

DATED 15/12/2022

2022

BINSTED FARMS LIMITED (1)

TO

ARUN DISTRICT COUNCIL (2)

and

WEST SUSSEX COUNTY COUNCIL (3)

UNILATERAL UNDERTAKING

Pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) relating to Land East of Yapton Lane Walberton BN18 0LJ

Planning Application Reference: WA/80/21/OUT

Appeal Reference: APP/C3810/W/22/3299514

Bexley Beaumont Limited

Centurion House, 129 Deansgate, Manchester M3 3WR

Doc Ref: 2022 - 1863

THIS UNDERTAKING is made this 15th day of December 2022

FROM:-

1. **BINSTED FARMS LIMITED** (Co. Regn. No. 00590446) care of Green Wright Chalton Annis, 1 Tarrant Street, Arundel, West Sussex BN18 9AZ and of Church Farm, Binsted, Arundel, West Sussex BN18 0LP and of 8 The Drive, Hove, East Sussex BN3 3JT (hereinafter referred to as the "Owner"); and

TO

2. **ARUN DISTRICT COUNCIL** of the Council Offices, Maltravers Rd, Littlehampton BN17 5LF (hereinafter referred to as the "District Council"); and

3. **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, PO19 1RQ (hereinafter referred to as the "County Council")

INTRODUCTION

- (1) The District Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- (2) The County Council is the highway authority for the purposes of the Highways Act 1980 for the area in which the Site is situated.

- (3) The Owner is the freehold owner of the Site under Title Number WSX330568 registered at HM Land Registry.
- (4) The Application was submitted to the District Council for approval in respect of the Development of the Site and was validated on the 6th September 2021.
- (5) The District Council refused the Application on the 6th December 2021.
- (6) A Planning Appeal has been submitted to the Secretary of State against the District Council's refusal of the Application and for the matter to be determined by an Inspector appointed by the Secretary of State.
- (7) The Owner believes that subject to clause 13 of this Deed the Planning Obligations contained in this Deed are necessary to make the Development acceptable in planning terms directly relate to the Development and fairly and reasonably relate in scale and kind to the Development in accordance with Regulation 122 of the Community Infrastructure Regulations 2010 (as amended).
- (8) The Owner has subject to Clause 13 hereof agreed to offer this Deed so as to create a Planning Obligation for the purposes of section 106 of the 1990 Act in favour of the District Council and the County Council and have agreed to be bound by and observe and perform the covenants hereinafter contained in the event the Secretary of State or his appointed Inspector allow the Planning Appeal.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

"the 1990 Act"	means the Town and Country Planning Act 1990 as amended;
"Affordable Housing"	means affordable housing, including Affordable Housing for Rent Social Rented Units and Shared Ownership Units made available to designated persons or other specific eligible households in accordance with the terms of this Deed whose needs are not met by the market as set out within the National Planning Policy Framework ("NPPF") current at the date of this Deed or any guidance notes or circulars which may supersede it;
"Affordable Dwelling"	means the Dwellings provided on Site that are to be Affordable Housing and provided in accordance with the

	Affordable Housing Scheme which shall comprise a combination of the following; (i) 37% (thirty seven percent) Affordable Housing for Rent; and (ii) 38% (thirty eight percent) Social Rented Housing; and (iii) 25% (twenty five percent) Shared Ownership Units to be provided in accordance with the provisions of Part 1 of Schedule 1 of this Deed and reference to "Affordable Dwellings" shall be construed accordingly;
"Affordable Housing Scheme"	means a scheme to be submitted to the District Council in accordance with the provisions of Part 1 of Schedule 1 to this Deed setting out the number, location, size, tenure, type and specification (including Standards) of the Affordable Dwellings to

	be constructed on the Site;
"Affordable Housing for Rent"	means the Affordable Dwellings to be provided by a Registered Provider in accordance with the NPPF (current at the date of this Deed) whereby the rent to be charged shall not exceed 80% of gross local market rents including all service charges (where applicable) for properties of similar size and location in the locality and reference to "Affordable Rented Units" to be construed accordingly;
"Allocation Policy"	means the District Council's allocation scheme in respect of the Affordable Housing Dwellings;
"Application"	means the outline planning application submitted to the District Council and allocated reference number: WA/80/21/OUT Planning Permission in respect of the Development for

	residential development of up to 75 residential dwellings with all matters reserved except for access;
"Approved Purchaser(s)"	means a person or persons in need of a Shared Ownership Unit and who are registered with the Help to Buy Agent and whose needs are not met by the market (or as otherwise approved in writing by the District Council) and who shall occupy the Shared Ownership Unit as their principal or main home and have a Local Connection;
"BCIS Index"	means the All in Tender Price Index published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors (if such Index is at the relevant time no longer published) such other comparable index or basis for indexation as the Council may specify;

"Bus Works"	means the upgrade to the following two existing bus stops by carrying out the following works via an agreement under Section 278 of the Highways Act 1980; (i) Bus stop 1 (South of the site access on the east side of Yapton Lane) provision of a new flag and post, with raised kerb and road markings; and Bus stop 2 (south of the site access on the west side of Yapton Lane); provision of a raised kerb and road markings; Such works to be carried out in accordance with the provisions of Part 3 of Schedule 2 to this Deed;
"Commencement of Development"	implementation of the Planning Permission by the carrying out of any material operation within the meaning of Section 56 of the 1990

	Act but shall not include operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial works in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and expressions such as "Commence Development" and "Commenced Development" shall be construed accordingly;
"Commencement Notice"	means the notice in the form of the attached at Appendix 2 to be served on the District Council and County Council pursuant to this Deed;

"Development"	means development to be undertaken in accordance with the Planning Permission;
"Dwelling"	means any dwelling (including a house, a flat or a maisonette and whether or not comprising Affordable Housing) to be constructed pursuant to the Planning Permission and reference to "Dwellings" shall be construed accordingly;
"Eligible Person"	means a person or persons who does not have a financial interest in any other property and is not able to resolve their housing needs on the open market within the Arun District and who additionally satisfies one or more of the following criteria; i. a person or applicant or their partner are currently living in the Arun District

	and have lived in the Arun District permanently for at least 5 years immediately prior to the application date; or are currently living in the Arun District and have lived permanently in the Arun District for 10 years out of the last 15 years; ii. a person or their partner has worked on a full or part time basis (24 hours per week) in the Arun District for the past 2 years and remains in employment in the Arun District; iii. a person or their partner needs to be in the Arun District to give or receive regular daily support from or for a close relative (parents, adult children,
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	brother and/or sister). This support must be required on an ongoing long term basis and cannot be provided by other family members or available support agencies. The family member must be permanently resident in Arun District and have lived here permanently for at least 10 years immediately prior to the application date; iv. a person has been accepted as being owed the main homeless duty. The Homelessness main duty is defined as the main duty under Section 193 Part 7
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	of the Housing Act 1996 (as amended by the Homelessness Act 2002 and the Homelessness Reduction Act 2017) or any successor legislation;
	v. a young person who is owed 'leaving care' duties by West Sussex County Council (WSSCC) under section 23C of the Children Act 1989
	vi. Other exceptional circumstances that the District Council might reasonably consider constitutes a local connection as agreed with the Housing Services Manager;

"Health and Fitness Contribution"	means the sum to be calculated by applying £128 (one hundred and twenty eight pounds) per Dwelling Index Linked provided this contribution shall not exceed in aggregate the sum of £9,600 (nine thousand six hundred pounds) Index Linked for up to 75 Dwellings erected as part of the Development and is to be applied towards the health and fitness facilities within the vicinity of the Development and to be paid in accordance with the provisions Part 3 Schedule 1;
"Homes England"	means the non-departmental public body responsible for creating thriving communities and affordable homes in England and which is the Regulator of Social Housing within the meaning of section 81 of the Housing and Regeneration Act 2008

	or such other body that may replace it in either function;
"Index"	means the "All Items" index figure of the Index of BCIS Index and reference to "Indexation" is to be construed accordingly;
"Index Linked"	shall mean that the relevant sum to be index-linked by reference to the Index shall be increased (but not decreased) proportionately in line with any increase in the Index during the period from and including the date of this Deed to and including the date of actual payment;
"Interest"	means interest applied as follows; (i) at 4% (four percent) above the Bank of England base rate calculated on a day to day basis in relation to all late

	payments to the District Council; or (ii) at 4% (four percent) above the Bank of England base rate calculated on a day to day basis in relation to all late payments to the County Council;
"LAP"	means a local area of play which shall form part of the Public Open Space and as shown on the Public Open Space Plan;
"LEAP"	means a local equipped area of play which shall form part of the Public Open Space and as shown on the Public Open Space Plan;
"Local Housing Allowance"	means the rent rate set annually by the Valuation Office (or any successor body thereof) for the area within which the Affordable Rented Housing Units/Social Rented Units are located

	and which is used to calculate the maximum housing benefit entitlement for each tenant thereof or any scheme which supersedes it;
"Management Company"	means a company or body who will take over responsibility for the future maintenance of the Public Open Space and which definition may include a residents association established for this purpose, a management company or a private limited company
"Market Value"	means the estimated amount for which a local asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had each acted knowledgeably prudently and without compulsion on the basis that it is

	assessed in accordance with the Royal Institution of Chartered Surveyors (RICS) Valuation – Professional Standards 2017 UK Edition commonly known as the Red Book (or any subsequent updated version);
"Mortgagee"	means any mortgagee or chargee (or any receiver including an administrative receiver) or administrator appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security (each a 'Receiver') of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such mortgage or chargee or Receiver;
"NDSS"	means the Technical Housing Standards Nationally Described Space Standard published by the

	Department for Communities and Local Government and current at the Date of this Deed (or such document as shall succeed or replace it) as set out in Appendix 3 of this Deed;
"Occupation"	means the date upon which a Dwelling is first Occupied other than for the purposes of marketing or fitting out and the term "Occupied" or "Occupy" shall be construed accordingly;
"Open Market Dwelling"	means each Dwelling that is not an Affordable Dwelling and reference to Open Market Dwellings shall be construed accordingly;
"Payment Notice"	means the notice in the form of the attached at Appendix 2 to be served on the District Council and County Council pursuant to this Deed;
"Plan"	means the plan annexed to this Deed;
"Planning Appeal"	means an appeal submitted by or on behalf of the Owner pursuant to section 78(1) of the 1990

	Act in respect of the refusal of the Application and such appeal to be determined by the Secretary of State or his appointed Inspector (as the case may be) with appeal reference: APP/C3810/W/22/32995 14;
"Planning Obligations"	means the obligations and covenants given by the Owner to the District Council and the County Council as set out in the Schedules to this Deed;
"Planning Permission"	means the planning permission that may be granted by the Secretary of State or his appointed Inspector (as the case may be) for the Development following determination of the Planning Appeal;
"Practical Completion"	means the issue of a certificate signed by a chartered architect which confirms that a specified housing unit has been constructed in compliance with building regulations and is

	completed so as to be fit for habitation as a residential housing unit, or the issue of an NHBC or Zurich insurance cover note or new homes warranty and "Practically Completed" shall have the corresponding meaning;
"Protected Tenant"	means any tenant or leaseholder who: a) has exercised any statutory right to acquire or buy (or any equivalent contractual right) in respect of a particular Affordable Dwelling pursuant to Part V of the Housing Act 1985; or b) has exercised a right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Dwelling; c) is a Shared Ownership Lessee and has

	subsequently purchased from the freeholder all the remaining equitable shares in that Shared Ownership Unit so that the said tenant or leaseholder owns the freehold of the entire Shared Ownership Unit;
"Public Open Space"	means that part of the Development to be made available for recreation by the general public in accordance with the Public Open Space Plan;
"Public Open Space Plan"	means the plan to be submitted by the Owner to the District Council showing the layout and design of the Public Open Space, the phasing and timing of the delivery of the Public Open Space including details of a LEAP and landscaping, paths and access arrangements, street furniture and fencing together with details of the proposed future management and to be provided in accordance with the provisions of the

	Part 2 of Schedule 1 of this Deed;
"Public Open Space Transfer"	means a transfer of the Public Open Space which inter alia shall contain the following provisions: a) The Owner shall transfer the fee simple estate free from encumbrances save those set out in the title; b) All easements and rights necessary in relation to access for the benefit of the Public Open Space; c) Restrictive covenants by the Management Company: (i) Not to use or permit the Public Open Space to be used for any purpose other than for the provision of recreational facilities or amenity land for use by the general public as open space;

	(ii) Not to use or permit the Public Open Space to be used in a manner which may be or become a nuisance (whether or not amounting to a legal nuisance), annoyance, disturbance or cause damage to the rest of the Development;
"Registered Provider"	means a registered provider as defined in Section 80 of the Housing and Regeneration Act 2008 (including any statutory amendments thereto) who is registered with Homes England or any other registered provider of Affordable Housing first approved in writing by the District Council and reference to "Registered Providers" to be construed accordingly;
"Regulator of Social Housing"	means part of Homes England (as formed by Part 1 of the Homes and Regeneration Act 2008) and which is regulator of

	social housing within the meaning of the Homes and Regeneration Act 2008 or any successor to that function;
"Service Charge"	means a charge made to the occupiers of individual Affordable Dwellings made by the Registered Provider to cover the reasonable cost of the yearly maintenance and management of common parts communal gardens or landscaping areas of the Development that directly benefit the Affordable Dwellings to a standard reasonably required but for the avoidance of doubt shall not include any charge made in respect of the provision of health care services and utilities supplied to or used by occupiers of an individual Affordable Dwellings;
"Secretary of State"	means the Secretary of State for the Ministry of Housing Communities and Local Government (or such successor secretary of state or minister of state who

	shall assume the same decision making powers from time to time) or an Inspector appointed by the Secretary of State to determine the Planning Appeal as applicable;
"Shared Ownership Unit"	means the Affordable Dwellings to be provided by way of a Shared Ownership Lease in accordance with paragraph d) of Annex 2 of the NPPF (or any successor or equivalent) policy where the percentage equity share to be marketed and the percentage rent payable on the retained equity is agreed in writing between the District Council and the Registered Provider before the units are marketed to the public and reference to Shared Ownership Units to be construed accordingly;
"Shared Ownership Lease"	means a lease to be granted for each Shared Ownership Dwelling which shall accord with the requirements of and be consistent with any

	model shared ownership lease from time to time, of the Regulator of Social Housing (or any statutory successor);
"Shared Ownership Lessee"	means the tenant of a Shared Ownership Lease which permits Staircasing;
"Site"	means the Land East of Yapton Lane Walberton BN18 0LJ comprised in registered title WSX330568 to which the Planning Application relates and against which this Deed may be enforced as shown edged red on the Plan attached to this Deed at Appendix 1;
"Social Rented Units"	means Affordable Dwelling(s) for which guideline target rents are determined through the national rent regime or such Affordable Dwellings that may be owned by other private persons and provided under equivalent rental

	arrangements as agreed with the District Council or with the Homes England or the Regulator of Social Housing or as social rented housing as that term is defined in any Affordable Housing definition as within the NPPF current at the date of this Deed or as defined in any government documentation that shall supersede it;
"Standards"	means the size standards promoted by Homes England as at the date of this Deed being at least 85% NDSS;
"Staircase"	means the method by which the occupier of a Shared Ownership Unit is permitted to required a further share or shares in the equity of the Shared Ownership Unit in consideration of a payment of a premium to the Owner for such share and reference to "Staircased" and

	"Star casing" shall be construed accordingly;
"Travel Plan Monitoring Fee"	means £1,500 (one thousand five hundred pounds) Index Linked to be applied towards the monitoring and all updates of the travel plan and such contribution to be paid in accordance with the provisions of Part 1 of schedule 2 to this Deed;
"Working Days"	means any day from Monday to Friday inclusive which is not Christmas Day Good Friday a statutory bank holiday or a day between Christmas Day and New Year's Day;

1 CONSTRUCTION OF THIS DEED

- 1.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

- 1.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 1.5 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 unless there is an express provision otherwise.
- 1.6 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 1.7 References to any party to this Deed 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 District Council and County Council the successors to their respective statutory functions.
- 1.8 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.9 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 LEGAL BASIS

- 2.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling acts
- 2.2 **Subject to clause 13** hereof the covenants, restrictions and requirements imposed upon the Owner under this Deed create planning

obligations pursuant to Section 106 of the Act and are enforceable by the District Council and County Council against the Owner with the intention that they bind the interests held by those persons in the Site and their respective successors and assigns.

3 CONDITIONALITY

This Deed is conditional upon;

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

with the exception of clauses 9 (jurisdiction) and 10 (delivery) all of which shall come into effect immediately upon completion of this Deed.

4 THE OWNER'S COVENANTS

- 4.1 The Owner covenants to observe and perform their respective covenants, restrictions and obligations **subject to clause 13** hereof to the District Council and County Council as set out in Schedules 1 and 2 of this Deed; and

5 MISCELLANEOUS

- 5.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 5.2 The contents of this Deed shall be registered by the District Council as a Local Land Charge pursuant to Section 106(11) of the 1990 Act.
- 5.3 Any notices to be given under this Deed must in writing and shall be deemed to have been properly served if: a) delivered by hand or b) sent by pre-paid first class post or other next working day delivery service to the principal address or registered office (as appropriate) of the relevant party.
- 5.4 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality

or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

- 5.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development
- 5.6 No person shall be liable for any breach of any of the Planning Obligations or other provisions of this Deed in respect of the whole or any part of the Site after it shall have parted with its ownership of the whole or part of the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 5.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) before or after the date of this Deed.
- 5.8 The Planning Obligations contained in this Deed shall not be binding upon:-
- 5.8.1 any person whose only interest in the Site is as a residential owner/occupier or tenant of an individual Dwelling;
- 5.8.2 any person whose only interest in the Site is in a Dwelling sold as Affordable Housing or any replacement thereof;
- nor the Mortgagee or chargee of any such persons referred to in Schedule 1 of this Deed including any receiver appointed by a Mortgagee or chargee of any such persons.
- 5.9 If any payment due under this Deed is paid late Interest will become payable from the date of payment is due to the date payment is made.

6 WAIVER

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

7 CHANGE IN OWNERSHIP

The Owner shall provide the District Council and County Council written notice within 14 days of any change in ownership of any of its interest in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan PROVIDED THAT this clause shall not apply to the disposal of individual Dwellings.

8 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable

9 JURISDICTION

This Deed is governed by and interpreted in accordance with the laws of England and Wales.

10 DELIVERY

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

11 DISPUTES

- 11.1 In the event of there being any dispute between the parties hereto in respect of any of the terms of this Deed such dispute shall be determined in accordance with this clause and either party to the dispute may at any time require by notice in writing to the other party to the dispute an independent expert to be appointed to resolve the dispute
- 11.2 The expert (who shall be an appropriately qualified person to resolve the dispute in question) may be agreed upon by the parties to the dispute and in default of such agreement within one month of a requirement being made pursuant to this clause shall be appointed by the President for the time being of the Royal Institution of Chartered Surveyors (or the President for the time being of The Law Society in the case of a dispute relating to legal matters) on the application of either party to the dispute made at any time after the said period of one month
- 11.3 Notice in writing of his appointment shall be given by the expert to the parties to the dispute and he shall invite each to submit within a specified period (which will not exceed four weeks) any written representations each wishes to make to him
- 11.4 The expert shall act as an expert and not as an arbitrator and he shall consider any written representation submitted to him within the said period and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgment
- 11.5 The expert shall give notice in writing of his decision to the parties to the dispute within two months of his appointment or within such extended period as the parties may together allow
- 11.6 The decision of the expert shall be final on all matters referred to him
- 11.7 If for any reason the expert shall fail to make a decision and give notice thereof within the time and in the manner herein before provided either party to the dispute may apply to the President of the Royal Institution of

Chartered Surveyors (or the President of The Law Society in the case of a dispute relating to legal matters) for a substitute to be appointed in his place which procedure may be repeated as many times as necessary

- 11.8 Each party to the dispute shall bear its own costs save that the fees of the expert and of the Royal Institution of Chartered Surveyors (or The Law Society if applicable) shall be in the expert's determination

12. STATUTORY UNDERTAKERS

- 12.1 The obligations contained in this Deed shall not be binding or enforceable against a statutory undertaker after the transfer by the Owner to a statutory undertaker of any statutory apparatus and any land upon or in which the statutory apparatus is situated.

13. APPLICATION OF POLICY AND COMMUNITY INFRASTRUCTURE LEVY REGULATIONS

- 13.1 If the Secretary of State (or an Inspector appointed on his behalf as the case maybe) states in a decision letter granting Planning Permission that the Planning Obligations contained in this Deed (in whole or in part):

13.1.1 fail to meet or do not meet the criteria or threshold required by planning policy or that they are not material considerations relied on by the District Council or the County Council (as the case maybe); and/or

13.1.2 fail to meet the statutory tests set out in regulation 122 (2) of the Community Infrastructure Levy Regulations 2010 (as amended) and the National Planning Policy Framework such that they;

(a) are not necessary to make the Development acceptable in planning terms; and/or

(b) do not directly related to the Development; and/or

(c) do not fairly and reasonably relate in scale and kind to the Development;

13.2 then the said Planning Obligation or Planning Obligations contained in this Deed shall not apply and to the same extent shall be treated as void and not enforceable by the District Council or the County Council (as the case maybe) PROVIDED ALWAYS that any Planning Obligation in whole or in part considered deleted and void by the operation of this clause 13 will be considered reinstated in the event that the decision of the Secretary of State (or appointed Inspector) in relation to that Planning Obligation or Planning Obligations is successfully challenged and it is ordered that the said Planning Obligation or Planning Obligations be reinstated.

14. MONITORING FEES

14.1 The Owner undertakes to pay the District Council's monitoring fees in the sum of £900.00 (nine hundred pounds) (no VAT payable) prior to the Commencement of Development; and

14.2 The Owner undertakes to pay the County Council's monitoring fees in the sum of £150.00 (one hundred and fifty pounds) (no VAT payable) prior to the Commencement of Development

15. NOTICES

15.1 14 days prior to the Owner's intention to Commencement Development the Owner shall serve the Commencement Notice on the District Council and the County Council; and

15.2 14 days prior to the payment of any contributions pursuant to Schedule 1 and Schedule 2 of this Deed the Owner shall serve the Payment Notice on the District Council and County Council

SCHEDULE 1
OWNER'S PLANNING OBLIGATIONS TO DISTRICT COUNCIL

SUBJECT TO clause 13 of this Deed the Owner covenants to the District Council as follows:-

Part 1

AFFORDABLE HOUSING

1 GENERAL

- 1.1 To construct as Affordable Dwellings being 30% (thirty percent) of the aggregate number of Dwellings to be erected as part of the Development

2 CONSTRUCTION AND USE OF THE AFFORDABLE DWELLINGS

- 2.1 Prior to Commencement of the Development the Owner will submit to the District Council the Affordable Housing Scheme for approval in writing and no Commencement of Development shall take place until the Affordable Housing Scheme has been approved by the District Council
- 2.2 Prior to Occupation of 37 (thirty seven) Open Market Dwellings the Owner shall construct and arrange Practical Completion of the Affordable Dwellings in accordance with;
- (a) the approved Affordable Housing Scheme; and
 - (b) the Scheme Standard; and
 - (c) the Planning Permission
- 2.3 **In relation to the Occupation of the Affordable Dwellings:**
- (a) from the date of Practical Completion of the Affordable Dwellings not to use the Affordable Dwellings other than for Affordable Housing; and

- (b) the allocation of the Affordable Dwellings shall be made through the Allocation Policy between the District Council and the Registered Provider
- (c) Not to permit the letting and management of the Affordable Dwellings otherwise than by a Registered Provider.
- (d) Not to permit the letting and Occupation of any Affordable Dwelling unless in accordance with the following;
 - (i) in respect of the Shared Ownership Units other than by Approved Purchasers; and
 - (ii) in respect of the Affordable Rented/Social Rent Units other than by an Eligible Person; and
 - (iii) on the first letting of each of the Affordable Rented/Social Rent Unit(s) the District Council shall at all times be entitled to nominate the Eligible Person for one hundred per cent (100%) of the Affordable Rented Units/Social Rented Units; and
 - (iv) on subsequent re-lettings of the Affordable Rented/Social Rent Units the District Council shall at all times be entitled to nominate the Eligible Person for seventy five per cent (75%) of the Affordable Rented/Social Rent Units subsequently rented unless otherwise agreed in writing between the District Council and the Registered Provider with the remainder of the lettings made by the Registered Provider in accordance with the requirements of this Part 1 of Schedule1.
- (e) No Service Charge will apply to the Affordable Dwellings unless all elements of the Service Charge are eligible for Local Housing Allowance or an equivalent subsequent scheme.

- 2.4 The Registered Provider shall not transfer the freehold or leasehold interest on the part of the Site which the Affordable Dwellings are constructed or any Affordable Dwelling (save for a transfer of the freehold interest of an Affordable Dwelling to an occupier of a Shared Ownership Unit who has Staircased to 100% of the freehold interest or an occupier of an Affordable Rented Unit/Social Rented Unit who has exercised the right to acquire) to any person firm or company other than a Registered Provider unless the transfer to another Registered Provider shall include a covenant that the Registered Provider shall comply with the terms of this Deed
- 2.5 the Registered Provider shall not sell let or dispose of any Affordable Dwellings or allow or permit or suffer any Affordable Dwellings to be sold let or disposed of other than in accordance with terms of this Schedule 1 of this Deed

SAVE THAT the provisions of this Part 1 of Schedule 1 shall not be binding on:

- (i) any mortgagee or chargee of the purchaser of an individual Affordable Dwelling;
- (ii) any purchaser from a mortgagee or chargee of an individual Affordable Dwelling;
- (iii) pursuant to any default by the individual mortgagor; or
- (iv) any Protected Tenant; or
- (v) any Mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such Mortgagee or chargee or any other person appointed under any security documentation to enable such Mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a receiver)) of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such Mortgagee or chargee or receiver **PROVIDED THAT**

- (vi) the Mortgagee or chargee or receiver appointed by such mortgagee or chargee will notify the District Council in writing immediately the Mortgagee or chargee has an enforceable power of sale;
- (vii) the Mortgagee or chargee or receiver shall use its reasonable endeavours to dispose of the relevant Affordable Dwelling to a Registered Provider which the District Council may nominate in writing. For the avoidance of doubt such Mortgagee or chargee or receiver shall not be under any obligation to dispose of the relevant Affordable Dwelling for any sum less than monies outstanding pursuant to the said legal charge or mortgage;
- (viii) if the Mortgagee or chargee or receiver shall not have entered into a contract to dispose of the relevant Affordable Dwelling in accordance with paragraph (vii) above within 3 (three) months of notifying the District Council in accordance with clause (vi) above the Mortgagee, chargee or receiver may (but without imposing an obligation on the Mortgagee, chargee or receiver) dispose of the relevant Affordable Dwelling on the open market to a willing buyer or buyers free from the provisions of this Deed and any land which is so disposed of shall be free from the provisions of this Schedule.

3 TRANSFER OF THE AFFORDABLE HOUSING TO THE REGISTERED PROVIDER

- 3.1 Prior to the Occupation of 37 (thirty seven) Open Market Dwelling on the Site to notify the District Council of the identity of the Registered Provider to which the Affordable Dwellings are to be transferred.
- 3.2 No more than 37 (thirty seven) Open Market Dwellings shall be Occupied until a contract to dispose of the Affordable Dwellings has been entered into with the Registered Provider.

3.3 If upon Occupation of the 37th (thirty seventh) Open Market Dwellings no Registered Provider has entered into a contract to purchase the Affordable Dwellings the Owner shall notify the District Council and the Help to Buy Agent in writing (the "Notification") and if the District Council fail to recommend an alternative Registered Provider or equivalent nominee within 1 calendar month of receipt of the Notification the Owner shall use reasonable endeavours to contract to transfer the Affordable Dwellings under the terms of this Schedule PROVIDED THAT:

- (a) if the District Council fails to recommend a nominee within 1 calendar month of the Notification then the Owner shall be permitted to revert to a Registered Provider of its own choosing to whom it shall use reasonable endeavours to contract to transfer the Affordable Dwellings under the terms of this Part 1 of Schedule 1.

Part 2

PUBLIC OPEN SPACE

The Owner undertakes to the District Council as follows;

- 1 To submit the Open Space Plan prior to Occupation of the first Dwelling
- 2 To lay out the Open Space within the Development in accordance with the approved Open Space Plan (pursuant to clause 1 of this Part 2).
- 3 The Owner covenants not to permit or allow the Occupation of more than 37 (twenty seven) Dwellings until the Public Open Space has been provided and completed in accordance with the approved Open Space Plan (pursuant to clause 2 of this Part 2).
- 4 Following completion of the Public Open Space and until such time as the Public Open Space may be transferred to a Management Company the Owner shall ensure the following (in perpetuity):

- 4.1 the Public Open Space shall not be used for any purpose other than for the provision of public open space for the benefit of members of the public;
- 4.2 the Public Open Space is to be maintained and managed in a clean and tidy condition and free of defects and in accordance with the Open Space Plan;
- 5. In the event the Owner wishes to transfer the Public Open Space to the Management Company the Owner covenants as follows;
- 6. the Owner shall notify the District Council in writing of its intention to transfer the Public Open Space to a Management Company;
- 7. In the event the Owner serves notice of its intention to the District Council (pursuant to clause 6 of this Part 2) the Owner covenants to transfer the Public Open Space to the Management Company in accordance with the Public Open Space Transfer.

Part 3

HEALTH AND FITNESS CONTRIBUTION

- 1. To pay to the District Council the Health and Fitness Contribution prior to Occupation of the 19th (nineteenth) Dwelling and not to Occupy or permit the Occupation of more than 18 Dwellings until such time as the Health and Fitness Contribution has been paid to the District Council.

SCHEDULE 2
OWNER'S PLANNING OBLIGATIONS TO COUNTY COUNCIL

SUBJECT TO clause 13 of this Deed the Owner covenants to the County Council as follows:-

Part 1

TRAVEL PLAN MONITORING FEE

1. To pay to the County Council the Travel Plan Monitoring Fee prior to the Commencement of Development and not to Commence the Development until such time as the Travel Plan Monitoring Fee has been paid to the County Council.

Part 2

BUS WORKS

1. Prior to the Occupation of the (1st) first Dwelling to carry out the Bus Works via an agreement under Section 278 of the Highways Act 1980 to the satisfaction of the County Council and not to Occupy or permit the Occupation of any Dwelling until such time as the Bus Works have been carried out to the satisfaction of the County Council.

IN WITNESS whereof the parties hereto have hereunto executed this Deed on
the day and year first before written

SIGNED as a DEED by
BINSTED FARMS LIMITED *
by a Director; ✓

in the presence

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation

PETER WILLIAM KNIGHT.

11 DAWLOWAY RD, ARLUND
W. SUSSEX. BN 18 9 HT

ESTATE MANAGEMENT.

APPENDIX 1

SITE PLAN

APPENDIX 2

NOTICES

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 Planning and Economic Regeneration, 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 provide the full postal address here</i>	

Appendix 3

NDSS and 85% NDSS

Number of bedrooms	Number of bed spaces	NDSS			Minimum 85% NDSS		
		1 storey (sqm)	2 storey (sqm)	3 storey (sqm)	1 storey (sqm)	2 storey (sqm)	3 storey (sqm)
2b							
	4p	70	79		60(B)	68(H)	
3b	4p	74	84	90	63	72	77
	5p	86	93	99	74	80	85
	6p	95	102	108	81	87	92
4b	5p	90	97	103	77	83	88
	6p	99	106	112	85	91	96
	7p	108	115	121	92	98	103
	8p	117	124	130	100	106	111
	8p	121	128	134	103	109	114

Where a one person flat has a shower room rather than a bathroom the floorspace may be reduced from 39 sqm to 37 sqm (NDSS) or from 34 sqm to 32 sqm (85% NDSS).

(F=Flat) (B=Bungalow) (H=House)