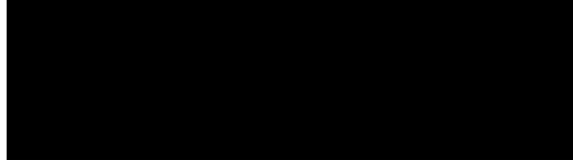
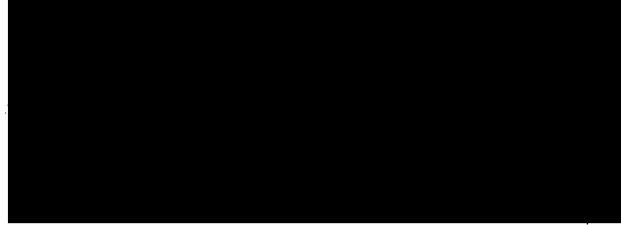
The parties agree:

- 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 DEED AND IS DELIVERED and takes effect on the date stated at the beginning of it.

EXECUTED AS A DEED on behalf of of Acting through A Director in the presence of:	
EXECUTED BY AFFIXING with the COMMON SEAL of ARUN DISTRICT COUNCIL in the presence of: Seal Book No: AUTHORISED SIGNATORY PRINT NAME JOB TITLE	



SIGNED and DELIVERED by SIMON DAVID FORTHERGILL as his Deed in the presence of: Witness Name: Witness Address: Witness Occupation:	 HELEN RUTH GOZZETT Bright & Sons (Solicitors) Ltd West House, West Square Maldon, Essex CM9 6HA RECEPTIONIST
SIGNED and DELIVERED by JONATHAN BRUCE LOVEYS as his Deed in the presence of: Witness Name: Witness Address: Witness Occupation:	 RICHARD JAMES 5 PIT LANE, TIPTREE CO5 0EG EXPRESS COURIER
SIGNED and DELIVERED by ANGELA MARY CLEANTHI as her Deed in the presence of: Witness Name: Witness Address: Witness Occupation:	 RICHARD JAMES 5 PIT LANE, TIPTREE CO5 0EG EXPRESS COURIER

SIGNED and DELIVERED
by Patricia Anne Loveys as
attorney for
ANTHONY BRIAN LOVEYS
as his Deed in the
presence of:

Witness Name:

Witness Address:

Witness Occupation:



RICHARD JAMES

5 PIT LANE, TIPTREE
CO5 0EG

EXPRESS COURIER

Signed by SIMON DAVID GRIFFITHS as Attorney for and on
behalf of HALLAM LAND MANAGEMENT LIMITED under a Power
of Attorney dated 17 March 2020 21 April 2022
6-5

~~A Director~~

in the presence of:

Witness Name:

Witness Address:

Witness Occupation:



RACHEL HALE

BANNER CROSS HALL
ECCLESALL ROAD SOUTH
SHEFFIELD S11 9PD

LEGAL ASSISTANT

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

Seal Book No:

AUTHORISED SIGNATORY

PRINT NAME

JOB TITLE

296/222

EMMA O'BRIEN

PROPERTY LAWYER

