

Sandra Edwards

From: Amanda Scholes on behalf of Planning.Responses
Sent: 24 October 2017 08:51
To: Planning Scanning
Subject: FW: Outline planning application WA/44/17/OUT - Land East of Tye Lane, Walberton [CHH-MAIN.FID3642232]
Attachments: FINAL FORM s106 Agreement Walberton (15502940v1).DOCX; COMPARISON s106 agreement (15514132v1).DOCX; S106 Plan (15507724v1).PDF; ITB11324-GA-014 Rev C (15507718v1).PDF; ITB11324-GA-015 Rev C (15507716v1).PDF; RE: Land East of Tye Lane, Walberton - S106
Importance: High

From: Michael Eastham
Sent: 23 October 2017 21:12
To: Planning.Responses
Subject: FW: Outline planning application WA/44/17/OUT - Land East of Tye Lane, Walberton [CHH-MAIN.FID3642232]
Importance: High

Please upload on Ocella as the Section 106 Agreement.

Thanks,

Michael

From: Nick Harding [REDACTED]
Sent: 23 October 2017 17:12
To: Michael Eastham; Delwyn Jones; 'Weeks, Paul'
Cc: Jordan Van Laun [REDACTED]
Subject: RE: Outline planning application WA/44/17/OUT - Land East of Tye Lane, Walberton [CHH-MAIN.FID3642232]
Importance: High

Paul and Michael

Please find attached a final form version of the s.106 agreement of which I plan to prepare engrossments tomorrow morning. Please also find attached a comparison version showing the marked-up changes between the last draft sent by Delwyn and this final form. You will see that I have made some minor amendments and I have also amended the wording of the clauses relating to the Highways England wording and works to make sure it is watertight.

I have also attached the plans that will be appended to the Agreement

For some reason, the comparison version has not picked up a change to Schedule 5. I have deleted the reference to "Crossing improvements at Blacksmiths Corner (The Street/Yapton Lane)" from the Highway Works as I have been told that this will be covered by the [REDACTED] the Transport Contribution as this crossing is part of the improvement to public footpath 350. This has been confirmed by WSCC in an email sent to my client's transport consultant (see attached).

Please can you both confirm acceptance of the Deed and also provide your final legal fees.

Kind regards

Nick



Nick Harding
Associate

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From: Michael Eastham [mailto:Michael.Eastham@arun.gov.uk]
Sent: 20 October 2017 10:02 AM
To: Nick Harding; Delwyn Jones; 'Weeks, Paul'
Cc: Jordan Van Laur [REDACTED]
Subject: RE: Outline planning application WA/44/17/OUT - Land East of Tye Lane, Walberton [CHH-MAIN.FID3642232]

Nick,

In Delwyn's absence, I can confirm that the draft Section 106 Agreement is agreed by Arun District Council.

Kind regards,

Michael

From: Nick Harding [REDACTED]
Sent: 20 October 2017 09:42
To: Delwyn Jones; 'Weeks, Paul'
Cc: Michael Eastham; Jordan Van Laur [REDACTED]
Subject: RE: Outline planning application WA/44/17/OUT - Land East of Tye Lane, Walberton [CHH-MAIN.FID3642232]

Paul

Please can you confirm that WSCC are happy with the current draft?

Michael, in Delwyn's absence, please can you confirm that the draft is agreed by ADC also?

We are waiting on Highways England's final confirmation regarding the obligations relevant to them and then should be in a position to produce a final form version.

Kind regards

Nick



Nick Harding
Associate

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From: Nick Harding [REDACTED]
Sent: 19 October 2017 10:02 AM
To: 'Delwyn Jones'; 'Weeks, Paul'
Cc: Michael Eastham
Subject: RE: Outline planning application WA/44/17/OUT - Land East of Tye Lane, Walberton [CHH-MAIN.FID3642232]

Delwyn

Thank you for your email. I attach a plan showing the location of the LAPs, LEAPs, and MUGA. This confirms that the minimum MUGA space provided will be 1,000sqm. This plan does not need to be attached to the s.106 agreement as the open space and MUGA are to be approved as part of reserved matters applications.

Regarding your query in relation to the MUGA transfer and the covenant to be included, this would not have the effect of barring the grant of planning permission, it would just mean that the Parish Council would be in breach of the covenant if they applied for changes to the planning of the MUGA without the approval of the owner of the site.

Please can you confirm that this is acceptable and the Deed is now agreed by ADC?

Kind regards

Nick



Nick Harding
Associate

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From: Delwyn Jones [<mailto:Delwyn.Jones@arun.gov.uk>]
Sent: 19 October 2017 5:26 PM
To: Nick Harding; 'Weeks, Paul'
Cc: Michael Eastham
Subject: FW: Outline planning application WA/44/17/OUT - Land East of Tye Lane, Walberton [CHH-MAIN.FID3642232]

Nick

Thanks for your email dated 19 October 2017

My comments are on the 2nd attachment subject to ADC clients comments :-

1. HE payment – agreed with senior officer authority
2. MUGA – agreed but please supply a plan of the site and please note I am awaiting from Landscapes – site dimensions – the relevant officer is away now

At this time and before leave this is the most I can supply and I trust this moves us forward somewhat
Once we have MUGA dimensions and WSCC agreement we can – I hope – circulate a final clean copy for agreement
, before completion
I am back on 31 October

D

Delwyn Jones | Planning Solicitor and Deputy Monitoring Officer, Legal Services, [Arun District Council](http://www.arun.gov.uk) | Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF DX 57406 Littlehampton
Internal: 37737 | External: +44 (0) 1903 737737 | E-mail: Delwyn.Jones@arun.gov.uk

Visit Arun's web site at www.arun.gov.uk



Save the environment - think before you print.

From: Nick Harding [REDACTED]
Sent: 19 October 2017 17:01
To: Delwyn Jones

Subject: FW: Outline planning application WA/44/17/OUT - Land East of Tye Lane, Walberton [CHH-MAIN.FID3642232]

FYI



Nick Harding
Associate

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From: Nick Harding
Sent: 19 October 2017 4:57 PM
To: 'Delwyn Jones'; 'Weeks, Paul'
Cc: Michael Eastham; Sue Howell
Subject: RE: Outline planning application WA/44/17/OUT - Land East of Tye Lane, Walberton [CHH-MAIN.FID3642232]

Dear Delwyn

I have slightly amended the wording of your draft relating to the MUGA and the Additional Transport Contribution. Could you please review this before your leave and provide your client's approval so I can prepare final copies?

Kind regards

Nick



Nick Harding
Associate

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From: Delwyn Jones [<mailto:Delwyn.Jones@arun.gov.uk>]
Sent: 19 October 2017 3:27 PM
To: Nick Harding; 'Weeks, Paul'
Cc: Michael Eastham; Sue Howell
Subject: Outline planning application WA/44/17/OUT - Land East of Tye Lane, Walberton

This email is from an external source.

Colleagues

Before my leave –I am back on 31 October –I can advise:-

Highways England “HE” – a senior authorised officer at ADC agrees that this payment can be made to ADC acting as agent for HE. You may wish to amend any draft accordingly

MUGA

Planning are requesting from Landscapes the dimensions of the land to accommodate a MUGA.

Please can you as developers supply a plan?

A suggested wording is :-

“Land will be provided on the application site for the provision of a Multi-Use Games Area (MUGA), which will be located to the north of the Walberton Playing Field, and east of the Walberton and Binstead CE Primary School”.

I will pick this up on my return and hope this keeps this moving whilst I am away

D

Delwyn Jones | Planning Solicitor and Deputy Monitoring Officer , Legal Services, Arun District Council | Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF DX 57406 Littlehampton
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Sandra Edwards

From: Stephen Gee [REDACTED]
Sent: 23 October 2017 14:56
To: Tim Wall
Subject: RE: Land East of Tye Lane, Walberton - S106

Tim,
I can confirm the below for your records.
Regards

Stephen

From: Tim Wall [REDACTED]
Sent: 23 October 2017 14:54
To: Stephen Gee
Subject: RE: Land East of Tye Lane, Walberton - S106

Stephen,
As discussed a few moments ago, and for record purposes:
On the basis that Wates agree to pay £65k towards the improvement of Footpath 350 (in line with WSCC estimate), WSCC agrees that this contribution includes and covers the pedestrian crossing improvement works to Blacksmiths corner, such that there is no need for a separate obligation for Wates to deliver the Blacksmiths Corner improvements.

Can you confirm this is agreed so that we can conclude the S106.

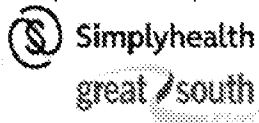
Kind regards

Tim Wall BA (Hons) MSc MCIHT CMILT
Associate Partner
for i-Transport LLP

Basingstoke Office: Grove House, Lutyens Close, Chineham Court, Basingstoke, RG24 8AG

T: 01256 316509 [REDACTED] 01256 338644 E: [REDACTED] W: www.i-transport.co.uk

13 brave souls from i-Transport will be running the Great South Run in memory of our colleague Chris Snazell. We will be raising money for the Evelina London Children's Hospital who have provided care and support to one of her sons over the last 17 years. Our sponsorship page can be found at: <https://www.justgiving.com/teams/i-Transport>



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From: Stephen Gee [REDACTED]
Sent: 12 October 2017 15:24
To: Tim Wall [REDACTED]
Subject: RE: Land East of Tye Lane, Walberton - S106

Tim,
I have received further information from Jonathan,
It is my view the creation of a bridleway link through the golf course, subject of course to the landowner's consent, will be a significant advantage for Walberton residents, Given there is no detailed design to provide certainty, the

cost of which will also need to be accounted for, and other costs such as traffic management, I suggest asking for £65k (is this index-linked?) subject to a bridleway (or cycleway) creation be agreed with the landowner(s) within 5 years and delivery within 7 years; any underspend can be returned to the applicant.

As such I would want to remain with the higher figure.

Stephen

From: Stephen Gee

Sent: 05 October 2017 11:34

To: Tim Wall

Subject: FW: Land East of Tye Lane, Walberton - S106

Tim,

Response received re the footpath contribution. I'm still awaiting something from Jonathan on the RoW (will chase him up).

Stephen

From: David Lambert

Sent: 04 October 2017 11:32

To: Stephen Gee

Subject: RE: Land East of Tye Lane, Walberton - S106

Stephen

I see the path is 40m long in amongst trees, not 30m in open grassland as priced for. The price will therefore need to increase to £18k in order to cover the design costs as well as the build, contingency and optimism bias. There is also our overheads to consider at 9% pf the build cost.

Again, if it lighting is deemed necessary this will be additional over and above the £18k figure I quoted. Let me know if you want to add this.

If the developer wishes to refute this figure they will need to undertake a design which we can get costed, and then there is a risk that the costs will increase again.

Bound Path estimator

WORK TYPE

WIDTH

2

LENGTH

40

Item No	Item Description	Qty	Units	2009-10 RATE	Amount
1	PRELIMINARIES - Allow for office and mess + traffic management typical 20 day scheme	1	ITEM	£1,467.66	£1,467.66
201	SITE CLEARANCE HAND - Allow for hand cutting trees and hedges, chipping and disposal of arisings	1	DAY	£1,433.92	£1,433.92
601	EXCAVATE UNBOUND MATERIAL - Allow excavate unsuitable materials, double handling and disposal.	100	CUM	£55.67	£5,566.97
620	REINSTATE VERGES SOILS FROM SITE - Allow for double handle topsoil up to 150 thick, level & prepare surface, standard verge mix seed	80	SQ.M	£6.07	£485.65
1120	REPLACE/PROVIDE NEW PC EDGING - Allow for excavate hard material/dspose existing edging, provide pc edging on 75 foundation, make good	80	LIN.M	£18.56	£1,484.52
1130	NEW FOOTWAY IN VERGE - Allow for excavate and dispose to 200, prep formation & weedkiller, subbase 150, wearing course 50	80	SQ.M	£37.96	£3,036.53
	Other works as required by the engineer.	1	SUM	£0.00	£0.00
		SUB-TOTAL			£13,475.25
		MAY GURNEY FEE @ 4.52%			£609.09
		TOTAL			£14,084.33

Regards

David Lambert

Lead Professional, Highway Design, Highway Agreements, Planning Services

West Sussex County Council, Ground Floor Northleigh, County Hall, Chichester PO19 1RH

Phone: 03302 225709

Email: [REDACTED]

Web: www.westsussex.gov.uk/roadagreements

From: Tim Wall [REDACTED]

Sent: 04 October 2017 10:13

To: Stephen Gee

Subject: Land East of Tye Lane, Walberton - S106

Hi Stephen,

Thank you for your time on this matter.

Recreation Ground Footpath

In terms of the contribution to the footpath link to the recreation ground, I understand your £16,000 figure was derived on the basis of a 30m connection at 3m width. This would give a value of £533 per linear metre, which is in our view very high.

I attach a figure to show that the connection is likely to be a distance of 40m and we had assumed a normal footpath width of 2m.

Based on SPONS Estimating costs (extract below), a bitumen macadam footpath including edgings, base course and excavation, is expected to cost £50 per square metre.

FOOTPATHS AND PAVINGS	Unit	£
Costs include excavation, base course as necessary and precast concrete edgings on foundations to one or both sides		
bitumen macadam footpath	m ²	45 to 60
precast concrete paving flags	m ²	30 to 70
precast concrete block pavings	m ²	45 to 70
clay brick paving	m ²	55 to 105
granite setts	m ²	90 to 110
cobbled paving	m ²	80 to 105

On the basis of a 3m wide 40m connection (120sqm), which is the worst case of the options, the construction cost would be £6,000.

Can you confirm if you are happy with this revised figure, or provide some further justification for the £16,000 value.

Footpath 350

Attached is a figure to show the works required to improve the surface of FP350. As agreed with Jonathan on site, the central part of the footpath through the golf course is already a suitable surface and does not require improvement. Our estimate included the costs of a new gate at Binstead Lane, a new footbridge and improved crossing facilities at Blacksmiths corner which would naturally be carried out when the FP350 works are completed (the works would require realignment and improvement of the connection of Yapton Lane to FP350. Whilst your latest comments on the S106 sought to separate the Blacksmiths corner crossing to a S278 obligation, our view is this is part of the same FP350 scheme to be covered under the S106.

On this basis, and as set out in the attached document, we estimate the costs to be £44,200 rather than £65,000. I understand you are to speak to Jonathan on this and confirm your position.

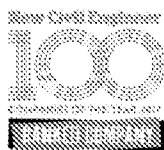
My clients are keen to get the S106 agreed asap, and so your early response would be well appreciated.

Thanks

Tim Wall BA (Hons) MSc MCiHT CMILT

Associate Partner

for i-Transport LLP



Basingstoke Office: Grove House, Lutyens Close, Chineham Court, Basingstoke, RG24 8AG

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Dated: _____ **2017**

Between:

- [1] David Henry Tupper, Hilary Jennifer Tupper, Andrew William Brooke and David Mark Spofforth**
- [2] Wates Developments Limited**
- [3] Arun District Council**
- [4] West Sussex County Council**

AGREEMENT

under Section 106 of the Town & Country Planning Act 1990

and other powers

Land East of Tye Lane, Walberton

Providing:

affordable housing; highway improvements including junction works;

public open space; ~~community facilities~~; schools; police; ~~social sport~~ and leisure; library and fire services provision

Arun District Council

Arun Civic Centre

Maltravers Road

Littlehampton

West Sussex BN17 5LF

DX 57406 LITTLEHAMPTON

Reference: WA/44/17/OUT

This Deed of Agreement is dated 2017 and 2017
and is made between:

- 1 **David Henry Tupper** and **Hilary Jennifer Tupper** of Littleton Farm, Upwaltham, Petworth, West Sussex GU28 0IX and **Andrew William Brooke** of Wisteria House, Market Square, Petworth, West Sussex GU28 0AJ and **David Mark Spofforth** of 52 Richmond Road, Worthing, West Sussex BN11 1RP (~~the Owners~~Owner)
- 2 **Wates Developments Limited** (Co. Regn. No. 0441484) of Wates House, Station Approach, Leatherhead KT22 7SW (the Developer)
- 3 **Arun District Council** of Arun Civic Centre, Maltravers Road, Littlehampton, West ~~Sussex, Sussex~~ BN17 5LF (ADC)
- 4 **West Sussex County Council** of County Hall, Chichester, West Sussex, PO19 1RQ (WSCC)

1. **BACKGROUND**

- 1.1 The ~~Owners are~~Owner is the registered proprietor under title number WSX267804 of part of the Land shown for identification purposes only shaded green on the Plan and David Henry Tupper is the registered proprietor under title number WSX314358 of the remaining part of the Land shown for identification purposes only shaded purple on the attached Plan.
- 1.2 The Land is subject to a contract in favour of the Developer.
- 1.3 ADC is the local planning authority and the local housing authority and the authority responsible for providing leisure and recreation services.
- 1.4 WSCC is the strategic planning authority, the local highway authority the local education authority and the authority responsible for providing library and fire and rescue services.
- 1.5 The Developer made the Application to carry out the Development
- 1.6 ADC have resolved to grant planning permission pursuant to the Application to carry out the Development

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 our 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 the successors in title to that party and to any deriving title through or under that party and in the case of the WSCC and ADC the successors to their respective functions.
- 2.9 The following expressions shall unless the context otherwise requires have the following meanings:

“the Act” means the Town & Country Planning Act 1990

“Additional Highway Works” means the highway works described in Schedule 6 of this Agreement

“Additional Transport Contribution” means the additional transport contribution in the sum of £180,000 (one hundred and eighty thousand pounds) as referred to at clause ~~11~~ 12 towards ~~improvements~~ improvements to the A27 corridor

“Affordable Housing” means affordable housing as defined in Annex 2 ~~of the~~ Glossary ~~of the~~ National Planning Policy Framework dated 27 March 2012 as amended from time to time to include Affordable Rented Housing and Intermediate Housing and to be provided in the amounts and tenures that follow or such other mix as is agreed between ADC and the Developer and/or the Owner:-

~~–Affordable~~ ~~rent~~ Rented Housing: 26 and
Intermediate Housing: 26

9 x 1 bed flats (*rented*)

4 x 1 bed flats (*intermediate*)

5 x 2 bed flats (*rented*)
7 x 2 bed flats (*intermediate*)
5 x 2 bed houses (*rented*)
7 x 2 bed houses (*intermediate*)
5 x 3 bed houses (*rented*)
8 x 3 bed houses (*intermediate*)
2 x 4 bed houses (*rented*).

“Affordable Housing Units” means up to 52 Dwellings being 30% of the total number of Dwellings which are being used for Affordable Housing and in accordance with the tenure split of 50% Affordable Rented Housing and 50% Intermediate Housing and “Affordable Housing Unit” shall be construed accordingly

“Affordable Housing Standard” means the ~~Homes and Communities Agency~~ ~~HCA~~ ~~HCA~~ building standard applicable at the date of the Reserved Matters Application or equivalent or replacement or successor standard adopted by the successor body to the HCA

“Affordable Housing Provider” means a provider of affordable housing registered with the HCA ~~or equivalent or replacement~~ and appearing within the Arun District Council List of Approved ~~Registered Affordable Housing~~ Providers attached at Schedule 3 or specifically approved in writing for the purposes of the present Agreement which can include ADC itself

“Affordable Rent” means Affordable Housing Units that will be let at an affordable rent which will be no higher than 80% of the open market rental value (including any service charge) paid in the district for the unit type such rent to be in accordance with guidance issued by the HCA ~~(or any successor agency)~~ from time to time and the National Planning Policy Framework 2012

“Affordable Rented Housing” means Affordable Housing to be provided as either Affordable Rent or Social Rent

“the Application” means the application for outline planning permission for the Development validated by ADC on 21 June 2017 and allocated reference number WA/44/17/OUT

“Chargee” means any mortgagee or chargee of the ~~Registered Affordable Housing~~ Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or any other person appointed under any security documentation to enable such mortgagee or chargee of the ~~Registered Affordable Housing~~ Provider to realise its security or any administrator (howsoever

appointed) including a housing administrator appointed pursuant to Chapter 5 of Part 4 of the Housing and Planning Act 2016 (each a Receiver) of the whole or any part of the Affordable Housing Units

“Commencement Notice” means the form of notice annexed to this Agreement as Schedule 1 and to be addressed to ADC’s Head of Planning Services and WSCC’s County Planning Officer or equivalent successor posts as appropriate

“Community Facilities Contribution” means the contribution in the sum of [REDACTED] towards community facilities to make good a deficiency in service provision arising from the Development and in particular to be used for :-

(1) [REDACTED] towards the upgrade of the existing Sports pavilion including double glazing, internal and external repainting, replacement guttering, retiling the showers & toilets, loft insulation, new flooring and curtains, new tables and chairs, upgraded lighting and heating.

(2) £14,000 towards the upgrade of the existing Village Hall including internal painting, upgraded kitchen, lighting and central heating, a proper sound system, new window and stage curtains and a paved patio area.

(3) £12,400 towards the resurfacing of the existing Village Hall car park.

“Completed” means the issue of a certificate of completion by the County Council and/or Highways England (as appropriate) in respect of the Highways Works and/or the Additional Highway Works (as appropriate) but excluding the 12 month maintenance period preceding issue of the final certificate confirming adoption

“Contributions” means the Fire and Rescue Contribution the Library Contribution the Police Contribution the Primary Education Contribution the Community Facilities Contribution the Secondary Education Contribution the Sixth Form Education Contribution the Sport and Leisure Contribution and the Transport Contribution

“the CIL Regulations” means the Community Infrastructure Levy Regulations 2010 (as amended)

“Deed of Variation” means a deed to vary this Agreement under Section 106 and S106A of the Act

“the Development” means the development of the Land to accommodate up to 175 dwellings, new vehicular access, together with associated car parking, landscaping and community facilities to include allotments, play space and community orchard as set out in the Application

“Dwellings” means any dwelling to be erected on the Land pursuant to the Permission including for the avoidance of doubt any flats or apartments

“Fire and Rescue Contribution” means the fire and rescue contribution calculated as referred to in Clause ~~19~~ to make good a deficiency in fire and rescue provision arising from the Development and in particular to be used for the re-development or re-location of fire stations and associated vehicles and equipment in West Sussex Fire Rescue Services Southern Area serving Walberton

“HCA” means the Homes and Communities Agency (or any equivalent, replacement or successor agency)

“Highways England” means the highways authority responsible for the maintenance of the A27

“Highways England Contribution” means the contribution in the sum of £400,000 towards the A27 / A29 Fontwell Avenue / Arundel Road junction improvements in general accordance with the scheme of works shown in principle on Drawing IIB11324-GA-015 Rev C (appended to this Agreement at Appendix 2) or such alternative scheme as Highways England considers necessary to achieve improvement of the junction

“the Highway Works” means the highway works described in Schedule 5 of this Agreement

“Indexation (BCIS)” means linked to movements in the All-in Tender Price Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors to include any applicable local or regional weighting or such other index agreed between the parties between the date hereof and the date of actual payment and “Index Linked (BCIS)” shall be construed accordingly

“Indexation (RPI)” means linked to movements in the rate of inflation as measured by the All Items Retail Price Index published by the Office for National Statistics or any other department or ministry or other government body upon which the duties in connection with the indices devolves to include any applicable local or regional weighting or such other index agreed between the parties between the date hereof and the date of actual payment and “Index Linked (RPI)” shall be construed accordingly

“Intermediate Housing” means Affordable Housing which complies with the definition of intermediate housing in annex 2 of the National Planning Policy Framework (which may include Shared Ownership Housing, other low cost homes

for sale and intermediate rent as defined in section 90(4) of the Housing and Regeneration Act 2008, but not Affordable Rent);

“**Land**” means all the land shown for identification purposes only edged red on the Plan

“**Library Contribution**” means the library contribution calculated as referred to in Clause ~~18~~ to make good a deficiency in provision arising from the Development and in particular to be used towards enhancing library space with improved digital access at Littlehampton Library

“**Market Housing Unit**” means any Dwelling which is general market housing for sale on the open market and which is not an Affordable Housing Unit

“**MUGA**” means Multiple Use Games Area the site and land for which shall be provided by the Owner located to the north of the Walberton Recreation Ground, and east of the Walberton and Binsted CE Primary School and with a minimum play area of 1,000sqm in accordance with the terms of the Agreement ~~and with the following dimensions:-~~

“**Nominations Agreement**” means a nomination agreement substantially in the form of the draft Deed of Nomination Rights attached to this Agreement at Schedule 4

“**Occupation**” means beneficial occupation of Dwellings other than occupation for the purposes of construction fitting out security marketing or repair and “Occupied” and “Occupy” shall be construed accordingly

“**Permission**” means outline planning permission for the Development pursuant to the Application

“**Plan**” means the attached plan marked ‘Plan’ appended at Appendix 1 of this Agreement

“**Police Contribution**” means the police contribution in the sum of {£22,709.91} (twenty two thousand and seven hundred and nine pounds ninety one pence) as referred to at Clause ~~8~~ to make good a deficiency in provision arising from the Development and in particular to applied as follows :-

- (i) [REDACTED] towards the purchase of an additional vehicle for use by the Walberton Neighbourhood Policing Team.
- (ii) [REDACTED] towards the costs of an additional officer to work in the Walberton Neighbourhood Policing Team.

(iii) [REDACTED] towards the cost of 1 additional support staff member to be based at Bognor Regis Police station.

(iv) [REDACTED] towards the cost of siting or posting ~~these~~ additional police officers/staff at Bognor Regis Police Station.

“Primary Education Contribution” means the contribution calculated as referred to at clause ~~{---}13~~ to be used towards the expansion of Walberton CoE Primary School

“Public Open Space” means that part of the Land provided as open space, to include 8 x local areas of play (“LAP”) and 1 x Local Equipped Area of Play (“LEAP”) referred to in Clause ~~---}16~~

“Qualifying Occupiers” means persons who qualify for Affordable Housing within the terms of 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

“Reserved Matters Application” means an application under the Act for approval of reserved matters reserved under the Planning Permission for subsequent approval

“Reserved Matters Approval” means the approval of reserved matters reserved under the Planning Permission and pursuant to which Development is Commenced

“Secondary Education Contribution” means the contribution calculated as referred to at clause ~~{---}16~~ to be used towards the expansion of Omiston Six Villages Academy

~~“Section 278 Agreement” means a highways agreement under section 278 of the Highways Act 1980~~

“Section 73 Consent” means any application made by the Developer or the Owner under section 73 of the Act relating to the Permission

“Shared Ownership Housing” means Affordable Housing Units which are Occupied by persons under shared ownership arrangements as defined by Section 70(4) of the Housing and Regeneration Act 2008 where those persons have the opportunity to purchase all or substantially all of the equity in the Affordable Housing Units at a later date or such other equity sharing or retention terms from time to time approved by ADC

“Sixth Form Education Contribution” means the contribution calculated as referred to at clause ~~{-11-12}~~ to be used towards the expansion of St Philip Howard Catholic High School’s Sixth Form

“Social Rent” means Affordable Housing available for rent as social rented housing for which guideline target rents are determined through the national rent regime

“Specified Date” means the date upon which an obligation arising under this Agreement is due to be performed.

“Sport and Leisure” means the sport and leisure contribution in the sum of £77,743 (seventy seven thousand and seven hundred and forty three pounds) as referred to at clause ~~{-12}~~ to be used towards the provision of ~~{-a Sports Hall a sports hall}~~ to provide additional multi-use health and fitness/studio space and dry changing to increase capacity and overall customer experience at Arun Leisure Centre Bognor Regis

“Statutory Undertaker” means any public gas transporter, water or sewerage undertaker, electricity supplier, public telecommunications operator or other body performing a statutory undertaking

“Transport Contribution” means the transport contribution in the sum of £88,500 (eighty-eight thousand five hundred pounds) referred to at clause ~~{-11-14}~~ to be used towards the provision of the transport facilities described in Schedule 7

3. **ENABLING PROVISIONS**

This Agreement is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, s1 Localism Act 2011 and all other enabling powers.

4. **COMMENCEMENT**

- 4.1 This Agreement shall come into effect upon the date of grant of the Permission but the obligations in ~~{-Clauses 5 – 11-10 and 13 – 19}~~ shall become effective only on the Commencement of the Development ~~-in accordance with Section 56 of the Act.~~
- 4.2 On Commencement of the Development the Owner will give to ADC and WSCC the Commencement Notice
- 4.3 The Owner shall provide written notice of not less than 28 days to ADC ~~and WSCC~~ prior to the Occupation of the first Market Housing Unit to be Occupied

COVENANTS IN FAVOUR OF ADC

5. PROVISION OF ON SITE AFFORDABLE HOUSING

The Owner ~~and Developer covenant covenants~~ with ADC:-

- 5.1 That the location tenure and mix of the Affordable Housing Units within the Development shall be as shown on a plan ('Affordable Housing Scheme') to be agreed in writing by the Owner or the Developer and ~~the District ADC~~ as part of the Reserved Matters Application
- 5.2 Unless otherwise agreed in writing with ADC not to Occupy or permit or allow the Occupation of more than 70% of the Market Housing Units until:
 - 5.2.1 all of the Affordable Housing Units have been constructed in accordance with the Permission and made ready for residential occupation, and
 - 5.2.2 all of the Affordable Housing Units have been transferred (either freehold or leasehold for a period of not less than 165 years) to ~~a~~ an Affordable Housing Provider on terms which ensure that the Affordable Housing Units are and remain bound by the obligations in this Clause.
- 5.3 The Affordable Housing Units shall be constructed to meet the Affordable Housing ~~Standards~~ Standard
- 5.4 Subject to ~~{Clause 5-XX} S.11~~ 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 Qualifying Occupier of any of the Affordable Housing Units but to all subsequent Occupiers of them.

FIRST OFFER TO TRANSFER AFFORDABLE HOUSING

- 5.5 The Owner and Developer shall make an offer ("the First Offer") to an Affordable Housing Provider which offer shall include:
 - 5.5.1 A sale of land contract
 - 5.5.2 A draft transfer
- 5.6 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 TO TRANSFER AFFORDABLE HOUSING

- 5.7 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 Owner shall make a second offer to another Affordable Housing Provider to enter into a sale contract for the Affordable Housing Units not later than one month after the expiry of the ~~first offer period~~ 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")

IF SECOND OFFER FAILS PAYMENT OF AFFORDABLE HOUSING COMPENSATION SUM

- 5.8 In the event the Second Offer not being accepted within the Second Offer Period then the Owner will:

5.8.1 ~~5.8.2~~ apply to ADC in writing for the Affordable Housing Scheme to be varied in relation to the tenure and the unit mix only. Permission for a variation of the Affordable Housing Scheme shall not be unreasonably withheld by ADC PROVIDED ALWAYS that ~~the~~ ADC is satisfied (following submission of such evidence as may be reasonably required) that the Affordable Housing Scheme is not financially viable AND that the revised scheme will help meet local housing need AND that such variation would not be inconsistent with the Permission; OR

5.8.2 ~~5.8.3~~ pay to ADC a sum equivalent to the cost of providing the Affordable Housing Units such sum to be £80,000 per each and every Affordable Housing Unit lost to ADC within the District of Arun and the provisions of this Clause 5 shall cease to apply on receipt of that payment by ADC

- 5.9 None of the Affordable Housing Units shall be Occupied until the Affordable Housing Provider has entered into a Nominations Agreement granting nomination rights to ADC
- 5.10 Nothing in this Agreement 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 Owner or Developer in obtaining such public subsidy or other financial support) in respect of the Affordable Housing Units

EXEMPTIONS

5.11 The provisions of this Clause 5 above affecting the Affordable Housing Units shall not apply to:

5.11.1 Subject to Clause ~~5-14~~5.12, any Chargee or its successor in title; or

5.11.2 Any ~~owner-occupier~~ of an Intermediate Housing Unit where that owner has purchased 100% of the equity in that unit or their successor in title; or

5.11.3 Any ~~owner-occupier~~ of an Affordable Housing Unit who has exercised a right to buy or right to acquire that unit or their successor in title;

~~5.11.4~~In the event of any dispute as to whether any proposed ~~Occupier-occupier~~ of any Affordable Housing Unit is a Qualifying Occupier the matter shall be determined by ADC (acting reasonably)

MORTGAGEE OR CHARGE IN POSSESSION

5.12 In the event that any Affordable Housing Unit 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 shall be entitled to exercise its power of sale free from the restrictions set out in this Clause provided that the Chargee shall first have followed the procedure set out below:

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

5.12.2 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")

5.12.3 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)

5.12.4 If ADC shall notify the Chargee within the time specified in clause ~~5-14-3~~5.12.3 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 an Affordable Housing~~ Provider.

5.12.5 If ADC shall notify the Chargee within one month of the date of the Offer that it wishes to accept the offer or if within the time specified in clause ~~5.14.4~~ 5.12.4 ADC gives written notice to the Chargee that arrangements can be made in accordance with clause ~~5.14.4~~ 5.12.4 then:

~~7.1.5-15.12.5.1~~ the Chargee shall co-operate with ADC to secure the transfer;
and

~~7.1.5-25.12.5.2~~ 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 this clause 5 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.

5.12.6 Subject to the provisions of clause ~~5.14.7~~ 5.12.7 the transfer to ADC or to a ~~Registered an Affordable Housing~~ Provider shall be completed within three months of the date of the Offer (or such longer period as may be agreed between the Chargee and ADC) ("the Completion Period).

5.12.7 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 this clause 5 that party shall give to the other not less than seven days' written notice of its intention to discontinue.

5.12.8 If either:

~~7.1.8-15.12.8.1~~ ADC fails to give notification to the Chargee within the time specified in clause ~~5.14.3~~ 5.12.3 or

~~7.1.8-25.12.8.2~~ having given notification of refusal of the Offer in accordance with clause ~~5.14.3~~ 5.12.3 ADC fails to give notification to the Chargee within the time specified in clause ~~5.14.4~~ 5.12.4; or

~~7-1-8-35.12.8.3~~ ADC having complied with the time periods specified in clause ~~5-14-3-5.12.3~~ and (in the case of a refusal of the Offer) clause ~~5-14-4-5.12.4~~ the transfer to either ADC or to ~~a Registered-an Affordable Housing~~ Provider shall not be completed within the Completion Period; or

~~7-1-8-45.12.8.4~~ ADC shall serve notice of its intention to discontinue under clause ~~5-14-75.12.7~~.

then the Chargee shall be under no obligation to sell the Affordable Housing Units either to ADC or to ~~a Registered-an Affordable Housing~~ Provider and shall be entitled to exercise its powers of sale without any of the provisions of clause 5 of this Agreement being binding on the purchaser or purchasers of the Affordable Housing Units or any part thereof or any successor in title hereto.

5.13 ADC shall in formulating or promoting any arrangements referred to in ~~clause 5-14-4-5.12.4~~ give consideration to protecting the interests of the Chargee in respect of monies outstanding under the charge or mortgage.

6. ON SITE PROVISION OF PUBLIC OPEN SPACE

The Owner covenants with ADC

6.1 to provide and lay out the Public Open Space ~~in accordance with a scheme~~ to be approved by ADC as part of the Reserved Matters Application.

6.2 to ensure that the Public Open Space is accessible to the public ~~at all times~~.

6.3 to complete the works of provision and laying out in accordance with ~~the scheme approved pursuant to~~ Clause 6.1 and to make the Public Open Space available for use by the public by no later than the first Occupation of the first Dwelling forming part of the Development to be Occupied.

~~6.4~~ ~~Not to occupy any Dwelling forming part of the Development unless and until the Public Open Space is provided in accordance with this clause~~

~~6.5~~ ~~6.4~~ within two months of the completion of the works referred to in Clause 6.3 to transfer the Public Open Space to a management company set up for the purpose of managing and maintaining the Public Open Space ("the Management Company")

~~6.6~~ ~~6.5~~ to manage and maintain the Public Open Space in perpetuity ~~as public open space~~.

7. ON SITE PROVISION OF LAND FOR MUGA

The Owner covenants with ADC

- 7.1 to provide land for use as a MUGA ~~in accordance with a scheme~~ to be approved by ADC as part of the Reserved Matters Application.
- 7.2 to ensure that the MUGA is accessible to the public ~~at all times~~.
- 7.3 to complete the works of provision and laying out in accordance with Clause 7.1 and to make the MUGA available for use by the public by no later than the first Occupation of the first Dwelling forming part of the Development to be Occupied.
- 7.4 ~~Not~~ to occupy any Dwelling forming part of the Development unless and until the MUGA is provided in accordance with this clause
- 7.5 within two months of the completion of the works referred to in Clause ~~7-3-3~~ to transfer the MUGA to the Walberton Parish Council for the purpose of managing and maintaining the MUGA such transfer to include ~~a covenant~~ covenants on Walberton Parish Council not to ~~apply to the Council for~~ make an application to ADC to amend the ~~planning permission~~ Permission relating to the MUGA without obtaining the written approval of the Owner ~~and to manage and maintain the MUGA as play area in perpetuity~~.

8. POLICE CONTRIBUTION

The Owner covenants with ADC:-

- 8.1 to pay to ADC the Police Contribution in the amounts or portions set out below:-
 - (i) The first 50% on Occupation of the first Market Housing Unit to be Occupied
 - (ii) The remaining 50% on Occupation of the 75th Market Housing Unit to be Occupied
- 8.2 not to Occupy or cause or allow to be Occupied any Market Housing Unit forming part of the Development over and above the number of Market Housing Units set out in this clause before the Police Contribution or the stated portion of it shall have been paid to ADC and any Indexation (RPI) and Interest payable under this Agreement

9. SPORT AND LEISURE CONTRIBUTION

The Owner covenants with ADC:-

9.1 to pay to ADC the Sport and Leisure Contribution in the amounts or portions set out below:-

- (i) The first 50% on Occupation of the first Market Housing Unit to be Occupied
- (ii) The remaining 50% on Occupation of the 75th Market Housing Unit to be Occupied

9.2 not to Occupy or cause or allow to be Occupied any Market Housing Unit forming part of the Development over and above the number of Market Housing Units set out in this clause before the Sport and Leisure Contribution or the stated portion of it shall have been paid to ADC and any Indexation (RPI) and Interest payable under this Agreement

10. **COMMUNITY FACILITIES CONTRIBUTION**

The Owner covenants with ADC -

10.1 to pay to ADC the Community Facilities Contribution in accordance with the amounts or portions set out below :-

- (i) The first 50% on Occupation of the first Market Housing Unit to be Occupied
- (ii) The remaining 50% on Occupation of the 75th Market Housing Unit to be Occupied

10.2 not to Occupy or cause or allow to be Occupied any Market Housing Unit forming part of the Development over and above the number of Market Housing Units set out in this clause before the Community Facilities Contribution or the stated portion of it shall have been paid to ADC and any Indexation (RPI) and Interest payable under this Agreement

11. **HIGHWAYS ENGLAND CONTRIBUTION**

The Owner covenants with ADC -

11.1 That it shall prior to Commencement of the Development enter into a Section 278 Agreement with Highways England to secure the Highways England Contribution

11.2 The Section 278 Agreement entered into under clause 11.1 of this Agreement shall contain obligations as follows:

11.2.1 11.1 Provided that the Development has Commenced and Highways England have issued Following Commencement of Development Highways England shall issue a payment notice to request payment of the Highways England

Contribution (which shall be two months prior to the expected start of the design works relating to the construction at the Fontwell Avenue junction in relation to the planning permission granted under reference WA/22/15/OUT) ("the Payment Notice") ~~to and the Owner shall pay to ADC Highways England the~~ Highways England Contribution no later than two months following the issue of the Payment Notice.

11.2.2 ~~If by 31 December 2031 the Highways England Contribution or any part of it remains unspent Highways England will covenant to return such unspent contribution to the person who paid the Highways England Contribution~~

12. **ADDITIONAL HIGHWAY WORKS**

~~12.1 In the event that the Additional Highway Works are required to be Completed by the Owner ADC shall give notice to the Owner in writing prior to the Occupation of the first Market Housing Unit to be Occupied and the~~ The Owner covenants with ADC:

12.1 ~~12.1.1 that the Owner~~ That it shall prior to Commencement of the Development enter into an ~~agreement under section 278 of the Highways Act 1980 a~~ Section 278 Agreement enabling the Owner to undertake and complete the Additional Highway Works prior to the Occupation of the first Market Housing Unit to be Occupied

12.2 The Section 278 Agreement entered into under clause 12.1 of this Agreement shall contain obligations as follows:

12.2.1 ~~12.1.2 to~~ Subject to confirmation from Highways England that the Additional Highway Works are required to be delivered the Owner shall undertake and complete the Additional Highway Works and to the satisfaction of Highways England ~~by no later than prior to the Occupation of~~ the Occupation of the 90th Market Housing Unit to be Occupied

~~12.1.3 not to Occupy or cause or allow to be Occupied more than 90 Market Housing Units built on the Land before the Additional Highway Works shall have been Completed to the satisfaction of Highways England~~

12.2.2 ~~12.2 In the event that~~ In the event that Highways England identify the Additional Highway Works are not required to be Completed by delivered the Owner ADC shall give notice to the Owner in writing prior to the Occupation of the first Market Housing Unit to be Occupied and the Owner covenants with ADC shall pay the Additional Transport Contribution to Highways England prior to Occupation of the 90th Market Housing Unit

~~to pay 12.2.1 to ADC the Additional Transport Contribution prior to the Occupation of the 90th Market Housing Unit built on the Land.~~

~~12.2.3 12.2.2 not to Occupy or cause or allow to be Occupied more than 89 Market Housing Units built on the Land before In the event that the Additional Transport Contribution is paid and if by 31 December 2031 the Additional Transport Contribution has been paid to ADC and any Indexation (RPI) and interest payable under this Agreement or any part of it remains unspent Highways England will covenant to return such unspent contribution to the person who paid the Additional Transport Contribution~~

~~12.3 In the event that ADC have not given notice to the Owner in accordance with clause 12.1 or clause 12.2 of this Agreement prior to the Occupation of the first Market Housing Unit to be Occupied then the Owner covenants with ADC:~~

~~12.3.1 To pay to ADC the Additional Transport Contribution prior to the Occupation of the 90th Market Housing Unit~~

~~12.3.2 Not to Occupy or cause or allow to be Occupied more than 89 Market Housing Units built on the Land before the Additional Transport Contribution has been paid to ADC and any Indexation (RPI) and interest payable under this Agreement~~

COVENANTS IN FAVOUR OF WSCC

13. HIGHWAY WORKS

The Owner covenants with WSCC

13.1 to enter into an agreement under section 278 of the Highways Act 1980 enabling the Owner to undertake and complete the Highway Works

13.2 to undertake and complete the Highway Works and to the satisfaction of WSCC by no later than the Occupation of the first Dwelling to be Occupied.

13.3 not to Occupy or cause or allow to be Occupied any Dwelling built on the Land before the Highway Works shall have been Completed to the satisfaction of WSCC.

14. TRANSPORT CONTRIBUTION

The Owner covenants with WSCC

14.1 to pay to WSCC the Transport Contribution on Occupation of the first Dwelling to be Occupied

- 14.2 not to Occupy or cause or allow to be Occupied any Dwelling forming part of the Development before the Transport Contribution shall have been paid to WSCC and any Indexation (BCIS) and Interest payable under this Agreement

15. PRIMARY EDUCATION CONTRIBUTION

The Owner covenants with WSCC:-

- 15.1 to pay to WSCC the Primary Education Contribution in accordance with the amounts or portions set out below :-

- (i) The first 50% on Occupation of the first ~~Dwelling to Dwelling to~~ be Occupied
- (ii) The remaining 50% on Occupation of the 50th Dwelling to be Occupied

- 15.2 not to Occupy or cause or allow to be Occupied any Dwelling forming part of the Development over and above the number of Dwellings set out in this clause before the Primary Education Contribution or the stated portion of it shall have been paid to WSCC and any Indexation (BCIS) and Interest payable under this Agreement

- 15.3 The Primary Education Contribution shall be calculated by reference to the following formula:

DfE Figure x ACP = Primary Education Contribution 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 100% discount for the product from any dwellings provided for Social Rent as future occupants are assumed to be living locally and already service users, as approved by a subsequent Reserved Matters 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 are 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 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 (DfE) school building costs per pupil place (for pupils aged 4 to 16) as adjusted for the West Sussex area applicable at the date when the Primary Education Contribution is paid (which currently for the financial year 2017/2018 is £15,666, updated as necessary by the Royal Institute of Chartered Surveyors Building Cost Information Service All-In Tender Price Index.

16. **SECONDARY EDUCATION CONTRIBUTION**

The Owner covenants with WSCC:-

16.1 to pay to WSCC the Secondary Education Contribution in accordance with the amounts or portions set out below :-

- (i) The first 50% on Occupation of the first Dwelling to be Occupied
- (ii) The remaining 50% on Occupation of the 50th Dwelling to be Occupied

16.2 not to Occupy or cause or allow to be Occupied any Dwelling forming part of the Development over and above the number of Dwellings set out in this clause before the Secondary Education Contribution or the stated portion of it shall have been paid to WSCC and any Indexation (BCIS) and Interest payable under this Agreement

16.3 The Secondary Education Contribution shall be calculated by reference to the following formula:

$\text{DfE Figure} \times \text{ACP} = \text{Secondary Education Contribution}$ 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 100% discount for the product from any dwellings provided for Social Rent as future occupants are assumed to be living locally and already service users, as approved by a subsequent Reserved Matters 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 are 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 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 (DfE) school building costs per pupil place (for pupils aged 4 to 16) as adjusted for the West Sussex area applicable at the date when the Secondary School Contribution is paid (which currently for the financial year 2017/2018 [REDACTED] updated as necessary by the Royal Institute of Chartered Surveyors Building Cost Information Service All-In Tender Price Index.

17. **SIXTH FORM EDUCATION CONTRIBUTION**

The Owner covenants with WSCC:-

17.1 to pay to WSCC the Sixth Form Education Contribution in accordance with the amounts or portions set out below :-

- (i) The first 50% on Occupation of the first Dwelling to be Occupied
- (ii) The remaining 50% on Occupation of the 75th Market Housing Unit to be Occupied

17.2 not to Occupy or cause or allow to be Occupied any Dwelling forming part of the Development over and above the number of Dwellings set out in this clause before the Sixth Form Education Contribution or the stated portion of it shall have been paid to WSCC and any Indexation (BCIS) and Interest payable under this Agreement

17.3 The Sixth Form Education Contribution shall be calculated by reference to the following formula:

$\text{DfE Figure} \times (\text{ACP} \times 54\%) = \text{Sixth Form Education Contribution where:}$

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 100% discount for the product from any dwellings provided for Social Rent as future occupants are assumed to be living locally and already service users, as approved by a subsequent Reserved Matters 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 are 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 for flats. For Sixth Form, a factor of 0.54 is applied to the Child Product figure as this is the average percentage of year 11 leavers who continue unto Sixth Form colleges in West Sussex.

DfE Figure = Department for Education (DfE) school building costs per pupil place (for pupils aged 16 to 18) as adjusted for the West Sussex area applicable at the date when the Sixth Form Contribution is paid (which currently for the financial year 2017/2018 is £25,600 updated as necessary by the Royal Institute of Chartered Surveyors Building Cost Information Service All-In Tender Price Index.

18. **LIBRARY CONTRIBUTION**

18.1 The Owner covenants with WSCC:-

18.2 to pay to WSCC the Library Contribution in accordance with the amounts or portions set out below :-

(i) The first 50% on Occupation of the first Dwelling to be Occupied

(ii) The remaining 50% on Occupation of the 50th Dwelling to be Occupied

18.3 not to Occupy or cause or allow to be Occupied any Dwelling forming part of the Development over and above the number of Dwellings set out in this clause before

the Library Contribution or the stated portion of it shall have been paid to WSCC and any Indexation (BCIS) and Interest payable under this Agreement

18.4 The Library Contribution shall be calculated by reference to the following formula:

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

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 100% discount for any dwellings provided for Social Rent as future occupants are assumed to be living locally and already service users, approved pursuant to the Reserved Matters Approval. The following figures are used to calculate the estimated additional persons:

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 sqm. per 1,000 population x the library cost multiplier (which current for the financial year 2017/2018 are 30 sqm. and £4,591 per sqm respectively)

19. FIRE AND RESCUE SERVICE CONTRIBUTION

The Owner covenants with WSCC:-

19.1 to pay to WSCC the Fire and Rescue Service Contribution in accordance with the amounts or portions set out below :-

- (i) The first 50% on Occupation of the first Dwelling to be Occupied
- (ii) The remaining 50% on Occupation of the 50th Dwelling to be Occupied

19.2 not to Occupy or cause or allow to be Occupied any Dwelling forming part of the Development over and above the number of Dwellings set out in this clause before the Fire and Rescue Service Contribution or the stated portion of it shall have been paid to WSCC and any Indexation (BCIS) and Interest payable under this Agreement

19.3 The Fire and Rescue Service Contribution shall be calculated by reference to the following formula:

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

Where

/ = divided by, x = multiplied by

Y = The estimated adjusted increase in population generated by the Development pursuant to the Reserved Matters Approval. The following figures are used to calculate the estimated additional persons:

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 ~~est. of~~ providing additional Fire and Rescue Infrastructure in the Southern Service Division of West Sussex at the time of payment (which, for the 2017/2018 financial year was [REDACTED])

M = the projected population of the Fire and Rescue Service Southern Division of West Sussex in 2016 at the time of the payment (which, for information, for the 2017/2018 financial year was [REDACTED])

20. ADC AND WSCC COVENANTS

20.1 ADC and WSCC covenant with the Owner and the Developer not to use any of the Contributions paid under this Agreement otherwise than for the purposes referred to

for that Contribution and to maintain detailed records and accounts for all expenditure made from the contribution monies

- 20.2 ADC and WSCC covenant with the Owner and the Developer that the Contribution monies will be held in an interest bearing account and that if at the date ten years from the date of receiving the respective Contributions (or if the Contributions are paid in instalments from the date of the last respective instalment) any monies still remain (including any interest accrued) then on request from the Owner or Developer ADC and/or WSCC as appropriate shall return such monies to the party that paid the relevant Contribution
- 20.3 ADC and WSCC covenant with the Owner and the Developer that no more than four other planning obligations under Section 106 of the 1990 Act (including all of those completed since 6 April 2010) provide for or fund or will so provide or fund the specific projects infrastructure or purposes that the Owner or the Developer covenant to provide for or fund under this Agreement

~~20.4 ADC covenants with the Owner that it shall pay the Highways England Contribution paid pursuant to clause { } and the Additional Transport Contribution (if appropriate) to Highways England within 10 working days of receipt of the relevant contribution by ADC~~

21. CERTIFICATES

The Owner and the Developer covenant with WSCC and ADC:

- 21.1 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 Owner and the Developer shall give to ADC notice of the Specified Date not more than seven days after such Specified Date
- 21.2 if the Owner and/or Developer fails to give the notice required under this Clause ~~18~~ 21 then ADC shall be entitled in its absolute discretion to determine the Specified Date and shall give notice to the Owner and Developer of its determination

22. INDEX LINKING

- 22.1 The Owner and the Developer covenant with ADC and WSCC that all contributions payable to ADC shall be Index Linked (RPI) and all contributions payable to WSCC shall be Index Linked (BCIS).

22.2 All Contributions shall be increased by an amount equivalent to Indexation (BCIS) or Indexation (RPI) movements as appropriate from the date of this Agreement until the date on which the relevant Contribution is payable or is paid whichever is the earlier.

23. INTEREST

The Owner and the Developer covenant with ADC and WSCC to pay interest on the Contributions 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 HSBC Bank base rate from time to time.

24. LEGAL AND ADMINISTRATIVE COSTS

The Developer covenants with ADC and WSCC to pay their reasonable respective legal costs as follows:-

Payee	Amount of legal costs
ADC	
WSCC	

25. PAYMENT NOTICE

The parties to this Agreement hereby agree that all payments due under this Agreement shall have attached to them a copy of the Payment Notice contained in Schedule 2 to this Agreement duly completed.

26. GENERAL

The parties agree that:

26.1 nothing in this Agreement constitutes an obligation to grant planning permission

26.2 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

26.3 nothing in this Agreement fetters or restricts the exercise by WSCC and ADC of any of their powers

26.4 the obligations contained in Clauses 5 - ~~16-19~~ are planning obligations for the purpose of Section 106 of the Act

- 26.5 this Agreement constitutes a deed
- 26.6 this Agreement is enforceable by ADC as to Clauses ~~5 – 12~~ and by the WSCC as to Clauses ~~13 – 19~~
- 26.7 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 save for clause 7 relating to the provision of Land for a MUGA for Walberton Parish Council
- 26.8 This Agreement shall apply to the Development as authorised by the Permission issued pursuant to the Application
- 26.9 This Agreement is a local land charge and shall be registered as such by ADC
- 26.10 ADC (at the written request of the Owner or the Developer at any time after the Owner or the Developer have complied with or are discharged from their obligations in this Agreement) is to:
- 26.10.1 Issue written confirmation of compliance or discharge;
- 26.10.2 Immediately cancel all entries made in the register of local land charges in respect of this Agreement
- 26.11 No covenants or obligations contained in this Agreement 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
- 26.12 In this Agreement the words “agreed” and “approved” shall mean agreed and approved in writing
- 26.13 The Owner and the Developer shall upon parting with the fee simple in any part of the Land be released from all obligations rights and duties under the terms of this Agreement insofar as they relate to such part of the Land (save in respect of liability for any antecedent breach of the agreement) and shall upon parting with the entirety of their respective interests in the Land as a whole be released from all liability whatsoever under the terms of this Agreement save insofar as it relates to an antecedent breach of this Agreement
- 26.14 Nothing in this Agreement shall be construed as prohibiting limiting or affecting any right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted by ADC or the Secretary of State on appeal or by reference to him after the date of this Agreement and for the avoidance of doubt any operations works or development in accordance with such a planning permission shall not constitute Commencement under the terms of this Agreement

- 26.15 If the Permission shall expire within the meaning of sections 91, 92 and 93 of the Act or be revoked modified or otherwise withdrawn by ADC then (if the Owner and the Developer so elect) this Agreement shall cease to have further effect but in ceasing to have further effect shall not prejudice any express or implied rights accrued or accruing to the Owner and the Developer by virtue of anything done by ADC or WSCC in connection with or arising from the terms of this Agreement
- 26.16 Nothing in this Agreement shall be construed as imposing any obligation on persons who purchase or Occupy a completed Dwelling or any mortgagee or chargee of any such persons
- 26.17 Nothing in this Agreement shall be enforceable against any party acquiring an interest in the Land solely by way of a registered legal charge or mortgage unless that party takes possession of the Land in which case they will be bound by the obligations of this Agreement as if it were a person deriving title from the Owner provided that at all times the rights and obligations in this clause shall not require any mortgagee or chargee to act contrary to its duties under the charge or mortgage and that ADC and WSCC must give full consideration to protecting the interest of the mortgagee or chargee in respect of moneys outstanding under the charge or mortgage.
- 26.18 If at any time a Deed of Variation is needed to amend any ADC covenants in this Agreement, then WSCC covenants that it will not need to be a party to such deed.

27. 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

28. 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.

29. CONDITIONALITY

29.1 In the event that the Application or any planning condition is subject to an appeal then each planning obligation in this Agreement is conditional upon:

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

29.1.1.1 necessary to make the Development acceptable in planning terms;
and

29.1.1.2 directly related to the Development; and

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

29.1.1.4 complies in all other respects with Regulation 122 of the CIL Regulations;

29.1.2 In the event that the Secretary of State or the planning inspector deciding the appeal expressly states in his decision letter that any individual planning obligation within this 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 Owner shall not be obliged to comply with the terms of that obligation and the remaining clauses will remain in full force and effect provided that severance is achievable.

29.2 In the event that ADC or WSCC adopt a charging schedule under the CIL Regulations prior to Planning Permission being granted, the ~~Owners-Owner~~ shall be released any of the obligations in this Agreement that relate to an item or project included on ADC or WSCC 's Regulation 123 list of infrastructure.

30. FUTURE SECTION 73 CONSENTS

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

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

30.1.2 the definitions of Application, Development and 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;

30.1.3 unless otherwise agreed this Agreement shall not require variation by deed

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

SCHEDULE 1

SCHEDULE 1 – COMMENCEMENT NOTICE

Pursuant to Relevant Clause in Planning Obligation Described Below

I advise you that the Development described below was commenced on the start date as stated in this notice.

Dated this day of 20

Signed

On behalf of

To:	[1] Director of Place Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF (DX:57406 Littlehampton) [2] County Planning Officer, West Sussex County Council, County Hall, Chichester, West Sussex, PO19 1RQ (DX: 30330 Chichester)
From:	
Development at:	
Nature of development:	
Planning Permission Reference:	
Agreement Date:	
Parties subject to the Agreement:	

Start Date:	
-------------	--

SCHEDULE 2

Payment Notice

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

1. Payment to be made by/on behalf of:
2. Development at:
3. Agreement dated:
4. Planning application reference number:
5. Obligation in Agreement (Please continue on a separate sheet if necessary):

Clause no(s):	
Contribution towards:	
Amount of contribution: due:	
Date upon which contribution is due:	
Amount of monitoring sum due/paid:	
Method of Payment: <i>If you require an invoice please provided the full postal address here</i>	

SCHEDULE 3

Affordable Housing Providers approved by ADC

Affinity Sutton

(Steven Connolly)

Cams Hall

Cams Hill

Fareham

Hampshire

PO16 8AB

[REDACTED]

[REDACTED]

The Guinness Partnership

(Claudette Rawlinson)

[REDACTED]

33 East Street

Havant

Hampshire

PO9 1AA

[REDACTED]

The Hyde Group

Telecom House

125 – 135 Preston Road

Brighton

West Sussex

BN1 6AF

[REDACTED]

Worthing Homes

(Damian Haley)

[REDACTED]

Davidson House

North Street

Worthing

West Sussex

[REDACTED]

Stonewater

(Jackie Burton)

[REDACTED]

[REDACTED]

Southern Housing Group

Spire Court

Albion way

Horsham

West Sussex

[REDACTED]

Saxon Weald

(Stephen Humphreys)

Saxon Weald House

38-42 Worthing Road

Horsham

West Sussex

RH12 1DT

[REDACTED]

[REDACTED]

[REDACTED]

Hastoe

Karen Hillhouse

[REDACTED]

[REDACTED]

SCHEDULE 4

SCHEDULE 4

DEED OF NOMINATION

DATED

20

and

ARUN DISTRICT COUNCIL

DEED OF NOMINATION

for

) rented units

at

West Sussex

Ref:

THIS DEED OF NOMINATION RIGHTS is made the day of 20

BETWEEN

- (1) (“the Registered Provider ” “RP”
- (2) **ARUN DISTRICT COUNCIL** of Arun Civic Centre Maltravers Road Littlehampton
West Sussex BN15 7LF

1 **DEFINITIONS**

In this Deed :

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

1.2 “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.

1.3 “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).

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

1.5 “Rented Units” means residential units in the form of flats/houses.

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

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

1.8 “Vacancy Notice” means a written notice given by the RP to the Council (in a form to be agreed between the RP and the Council within five weeks from the date of this Deed) 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.

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

1.9.1 moved to other accommodation either by transfer or decant provided by the RP;

1.9.2 moved to other accommodation under a reciprocal arrangement provided by another registered social landlord registered with the Housing Corporation under the Housing Act 1996.

1.10 “**Void Notice**” means a written notice given by the RP to the Council (in a form to be agreed between the RP and the Council within five weeks from the date of this Deed) 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 ten 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 RP 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 ten working days of receipt of the Vacancy Notice.

3.6 The RP shall within five working days of the date of receipt of the Nomination List referred to in clause 3.3 select a Nominee from the Nomination List in priority order and shall use its reasonable endeavours to arrange viewing of the relevant Rented Unit and offer a Tenancy Agreement to such selected Nominee.

3.7 If the selected Nominee fails to enter into a Tenancy Agreement within five working days of receipt of the RP's offer of a Tenancy Agreement such selected Nominee shall be deemed to have rejected the RP's offer and the RP 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 RP's offer of a Tenancy Agreement within the time prescribed by clause 3.7 then the RP 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 RP 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 RP'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 RP has reasonable cause to believe it will become a Void then and in each case:

3.10.1 the RP shall serve a Void Notice in respect of the relevant vacant Rented Unit; and

3.10.2 within ten working days of receipt of the said notice the Council shall serve upon the RP the Nomination List setting out a list of Subsequent Nominees which shall contain the information referred to in clause 3.4.

3.10.3 The RP 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 ten working days of receipt of the Void Notice.

3.10.4 Upon receipt of the Nomination List referred to in clause 3.10 the RP shall follow the procedure mutatis mutandis set out in clauses 3.6 to 3.8.

3.11 The RP 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

3.12 The RP shall give notification to the Council of the occurrence of the following events within five working days of their occurrence:

- 3.12.1 a Nominee or Subsequent Nominee failing to view a Rented Unit within 10 working days of an offer being made;
- 3.12.2 a Nominee or Subsequent Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Agreement;
- 3.12.3 a Nominee or Subsequent Nominee accepting an offer of a Tenancy Agreement;
- 3.12.4 a person accepting an offer of a tenancy from the RP;
- 3.12.5 the RP rejecting a Nominee or Subsequent Nominee in accordance with clause 3.20.
- 3.13 In the event of a notice being served pursuant to clause 3.12 then the name of such Nominee or Subsequent Nominee shall be removed from the Nomination List.
- 3.14 Within ten working days of the Council receiving notice served in accordance with clause 3.12 above save for notice under 3.12.4 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.
- 3.15 If the Council shall within the period mentioned in clause 3.16 notify the RP that the Council then has no suitable Nominee or Subsequent Nominee the Council shall advise the RP of a suitable replacement Nominee or Subsequent Nominee as soon as reasonably practicable.
- 3.16 The RP 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.
- 3.17 On 1 April 1 July 1 October and 1 January in each year the RP shall serve the Council with details of the letting activities of the Rented Units in a format to be agreed between the RP and the Council.
- 3.18 The RP 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 RP the grant of an Assured Tenancy to such Nominee would be in contravention of the RP's registered rules or its letting criteria.
- 3.19 The Council shall immediately notify the RP in writing if any Nominee or Subsequent Nominee is withdrawn from the Nomination List.
- 3.20 When calculating percentage for the purposes of this Deed percentage equal to or in excess of 0.5 shall be rounded up and percentages less than 0.5 shall also be rounded up.

3.21 The Council and the RP agree that the nomination ;rights contained in this Deed may be varied from time to time but only by agreement in writing by the parties.

4 NOTICES

- 4.1 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 RP 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 MOTGAGEES 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 RP agrees with the Council to pay the reasonable legal costs which the Council incurs in preparing and entering into this deed.

9 AGREEMENTS AND DECLARATIONS

The parties agree:

- 9.1 nothing in this deed fetters or restricts the exercise by the Council of any of its powers; and

9.2 the obligations contained in this Deed are covenants for the purpose of s33 of the Local Government (Miscellaneous Provisions) Act 1982.

EXECUTED as a **DEED** by

acting by:

Director

Director/Secretary

SEALED with the **COMMON SEAL** of

ARUN DISTRICT COUNCIL in the

presence of:

.....

SCHEDULE 5

HIGHWAY WORKS

The Highway Works shall include:

- 1 Dropped kerb crossing improvements at The Street opposite William Brooker Yard
- 2 Dropped kerb crossing improvements at The Street outside the Baptist church
- 3 Dropped kerb crossing improvements at The Street close to Dairy Lane
- 4 Improvements the eastern bus stop on Yapton Lane, to include enhanced crossing facilities and waiting area
- 5 Improvements to gateway features on Yapton Lane and Tye Lane

~~SCHEDULE 6~~

SCHEDULE 6

ADDITIONAL HIGHWAY WORKS

The Additional Highway Works shall include:

1. Improvements to the A27/Yapton Lane junction to provide an extended right turn facility as shown in principle on Drawing ITB11324-GA-014 Rev C (appended to this Agreement at Appendix 2)

SCHEDULE 7

TRANSPORT FACILITIES

The Transport Facilities shall include:

- 1 [REDACTED] towards the delivery of a footpath to connect the Land to the ~~Community Centre~~community centre across the recreation ground
- 2 [REDACTED] towards improvements to public footpath 350 (as defined in the WSCC Definitive Map and Statement)
- 3 [REDACTED] towards a Traffic Regulation Order to amend the speed limit on Yapton Lane

APPENDIX 1

PLAN

APPENDIX 2

HIGHWAYS DRAWINGS

SIGNED and DELIVERED

by DAVID HENRY TUPPER

as a deed in the

presence of:

SIGNED and DELIVERED

by HILARY JENNIFER TUPPER

as a deed in the

presence of:

SIGNED and DELIVERED

by ANDREW WILLIAM BROOKE

as a deed in the

presence of:

SIGNED and DELIVERED

by DAVID MARK SPOFFORTH

as a deed in the

presence of:

SEALED with the COMMON SEAL

of ARUN DISTRICT COUNCIL

in the presence of:

Seal Book No:

Authorised Signatory Signature

Name

Job title

EXECUTED as a deed by WATES DEVELOPMENTS LIMITED

acting by a director and its secretary/two directors

Signature of Director

Signature of Director/Secretary

SEALED with the COMMON SEAL

of WEST SUSSEX COUNTY COUNCIL

in the presence of:

Dated: _____ **2017**

Between:

- [1] David Henry Tupper, Hilary Jennifer Tupper, Andrew William Brooke and David Mark Spofforth**
- [2] Wates Developments Limited**
- [3] Arun District Council**
- [4] West Sussex County Council**

AGREEMENT

under Section 106 of the Town & Country Planning Act 1990

and other powers

Land East of Tye Lane, Walberton

Providing:

affordable housing; highway improvements including junction works;

public open space; community facilities; school; police; sport and leisure; library and fire services provision

Arun District Council

Arun Civic Centre

Maltravers Road

Littlehampton

West Sussex BN17 5LF

DX 57406 LITTLEHAMPTON

Reference: WA/44/17/OUT

This Deed of Agreement is dated _____ 2017 and is made between:

- 1 **David Henry Tupper** and **Hilary Jennifer Tupper** of Littleton Farm, Upwaltham, Petworth, West Sussex GU28 0IX and **Andrew William Brooke** of Wisteria House, Market Square, Petworth, West Sussex GU28 0AJ and **David Mark Spofforth** of 52 Richmond Road, Worthing, West Sussex BN11 1RP ("the Owner")
- 2 **Wates Developments Limited** (Co. Regn. No. 0441484) of Wates House, Station Approach, Leatherhead KT22 7SW ("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, Chichester, West Sussex, PO19 1RQ ("WSCC")

1. **BACKGROUND**

- 1.1 The Owner is the registered proprietor under title number WSX267804 of part of the Land shown for identification purposes only shaded green on the Plan and David Henry Tupper is the registered proprietor under title number WSX314358 of the remaining part of the Land shown for identification purposes only shaded purple on the attached Plan.
- 1.2 The Land is subject to a contract in favour of the Developer.
- 1.3 ADC is the local planning authority and the local housing authority and the authority responsible for providing leisure and recreation services.
- 1.4 WSCC is the strategic planning authority, the local highway authority the local education authority and the authority responsible for providing library and fire and rescue services.
- 1.5 The Developer made the Application to carry out the Development
- 1.6 ADC have resolved to grant planning permission pursuant to the Application to carry out the Development

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 our 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 the successors in title to that party and to any deriving title through or under that party and in the case of the WSCC and ADC the successors to their respective functions.
- 2.9 The following expressions shall unless the context otherwise requires have the following meanings:

“the Act” means the Town & Country Planning Act 1990

“Additional Highway Works” means the highway works described in Schedule 6 of this Agreement

“Additional Transport Contribution” means the additional transport contribution in the sum of £180,000 (one hundred and eighty thousand pounds) as referred to at clause 12 towards improvements to the A27 corridor

“Affordable Housing” means affordable housing as defined in Annex 2 of the Glossary of the National Planning Policy Framework dated 27 March 2012 as amended from time to time to include Affordable Rented Housing and Intermediate Housing and to be provided in the amounts and tenures that follow or such other mix as is agreed between ADC and the Developer and/or the Owner:-

Affordable Rented Housing: 26 and
Intermediate Housing: 26

9 x 1 bed flats (*rented*)
4 x 1 bed flats (*intermediate*)

5 x 2 bed flats (*rented*)
7 x 2 bed flats (*intermediate*)
5 x 2 bed houses (*rented*)
7 x 2 bed houses (*intermediate*)
5 x 3 bed houses (*rented*)
8 x 3 bed houses (*intermediate*)
2 x 4 bed houses (*rented*).

“Affordable Housing Units” means up to 52 Dwellings being 30% of the total number of Dwellings which are being used for Affordable Housing and in accordance with the tenure split of 50% Affordable Rented Housing and 50% Intermediate Housing and “Affordable Housing Unit” shall be construed accordingly

“Affordable Housing Standard” means the HCA building standard applicable at the date of the Reserved Matters Application or equivalent or replacement or successor standard adopted by the successor body to the HCA

“Affordable Housing Provider” means a provider of affordable housing registered with the HCA and appearing within the Arun District Council List of Approved Affordable Housing Providers attached at Schedule 3 or specifically approved in writing for the purposes of the present Agreement which can include ADC itself

“Affordable Rent” means Affordable Housing Units that will be let at an affordable rent which will be no higher than 80% of the open market rental value (including any service charge) paid in the district for the unit type such rent to be in accordance with guidance issued by the HCA from time to time and the National Planning Policy Framework 2012

“Affordable Rented Housing” means Affordable Housing to be provided as either Affordable Rent or Social Rent

“the Application” means the application for outline planning permission for the Development validated by ADC on 21 June 2017 and allocated reference number WA/44/17/OUT

“Chargee” means any mortgagee or chargee of the Affordable Housing Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or any other person appointed under any security documentation to enable such mortgagee or chargee of the Affordable Housing Provider to realise its security or any administrator (howsoever appointed) including a housing administrator appointed pursuant to Chapter 5 of Part 4 of the Housing

and Planning Act 2016 (each a Receiver) of the whole or any part of the Affordable Housing Units

“Commencement Notice” means the form of notice annexed to this Agreement as Schedule 1 and to be addressed to ADC’s Head of Planning Services and WSCC’s County Planning Officer or equivalent successor posts as appropriate

“Community Facilities Contribution” means the contribution in the sum of [REDACTED] towards community facilities to make good a deficiency in service provision arising from the Development and in particular to be used for :-

- (1) [REDACTED] wards the upgrade of the existing Sports pavilion including double glazing, internal and external repainting, replacement guttering, retiling the showers & toilets, loft insulation, new flooring and curtains, new tables and chairs, upgraded lighting and heating.
- (2) [REDACTED] wards the upgrade of the existing Village Hall including internal painting, upgraded kitchen, lighting and central heating, a proper sound system, new window and stage curtains and a paved patio area.
- (3) [REDACTED] towards the resurfacing of the existing Village Hall car park.

“Completed” means the issue of a certificate of completion by the County Council and/or Highways England (as appropriate) in respect of the Highways Works and/or the Additional Highway Works (as appropriate) but excluding the 12 month maintenance period preceding issue of the final certificate confirming adoption

“Contributions” means the Fire and Rescue Contribution the Library Contribution the Police Contribution the Primary Education Contribution the Community Facilities Contribution the Secondary Education Contribution the Sixth Form Education Contribution the Sport and Leisure Contribution and the Transport Contribution

“the CIL Regulations” means the Community Infrastructure Levy Regulations 2010 (as amended)

“Deed of Variation” means a deed to vary this Agreement under Section 106 and S106A of the Act

“the Development” means the development of the Land to accommodate up to 175 dwellings, new vehicular access, together with associated car parking, landscaping and community facilities to include allotments, play space and community orchard as set out in the Application

“Dwellings” means any dwelling to be erected on the Land pursuant to the Permission including for the avoidance of doubt any flats or apartments

“Fire and Rescue Contribution” means the fire and rescue contribution calculated as referred to in Clause 19 to make good a deficiency in fire and rescue provision arising from the Development and in particular to be used for the re-development or re-location of fire stations and associated vehicles and equipment in West Sussex Fire Rescue Services Southern Area serving Walberton

“HCA” means the Homes and Communities Agency (or any equivalent, replacement or successor agency)

“Highways England” means the highways authority responsible for the maintenance of the A27

“Highways England Contribution” means the contribution in the sum of £400,000 towards the A27 / A29 Fontwell Avenue / Arundel Road junction improvements in general accordance with the scheme of works shown in principle on Drawing ITB11324-GA-015 Rev C (appended to this Agreement at Appendix 2) or such alternative scheme as Highways England considers necessary to achieve improvement of the junction

“the Highway Works” means the highway works described in Schedule 5 of this Agreement

“Indexation (BCIS)” means linked to movements in the All-in Tender Price Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors to include any applicable local or regional weighting or such other index agreed between the parties between the date hereof and the date of actual payment and “Index Linked (BCIS)” shall be construed accordingly

“Indexation (RPI)” means linked to movements in the rate of inflation as measured by the All Items Retail Price Index published by the Office for National Statistics or any other department or ministry or other government body upon which the duties in connection with the indices devolves to include any applicable local or regional weighting or such other index agreed between the parties between the date hereof and the date of actual payment and “Index Linked (RPI)” shall be construed accordingly

“Intermediate Housing” means Affordable Housing which complies with the definition of intermediate housing in annex 2 of the National Planning Policy Framework (which may include Shared Ownership Housing, other low cost homes

for sale and intermediate rent as defined in section 90(4) of the Housing and Regeneration Act 2008, but not Affordable Rent);

“Land” means all the land shown for identification purposes only edged red on the Plan

“Library Contribution” means the library contribution calculated as referred to in Clause 18 to make good a deficiency in provision arising from the Development and in particular to be used towards enhancing library space with improved digital access at Littlehampton Library

“Market Housing Unit” means any Dwelling which is general market housing for sale on the open market and which is not an Affordable Housing Unit

“MUGA” means Multiple Use Games Area the site and land for which shall be provided by the Owner located to the north of the Walberton Recreation Ground, and east of the Walberton and Binsted CE Primary School and with a minimum play area of 1,000sqm in accordance with the terms of the Agreement

“Nominations Agreement” means a nomination agreement substantially in the form of the draft Deed of Nomination Rights attached to this Agreement at Schedule 4

“Occupation” means beneficial occupation of Dwellings other than occupation for the purposes of construction fitting out security marketing or repair and “Occupied” and “Occupy” shall be construed accordingly

“Permission” means outline planning permission for the Development pursuant to the Application

“Plan” means the attached plan marked ‘Plan’ appended at Appendix 1 of this Agreement

“Police Contribution” means the police contribution in the sum of £22,709.91 (twenty two thousand and seven hundred and nine pounds ninety one pence) as referred to at Clause 8 to make good a deficiency in provision arising from the Development and in particular to applied as follows :-

- (i) [REDACTED] towards the purchase of an additional vehicle for use by the Walberton Neighbourhood Policing Team.
- (ii) [REDACTED] towards the costs of an additional officer to work in the Walberton Neighbourhood Policing Team.

- (iii) [REDACTED] towards the cost of 1 additional support staff member to be based at Bognor Regis Police station.
- (iv) [REDACTED] towards the cost of siting or posting additional police officers/staff at Bognor Regis Police Station.

“Primary Education Contribution” means the contribution calculated as referred to at clause 13 to be used towards the expansion of Walberton CoE Primary School

“Public Open Space” means that part of the Land provided as open space, to include 8 x local areas of play (“LAP”) and 1 x Local Equipped Area of Play (“LEAP”) referred to in Clause 6

“Qualifying Occupiers” means persons who qualify for Affordable Housing within the terms of 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

“Reserved Matters Application” means an application under the Act for approval of reserved matters reserved under the Planning Permission for subsequent approval

“Reserved Matters Approval” means the approval of reserved matters reserved under the Planning Permission and pursuant to which Development is Commenced

“Secondary Education Contribution” means the contribution calculated as referred to at clause 16 to be used towards the expansion of Omiston Six Villages Academy

“Section 278 Agreement” means a highways agreement under section 278 of the Highways Act 1980

“Section 73 Consent” means any application made by the Developer or the Owner under section 73 of the Act relating to the Permission

“Shared Ownership Housing” means Affordable Housing Units which are Occupied by persons under shared ownership arrangements as defined by Section 70(4) of the Housing and Regeneration Act 2008 where those persons have the opportunity to purchase all or substantially all of the equity in the Affordable Housing Units at a later date or such other equity sharing or retention terms from time to time approved by ADC

“Sixth Form Education Contribution” means the contribution calculated as referred to at clause 17 to be used towards the expansion of St Philip Howard Catholic High School’s Sixth Form

“Social Rent” means Affordable Housing available for rent as social rented housing for which guideline target rents are determined through the national rent regime

“Specified Date” means the date upon which an obligation arising under this Agreement is due to be performed.

“Sport and Leisure” means the sport and leisure contribution in the sum of [REDACTED] (seventy seven thousand and seven hundred and forty three pounds) as referred to at clause 9 to be used towards the provision of a sports hall to provide additional multi-use health and fitness/studio space and dry changing to increase capacity and overall customer experience at Arun Leisure Centre Bognor Regis

“Statutory Undertaker” means any public gas transporter, water or sewerage undertaker, electricity supplier, public telecommunications operator or other body performing a statutory undertaking

“Transport Contribution” means the transport contribution in the sum of [REDACTED] (eighty eight thousand five hundred pounds) referred to at clause 14 to be used towards the provision of the transport facilities described in Schedule 7

3. **ENABLING PROVISIONS**

This Agreement is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, s1 Localism Act 2011 and all other enabling powers.

4. **COMMENCEMENT**

- 4.1 This Agreement shall come into effect upon the date of grant of the Permission but the obligations in Clauses 5 – 10 and 13 – 19 shall become effective only on the Commencement of the Development.
- 4.2 On Commencement of the Development the Owner will give to ADC and WSCC the Commencement Notice
- 4.3 The Owner shall provide written notice of not less than 28 days to ADC and WSCC prior to the Occupation of the first Market Housing Unit to be Occupied

COVENANTS IN FAVOUR OF ADC

5. PROVISION OF ON SITE AFFORDABLE HOUSING

The Owner covenants with ADC:-

- 5.1 That the location tenure and mix of the Affordable Housing Units within the Development shall be as shown on a plan ('Affordable Housing Scheme') to be agreed in writing by the Owner or the Developer and ADC as part of the Reserved Matters Application
- 5.2 Unless otherwise agreed in writing with ADC not to Occupy or permit or allow the Occupation of more than 70% of the Market Housing Units until:
 - 5.2.1 all of the Affordable Housing Units have been constructed in accordance with the Permission and made ready for residential occupation, and
 - 5.2.2 all of the Affordable Housing Units have been transferred (either freehold or leasehold for a period of not less than 165 years) to an Affordable Housing Provider on terms which ensure that the Affordable Housing Units are and remain bound by the obligations in this Clause.
- 5.3 The Affordable Housing Units shall be constructed to meet the Affordable Housing Standard
- 5.4 Subject to Clause 5.11 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 Qualifying Occupier of any of the Affordable Housing Units but to all subsequent Occupiers of them.

FIRST OFFER TO TRANSFER AFFORDABLE HOUSING

- 5.5 The Owner and Developer shall make an offer ("the First Offer") to an Affordable Housing Provider which offer shall include:
 - 5.5.1 A sale of land contract
 - 5.5.2 A draft transfer
- 5.6 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 TO TRANSFER AFFORDABLE HOUSING

- 5.7 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 Owner shall make a second offer to another Affordable Housing Provider to enter into a sale contract for the 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”)

IF SECOND OFFER FAILS PAYMENT OF AFFORDABLE HOUSING COMPENSATION SUM

- 5.8 In the event the Second Offer not being accepted within the Second Offer Period then the Owner will:

5.8.1 apply to ADC in writing for the Affordable Housing Scheme to be varied in relation to the tenure and the unit mix only. Permission for a variation of the Affordable Housing Scheme shall not be unreasonably withheld by ADC PROVIDED ALWAYS that ADC is satisfied (following submission of such evidence as may be reasonably required) that the Affordable Housing Scheme is not financially viable AND that the revised scheme will help meet local housing need AND that such variation would not be inconsistent with the Permission; OR

5.8.2 pay to ADC a sum equivalent to the cost of providing the Affordable Housing Units such sum to be £80,000 per each and every Affordable Housing Unit lost to ADC within the District of Arun and the provisions of this Clause 5 shall cease to apply on receipt of that payment by ADC

- 5.9 None of the Affordable Housing Units shall be Occupied until the Affordable Housing Provider has entered into a Nominations Agreement granting nomination rights to ADC

- 5.10 Nothing in this Agreement 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 Owner or Developer in obtaining such public subsidy or other financial support) in respect of the Affordable Housing Units

EXEMPTIONS

- 5.11 The provisions of this Clause 5 above affecting the Affordable Housing Units shall not apply to:

5.11.1 Subject to Clause 5.12, any Chargee or its successor in title; or

5.11.2 Any occupier of an Intermediate Housing Unit where that owner has purchased 100% of the equity in that unit or their successor in title; or

5.11.3 Any occupier of an Affordable Housing Unit who has exercised a right to buy or right to acquire that unit or their successor in title.

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)

MORTGAGEE OR CHARGE IN POSSESSION

5.12 In the event that any Affordable Housing Unit 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 shall be entitled to exercise its power of sale free from the restrictions set out in this Clause provided that the Chargee shall first have followed the procedure set out below:

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

5.12.2 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")

5.12.3 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)

5.12.4 If ADC shall notify the Chargee within the time specified in clause 5.12.3 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 an Affordable Housing Provider.

5.12.5 If ADC shall notify the Chargee within one month of the date of the Offer that it wishes to accept the offer or if within the time specified in clause 5.12.4 ADC gives written notice to the Chargee that arrangements can be made in accordance with clause 5.12.4 then:

- 5.12.5.1 the Chargee shall co-operate with ADC to secure the transfer; and
- 5.12.5.2 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 this clause 5 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.
- 5.12.6 Subject to the provisions of clause 5.12.7 the transfer to ADC or to an Affordable Housing Provider shall be completed within three months of the date of the Offer (or such longer period as may be agreed between the Chargee and ADC) ("the Completion Period).
- 5.12.7 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 this clause 5 that party shall give to the other not less than seven days' written notice of its intention to discontinue.
- 5.12.8 If either:
- 5.12.8.1 ADC fails to give notification to the Chargee within the time specified in clause 5.12.3 or
- 5.12.8.2 having given notification of refusal of the Offer in accordance with clause 5.12.3 ADC fails to give notification to the Chargee within the time specified in clause 5.12.4 ; or
- 5.12.8.3 ADC having complied with the time periods specified in clause 5.12.3 and (in the case of a refusal of the Offer) clause 5.12.4 the transfer to either ADC or to an Affordable Housing Provider shall not be completed within the Completion Period; or

5.12.8.4 ADC shall serve notice of its intention to discontinue under clause 5.12.7.

then the Chargee shall be under no obligation to sell the Affordable Housing Units either to ADC or to an Affordable Housing Provider and shall be entitled to exercise its powers of sale without any of the provisions of clause 5 of this Agreement being binding on the purchaser or purchasers of the Affordable Housing Units or any part thereof or any successor in title hereto.

5.13 ADC shall in formulating or promoting any arrangements referred to in clause 5.12.4 give consideration to protecting the interests of the Chargee in respect of monies outstanding under the charge or mortgage.

6. ON SITE PROVISION OF PUBLIC OPEN SPACE

The Owner covenants with ADC

- 6.1 to provide and lay out the Public Open Space in accordance with a scheme to be approved by ADC as part of the Reserved Matters Application.
- 6.2 to ensure that the Public Open Space is accessible to the public at all times.
- 6.3 to complete the works of provision and laying out in accordance with the scheme approved pursuant to Clause 6.1 and to make the Public Open Space available for use by the public by no later than the first Occupation of the first Dwelling forming part of the Development to be Occupied.
- 6.4 Not to occupy any Dwelling forming part of the Development unless and until the Public Open Space is provided in accordance with this clause
- 6.5 within two months of the completion of the works referred to in Clause 6.3 to transfer the Public Open Space to a management company set up for the purpose of managing and maintaining the Public Open Space ("the Management Company")
- 6.6 to manage and maintain the Public Open Space in perpetuity as public open space.

7. ON SITE PROVISION OF LAND FOR MUGA

The Owner covenants with ADC

- 7.1 to provide land for use as a MUGA in accordance with a scheme to be approved by ADC as part of the Reserved Matters Application.

- 7.2 to ensure that the MUGA is accessible to the public at all times.
- 7.3 to complete the works of provision and laying out in accordance with Clause 7.1 and to make the MUGA available for use by the public by no later than the first Occupation of the first Dwelling forming part of the Development to be Occupied.
- 7.4 not to occupy any Dwelling forming part of the Development unless and until the MUGA is provided in accordance with this clause
- 7.5 within two months of the completion of the works referred to in Clause 7.3 to transfer the MUGA to the Walberton Parish Council for the purpose of managing and maintaining the MUGA such transfer to include covenants on Walberton Parish Council not to make an application to ADC to amend the Permission relating to the MUGA without obtaining the written approval of the Owner and to manage and maintain the MUGA as play area in perpetuity.

8. POLICE CONTRIBUTION

The Owner covenants with ADC:-

- 8.1 to pay to ADC the Police Contribution in the amounts or portions set out below:-
- (i) The first 50% on Occupation of the first Market Housing Unit to be Occupied
 - (ii) The remaining 50% on Occupation of the 75th Market Housing Unit to be Occupied
- 8.2 not to Occupy or cause or allow to be Occupied any Market Housing Unit forming part of the Development over and above the number of Market Housing Units set out in this clause before the Police Contribution or the stated portion of it shall have been paid to ADC and any Indexation (RPI) and Interest payable under this Agreement

9. SPORT AND LEISURE CONTRIBUTION

The Owner covenants with ADC:-

- 9.1 to pay to ADC the Sport and Leisure Contribution in the amounts or portions set out below:-
- (i) The first 50% on Occupation of the first Market Housing Unit to be Occupied
 - (ii) The remaining 50% on Occupation of the 75th Market Housing Unit to be Occupied

- 9.2 not to Occupy or cause or allow to be Occupied any Market Housing Unit forming part of the Development over and above the number of Market Housing Units set out in this clause before the Sport and Leisure Contribution or the stated portion of it shall have been paid to ADC and any Indexation (RPI) and Interest payable under this Agreement

10. **COMMUNITY FACILITIES CONTRIBUTION**

The Owner covenants with ADC -

- 10.1 to pay to ADC the Community Facilities Contribution in accordance with the amounts or portions set out below :-

- (i) The first 50% on Occupation of the first Market Housing Unit to be Occupied
- (ii) The remaining 50% on Occupation of the 75th Market Housing Unit to be Occupied

- 10.2 not to Occupy or cause or allow to be Occupied any Market Housing Unit forming part of the Development over and above the number of Market Housing Units set out in this clause before the Community Facilities Contribution or the stated portion of it shall have been paid to ADC and any Indexation (RPI) and Interest payable under this Agreement

11. **HIGHWAYS ENGLAND CONTRIBUTION**

The Owner covenants with ADC -

- 11.1 That it shall prior to Commencement of the Development enter into a Section 278 Agreement with Highways England to secure the Highways England Contribution

- 11.2 The Section 278 Agreement entered into under clause 11.1 of this Agreement shall contain obligations as follows:

- 11.2.1 Following Commencement of Development Highways England shall issue a payment notice to request payment of the Highways England Contribution (which shall be two months prior to the expected start of the design works relating to the construction at the Fontwell Avenue junction in relation to the planning permission granted under reference WA/22/15/OUT) ("the Payment Notice") and the Owner shall pay to Highways England the Highways England Contribution no later than two months following the issue of the Payment Notice.

- 11.2.2 If by 31 December 2031 the Highways England Contribution or any part of it remains unspent Highways England will covenant to return such unspent contribution to the person who paid the Highways England Contribution

12. ADDITIONAL HIGHWAY WORKS

The Owner covenants with ADC:

- 12.1 That it shall prior to Commencement of the Development enter into a Section 278 Agreement enabling the Owner to undertake and complete the Additional Highway Works prior to the Occupation of the first Market Housing Unit to be Occupied
- 12.2 The Section 278 Agreement entered into under clause 12.1 of this Agreement shall contain obligations as follows:
- 12.2.1 Subject to confirmation from Highways England that the Additional Highway Works are required to be delivered the Owner shall undertake and complete the Additional Highway Works and to the satisfaction of Highways England prior to the Occupation of the Occupation of the 90th Market Housing Unit to be Occupied
- 12.2.2 In the event that Highways England identify the Additional Highway Works are not required to be delivered, the Owner shall pay the Additional Transport Contribution to Highways England prior to Occupation of the 90th Market Housing Unit
- 12.2.3 In the event that the Additional Transport Contribution is paid and if by 31 December 2031 the Additional Transport Contribution or any part of it remains unspent Highways England will covenant to return such unspent contribution to the person who paid the Additional Transport Contribution

COVENANTS IN FAVOUR OF WSCC

13. HIGHWAY WORKS

The Owner covenants with WSCC

- 13.1 to enter into an agreement under section 278 of the Highways Act 1980 enabling the Owner to undertake and complete the Highway Works
- 13.2 to undertake and complete the Highway Works and to the satisfaction of WSCC by no later than the Occupation of the first Dwelling to be Occupied.

- 13.3 not to Occupy or cause or allow to be Occupied any Dwelling built on the Land before the Highway Works shall have been Completed to the satisfaction of WSCC.

14. TRANSPORT CONTRIBUTION

The Owner covenants with WSCC

- 14.1 to pay to WSCC the Transport Contribution on Occupation of the first Dwelling to be Occupied
- 14.2 not to Occupy or cause or allow to be Occupied any Dwelling forming part of the Development before the Transport Contribution shall have been paid to WSCC and any Indexation (BCIS) and Interest payable under this Agreement

15. PRIMARY EDUCATION CONTRIBUTION

The Owner covenants with WSCC:-

- 15.1 to pay to WSCC the Primary Education Contribution in accordance with the amounts or portions set out below :-
- (i) The first 50% on Occupation of the first Dwelling to be Occupied
 - (ii) The remaining 50% on Occupation of the 50th Dwelling to be Occupied
- 15.2 not to Occupy or cause or allow to be Occupied any Dwelling forming part of the Development over and above the number of Dwellings set out in this clause before the Primary Education Contribution or the stated portion of it shall have been paid to WSCC and any Indexation (BCIS) and Interest payable under this Agreement
- 15.3 The Primary Education Contribution shall be calculated by reference to the following formula:

$DfE \text{ Figure} \times ACP = \text{Primary Education Contribution}$ 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 100% discount for the product from any dwellings provided for Social Rent as future occupants are assumed to be living locally and already service users, as approved by a subsequent Reserved Matters 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 are 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 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 (DfE) school building costs per pupil place (for pupils aged 4 to 16) as adjusted for the West Sussex area applicable at the date when the Primary Education Contribution is paid (which currently for the financial year 2017/2018 is £15,666, updated as necessary by the Royal Institute of Chartered Surveyors Building Cost Information Service All-In Tender Price Index.

16. **SECONDARY EDUCATION CONTRIBUTION**

The Owner covenants with WSCC:-

16.1 to pay to WSCC the Secondary Education Contribution in accordance with the amounts or portions set out below :-

- (i) The first 50% on Occupation of the first Dwelling to be Occupied
- (ii) The remaining 50% on Occupation of the 50th Dwelling to be Occupied

16.2 not to Occupy or cause or allow to be Occupied any Dwelling forming part of the Development over and above the number of Dwellings set out in this clause before the Secondary Education Contribution or the stated portion of it shall have been paid to WSCC and any Indexation (BCIS) and Interest payable under this Agreement

16.3 The Secondary Education Contribution shall be calculated by reference to the following formula:

$\text{DfE Figure} \times \text{ACP} = \text{Secondary Education Contribution}$ 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 100% discount for the product from any dwellings provided for Social Rent as future occupants are assumed to be living locally and already service users, as approved by a subsequent Reserved Matters 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 are 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 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 (DfE) school building costs per pupil place (for pupils aged 4 to 16) as adjusted for the West Sussex area applicable at the date when the Secondary School Contribution is paid (which currently for the financial year 2017/2018 is £23,604 updated as necessary by the Royal Institute of Chartered Surveyors Building Cost Information Service All-In Tender Price Index.

17. **SIXTH FORM EDUCATION CONTRIBUTION**

The Owner covenants with WSCC:-

17.1 to pay to WSCC the Sixth Form Education Contribution in accordance with the amounts or portions set out below :-

- (i) The first 50% on Occupation of the first Dwelling to be Occupied
- (ii) The remaining 50% on Occupation of the 75th Market Housing Unit to be Occupied

17.2 not to Occupy or cause or allow to be Occupied any Dwelling forming part of the Development over and above the number of Dwellings set out in this clause before

the Sixth Form Education Contribution or the stated portion of it shall have been paid to WSCC and any Indexation (BCIS) and Interest payable under this Agreement

- 17.3 The Sixth Form Education Contribution shall be calculated by reference to the following formula:

$\text{DfE Figure} \times (\text{ACP} \times 54\%) = \text{Sixth Form Education Contribution}$ 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 100% discount for the product from any dwellings provided for Social Rent as future occupants are assumed to be living locally and already service users, as approved by a subsequent Reserved Matters 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 are 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 for flats. For Sixth Form, a factor of 0.54 is applied to the Child Product figure as this is the average percentage of year 11 leavers who continue unto Sixth Form colleges in West Sussex.

DfE Figure = Department for Education (DfE) school building costs per pupil place (for pupils aged 16 to 18) as adjusted for the West Sussex area applicable at the date when the Sixth Form Contribution is paid (which currently for the financial year 2017/2018 is £25,600 updated as necessary by the Royal Institute of Chartered Surveyors Building Cost Information Service All-In Tender Price Index.

18. LIBRARY CONTRIBUTION

- 18.1 The Owner covenants with WSCC:-

18.2 to pay to WSCC the Library Contribution in accordance with the amounts or portions set out below :-

- (i) The first 50% on Occupation of the first Dwelling to be Occupied
- (ii) The remaining 50% on Occupation of the 50th Dwelling to be Occupied

18.3 not to Occupy or cause or allow to be Occupied any Dwelling forming part of the Development over and above the number of Dwellings set out in this clause before the Library Contribution or the stated portion of it shall have been paid to WSCC and any Indexation (BCIS) and Interest payable under this Agreement

18.4 The Library Contribution shall be calculated by reference to the following formula:

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

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 100% discount for any dwellings provided for Social Rent as future occupants are assumed to be living locally and already service users, approved pursuant to the Reserved Matters Approval. The following figures are used to calculate the estimated additional persons:

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 sqm. per 1,000 population x the library cost multiplier (which current for the financial year 2017/2018 are 30 sqm. and £4,591 per sqm respectively)

19. FIRE AND RESCUE SERVICE CONTRIBUTION

The Owner covenants with WSCC:-

19.1 to pay to WSCC the Fire and Rescue Service Contribution in accordance with the amounts or portions set out below :-

- (i) The first 50% on Occupation of the first Dwelling to be Occupied
- (ii) The remaining 50% on Occupation of the 50th Dwelling to be Occupied

19.2 not to Occupy or cause or allow to be Occupied any Dwelling forming part of the Development over and above the number of Dwellings set out in this clause before the Fire and Rescue Service Contribution or the stated portion of it shall have been paid to WSCC and any Indexation (BCIS) and Interest payable under this Agreement

19.3 The Fire and Rescue Service Contribution shall be calculated by reference to the following formula:

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

Where

/ = divided by, x = multiplied by

Y = The estimated adjusted increase in population generated by the Development pursuant to the Reserved Matters Approval. The following figures are used to calculate the estimated additional persons:

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 the 2017/2018 financial year was £5,530,000).

M = the projected population of the Fire and Rescue Service Southern Division of West Sussex in 2016 at the time of the payment (which, for information, for the 2017/2018 financial year was 429,647).

20. ADC AND WSCC COVENANTS

- 20.1 ADC and WSCC covenant with the Owner and the Developer not to use any of the Contributions paid under this Agreement otherwise than for the purposes referred to for that Contribution and to maintain detailed records and accounts for all expenditure made from the contribution monies
- 20.2 ADC and WSCC covenant with the Owner and the Developer that the Contribution monies will be held in an interest bearing account and that if at the date ten years from the date of receiving the respective Contributions (or if the Contributions are paid in instalments from the date of the last respective instalment) any monies still remain (including any interest accrued) then on request from the Owner or Developer ADC and/or WSCC as appropriate shall return such monies to the party that paid the relevant Contribution
- 20.3 ADC and WSCC covenant with the Owner and the Developer that no more than four other planning obligations under Section 106 of the 1990 Act (including all of those completed since 6 April 2010) provide for or fund or will so provide or fund the specific projects infrastructure or purposes that the Owner or the Developer covenant to provide for or fund under this Agreement

21. CERTIFICATES

The Owner and the Developer covenant with WSCC and ADC:

- 21.1 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 Owner and the Developer shall give to ADC notice of the Specified Date not more than seven days after such Specified Date
- 21.2 if the Owner and/or Developer fails to give the notice required under this Clause 21 then ADC shall be entitled in its absolute discretion to determine the Specified Date and shall give notice to the Owner and Developer of its determination

22. INDEX LINKING

- 22.1 The Owner and the Developer covenant with ADC and WSCC that all contributions payable to ADC shall be Index Linked (RPI) and all contributions payable to WSCC shall be Index Linked (BCIS).

22.2 All Contributions shall be increased by an amount equivalent to Indexation (BCIS) or Indexation (RPI) movements as appropriate from the date of this Agreement until the date on which the relevant Contribution is payable or is paid whichever is the earlier.

23. **INTEREST**

The Owner and the Developer covenant with ADC and WSCC to pay interest on the Contributions 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 HSBC Bank base rate from time to time.

24. **LEGAL AND ADMINISTRATIVE COSTS**

The Developer covenants with ADC and WSCC to pay their reasonable respective legal costs as follows:-

Payee	Amount of legal costs
ADC	
WSCC	

25. **PAYMENT NOTICE**

The parties to this Agreement hereby agree that all payments due under this Agreement shall have attached to them a copy of the Payment Notice contained in Schedule 2 to this Agreement duly completed.

26. **GENERAL**

The parties agree that:

26.1 nothing in this Agreement constitutes an obligation to grant planning permission

26.2 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

26.3 nothing in this Agreement fetters or restricts the exercise by WSCC and ADC of any of their powers

26.4 the obligations contained in Clauses 5 - 19 are planning obligations for the purpose of Section 106 of the Act

- 26.5 this Agreement constitutes a deed
- 26.6 this Agreement is enforceable by ADC as to Clauses 5 – 12 and by the WSCC as to Clauses 13 – 19
- 26.7 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 save for clause 7 relating to the provision of Land for a MUGA for Walberton Parish Council
- 26.8 This Agreement shall apply to the Development as authorised by the Permission issued pursuant to the Application
- 26.9 This Agreement is a local land charge and shall be registered as such by ADC
- 26.10 ADC (at the written request of the Owner or the Developer at any time after the Owner or the Developer have complied with or are discharged from their obligations in this Agreement) is to:
- 26.10.1 Issue written confirmation of compliance or discharge;
- 26.10.2 Immediately cancel all entries made in the register of local land charges in respect of this Agreement
- 26.11 No covenants or obligations contained in this Agreement 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
- 26.12 In this Agreement the words “agreed” and “approved” shall mean agreed and approved in writing
- 26.13 The Owner and the Developer shall upon parting with the fee simple in any part of the Land be released from all obligations rights and duties under the terms of this Agreement insofar as they relate to such part of the Land (save in respect of liability for any antecedent breach of the agreement) and shall upon parting with the entirety of their respective interests in the Land as a whole be released from all liability whatsoever under the terms of this Agreement save insofar as it relates to an antecedent breach of this Agreement
- 26.14 Nothing in this Agreement shall be construed as prohibiting limiting or affecting any right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted by ADC or the Secretary of State on appeal or by reference to him after the date of this Agreement and for the avoidance of doubt any operations works or development in accordance with such a planning permission shall not constitute Commencement under the terms of this Agreement

- 26.15 If the Permission shall expire within the meaning of sections 91, 92 and 93 of the Act or be revoked modified or otherwise withdrawn by ADC then (if the Owner and the Developer so elect) this Agreement shall cease to have further effect but in ceasing to have further effect shall not prejudice any express or implied rights accrued or accruing to the Owner and the Developer by virtue of anything done by ADC or WSCC in connection with or arising from the terms of this Agreement
- 26.16 Nothing in this Agreement shall be construed as imposing any obligation on persons who purchase or Occupy a completed Dwelling or any mortgagee or chargee of any such persons
- 26.17 Nothing in this Agreement shall be enforceable against any party acquiring an interest in the Land solely by way of a registered legal charge or mortgage unless that party takes possession of the Land in which case they will be bound by the obligations of this Agreement as if it were a person deriving title from the Owner provided that at all times the rights and obligations in this clause shall not require any mortgagee or chargee to act contrary to its duties under the charge or mortgage and that ADC and WSCC must give full consideration to protecting the interest of the mortgagee or chargee in respect of moneys outstanding under the charge or mortgage.
- 26.18 If at any time a Deed of Variation is needed to amend any ADC covenants in this Agreement, then WSCC covenants that it will not need to be a party to such deed.

27. 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

28. 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.

29. CONDITIONALITY

29.1 In the event that the Application or any planning condition is subject to an appeal then each planning obligation in this Agreement is conditional upon:

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

29.1.1.1 necessary to make the Development acceptable in planning terms;
and

29.1.1.2 directly related to the Development; and

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

29.1.1.4 complies in all other respects with Regulation 122 of the CIL Regulations;

29.1.2 In the event that the Secretary of State or the planning inspector deciding the appeal expressly states in his decision letter that any individual planning obligation within this 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 Owner shall not be obliged to comply with the terms of that obligation and the remaining clauses will remain in full force and effect provided that severance is achievable.

29.2 In the event that ADC or WSCC adopt a charging schedule under the CIL Regulations prior to Planning Permission being granted, the Owner shall be released any of the obligations in this Agreement that relate to an item or project included on ADC or WSCC 's Regulation 123 list of infrastructure.

30. **FUTURE SECTION 73 CONSENTS**

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

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

30.1.2 the definitions of Application, Development and 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;

30.1.3 unless otherwise agreed this Agreement shall not require variation by deed

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

SCHEDULE 1

SCHEDULE 1 – COMMENCEMENT NOTICE

Pursuant to Relevant Clause in Planning Obligation Described Below

I advise you that the Development described below was commenced on the start date as stated in this notice.

Dated this day of 20

Signed

On behalf of

To:	[1] Director of Place Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF (DX:57406 Littlehampton) [2] County Planning Officer, West Sussex County Council, County Hall, Chichester, West Sussex, PO19 1RQ (DX: 30330 Chichester)
From:	
Development at:	
Nature of development:	
Planning Permission Reference:	
Agreement Date:	
Parties subject to the Agreement:	

Start Date:	
-------------	--

SCHEDULE 2

Payment Notice

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

1. Payment to be made by/on behalf of:
2. Development at:
3. Agreement dated:
4. Planning application reference number:
5. Obligation in Agreement (Please continue on a separate sheet if necessary):

Clause no(s):	
Contribution towards:	
Amount of contribution: due:	
Date upon which contribution is due:	
Amount of monitoring sum due/paid:	
Method of Payment: <i>If you require an invoice please provided the full postal address here</i>	

SCHEDULE 3

Affordable Housing Providers approved by ADC

Affinity Sutton

(Steven Connolly)

Cams Hall

Cams Hill

Fareham

Hampshire

PO16 8AB

[REDACTED]

[REDACTED]

The Guinness Partnership

(Claudette Rawlinson)

[REDACTED]

33 East Street

Havant

Hampshire

PO9 1AA

[REDACTED]

The Hyde Group

Telecom House

125 – 135 Preston Road

Brighton

West Sussex

BN1 6AF

[REDACTED]

Worthing Homes

(Damian Haley)

[REDACTED]

Davison House

North Street

Worthing

West Sussex

[REDACTED]

Stonewater

(Jackie Burton)

[REDACTED]

[REDACTED]

Southern Housing Group

Spire Court

Albion way

Horsham

West Sussex

[REDACTED]

Saxon Weald

(Stephen Humphreys)

Saxon Weald House

38-42 Worthing Road

Horsham

West Sussex

RH12 1DT

[REDACTED]



Hastoe

Karen Hillhouse



SCHEDULE 4

DEED OF NOMINATION

DATED

20

and

ARUN DISTRICT COUNCIL

DEED OF NOMINATION

for

) rented units

at

West Sussex

Ref:

THIS DEED OF NOMINATION RIGHTS is made the day of 20

BETWEEN

(1) (“the Registered Provider ” “RP”

(2) **ARUN DISTRICT COUNCIL** of Arun Civic Centre Maltravers Road Littlehampton
West Sussex BN15 7LF

1 **DEFINITIONS**

In this Deed :

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

1.2 “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.

1.3 “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).

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

1.5 “Rented Units” means residential units in the form of flats/houses.

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

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

1.8 “Vacancy Notice” means a written notice given by the RP to the Council (in a form to be agreed between the RP and the Council within five weeks from the date of this Deed) 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.

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

1.9.1 moved to other accommodation either by transfer or decant provided by the RP;

1.9.2 moved to other accommodation under a reciprocal arrangement provided by another registered social landlord registered with the Housing Corporation under the Housing Act 1996.

1.10 “**Void Notice**” means a written notice given by the RP to the Council (in a form to be agreed between the RP and the Council within five weeks from the date of this Deed) 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 ten 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 RP 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 ten working days of receipt of the Vacancy Notice.

3.6 The RP shall within five working days of the date of receipt of the Nomination List referred to in clause 3.3 select a Nominee from the Nomination List in priority order and shall use its reasonable endeavours to arrange viewing of the relevant Rented Unit and offer a Tenancy Agreement to such selected Nominee.

3.7 If the selected Nominee fails to enter into a Tenancy Agreement within five working days of receipt of the RP's offer of a Tenancy Agreement such selected Nominee shall be deemed to have rejected the RP's offer and the RP 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 RP's offer of a Tenancy Agreement within the time prescribed by clause 3.7 then the RP 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 RP 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 RP'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 RP has reasonable cause to believe it will become a Void then and in each case:

3.10.1 the RP shall serve a Void Notice in respect of the relevant vacant Rented Unit; and

3.10.2 within ten working days of receipt of the said notice the Council shall serve upon the RP the Nomination List setting out a list of Subsequent Nominees which shall contain the information referred to in clause 3.4.

3.10.3 The RP 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 ten working days of receipt of the Void Notice.

3.10.4 Upon receipt of the Nomination List referred to in clause 3.10 the RP shall follow the procedure mutatis mutandis set out in clauses 3.6 to 3.8.

3.11 The RP 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

3.12 The RP shall give notification to the Council of the occurrence of the following events within five working days of their occurrence:

- 3.12.1 a Nominee or Subsequent Nominee failing to view a Rented Unit within 10 working days of an offer being made;
- 3.12.2 a Nominee or Subsequent Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Agreement;
- 3.12.3 a Nominee or Subsequent Nominee accepting an offer of a Tenancy Agreement;
- 3.12.4 a person accepting an offer of a tenancy from the RP;
- 3.12.5 the RP rejecting a Nominee or Subsequent Nominee in accordance with clause 3.20.
- 3.13 In the event of a notice being served pursuant to clause 3.12 then the name of such Nominee or Subsequent Nominee shall be removed from the Nomination List.
- 3.14 Within ten working days of the Council receiving notice served in accordance with clause 3.12 above save for notice under 3.12.4 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.
- 3.15 If the Council shall within the period mentioned in clause 3.16 notify the RP that the Council then has no suitable Nominee or Subsequent Nominee the Council shall advise the RP of a suitable replacement Nominee or Subsequent Nominee as soon as reasonably practicable.
- 3.16 The RP 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.
- 3.17 On 1 April 1 July 1 October and 1 January in each year the RP shall serve the Council with details of the letting activities of the Rented Units in a format to be agreed between the RP and the Council.
- 3.18 The RP 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 RP the grant of an Assured Tenancy to such Nominee would be in contravention of the RP's registered rules or its letting criteria.
- 3.19 The Council shall immediately notify the RP in writing if any Nominee or Subsequent Nominee is withdrawn from the Nomination List.
- 3.20 When calculating percentage for the purposes of this Deed percentage equal to or in excess of 0.5 shall be rounded up and percentages less than 0.5 shall also be rounded up.

3.21 The Council and the RP agree that the nomination ;rights contained in this Deed may be varied from time to time but only by agreement in writing by the parties.

4 NOTICES

- 4.1 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 RP 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 MOTGAGEES 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 RP agrees with the Council to pay the reasonable legal costs which the Council incurs in preparing and entering into this deed.

9 AGREEMENTS AND DECLARATIONS

The parties agree:

- 9.1 nothing in this deed fetters or restricts the exercise by the Council of any of its powers; and

9.2 the obligations contained in this Deed are covenants for the purpose of s33 of the Local Government (Miscellaneous Provisions) Act 1982.

EXECUTED as a **DEED** by

acting by:

Director

Director/Secretary

SEALED with the **COMMON SEAL** of

ARUN DISTRICT COUNCIL in the

presence of:

.....

SCHEDULE 5

HIGHWAY WORKS

The Highway Works shall include:

- 1 Dropped kerb crossing improvements at The Street opposite William Brooker Yard
- 2 Dropped kerb crossing improvements at The Street outside the Baptist church
- 3 Dropped kerb crossing improvements at The Street close to Dairy Lane
- 4 Improvements the eastern bus stop on Yapton Lane, to include enhanced crossing facilities and waiting area
- 5 Improvements to gateway features on Yapton Lane and Tye Lane

SCHEDULE 6

ADDITIONAL HIGHWAY WORKS

The Additional Highway Works shall include:

1. Improvements to the A27/Yapton Lane junction to provide an extended right turn facility as shown in principle on Drawing ITB11324-GA-014 Rev C (appended to this Agreement at Appendix 2)

SCHEDULE 7

TRANSPORT FACILITIES

The Transport Facilities shall include:

- 1 [REDACTED] towards the delivery of a footpath to connect the Land to the community centre across the recreation ground
- 2 [REDACTED] towards improvements to public footpath 350 (as defined in the WSCC Definitive Map and Statement)
- 3 [REDACTED] towards a Traffic Regulation Order to amend the speed limit on Yapton Lane

APPENDIX 1

PLAN

APPENDIX 2

HIGHWAYS DRAWINGS

SIGNED and DELIVERED

by DAVID HENRY TUPPER

as a deed in the

presence of:

SIGNED and DELIVERED

by HILARY JENNIFER TUPPER

as a deed in the

presence of:

SIGNED and DELIVERED

by ANDREW WILLIAM BROOKE

as a deed in the

presence of:

SIGNED and DELIVERED

by DAVID MARK SPOFFORTH

as a deed in the

presence of:

SEALED with the COMMON SEAL

of ARUN DISTRICT COUNCIL

in the presence of:

Seal Book No:

Authorised Signatory Signature

Name

Job title

EXECUTED as a deed by WATES DEVELOPMENTS LIMITED

acting by a director and its secretary/two directors

Signature of Director

Signature of Director/Secretary

SEALED with the COMMON SEAL

of WEST SUSSEX COUNTY COUNCIL

in the presence of:



Land off Yapton Lane, Walberton BN18 0LS	Scale 1:2500
CONTRACT PLAN	Oct 2017

WSX267804

WSX314358



REPRODUCED FROM THE ORDNANCE SURVEY MAP WITH THE PERMISSION OF THE CONTROLLER OF HER MAJESTY'S STATIONERY OFFICE. LICENCE No. 100044286. © CROWN COPYRIGHT RESERVED.	DRAWING ISSUED FOR FEASIBILITY CONSIDERATION AND PLANNING PURPOSES ONLY. DRAWING NOT TO BE USED FOR CONSTRUCTION. I-TRANSPORT LLP ACCEPT NO RESPONSIBILITY FOR ERRORS MADE BY OTHERS IN SCALING FROM THIS DRAWING. MEASUREMENTS SHOULD BE TAKEN FROM FIGURED DIMENSIONS ONLY. CDM REQUIREMENTS CONSIDERED AT FEASIBILITY STAGE ONLY. FURTHER CONSIDERATION REQUIRED BY DETAILED DESIGN TEAM.
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 Grove House, Lutyens Close, Chineham Basingstoke, Hampshire, RG24 8AG www.i-transport.co.uk Tel: 01256 338640 Fax: 01256 338644	C	30.08.17	MC	UPDATES AS PER STAGE 1 RSA COMMENTS	MC	TW	TITLE: PROPOSED EXTENSION TO A27 YAPTON LANE RIGHT TURN	SCALE @ A3: 1:1000	CHECKED: MC	APPROVED: TW	
	B	22.08.17	MC	ADDITIONAL NOTES ADDED	MC	TW		FILE REF: ITB11324	DRAWN: AB	DATE: 23.05.17	
	A	07.07.17	AB	MINOR AMENDMENTS	MC	TW					
	REV	DATE	BY	DESCRIPTION	CHK	APD		PROJECT: LAND EAST OF TYE LANE WALBERTON	CLIENT: WATES DEVELOPMENTS	DRAWING No: ITB11324-GA-014	
	STATUS: FOR PLANNING							PROJECT No: ITB11324 REV: C			

