
Dated: _____ 2017

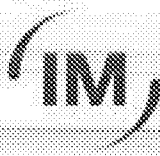
Between:

- [1] SHEILA MARY LYONS and
RICHARD GWYNN BENEDICT LYONS
- [2] SEAWARD PROPERTIES 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 at Bonhams Field Main Road, Yapton

Reference: Y/1/17/OUT

 **irwinmitchell**
solicitors

30 August

This Deed is dated _____

2017 and is made between:

- [1] **SHEILA MARY LYONS and RICHARD GWYNN BENEDICT LYONS** of 6 Pegasus Court, Deanery Close, Chichester PO19 1EA. ["the Owner"]
- [2] **SEAWARD PROPERTIES LIMITED** (company no: 02595439) whose registered office is Metro House, Northgate, Chichester, West Sussex, PO19 1BE ["the Applicant"]
- [3] **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltrovers Road, Littlehampton, West Sussex, BN17 5LF ["ADC"]
- [4] **WEST SUSSEX COUNTY COUNCIL** of County Hall, Chichester, West Sussex, PO19 1RQ ["WSCC"]

Background

- 1.1 The Owner is the registered proprietor under title number WSX343983 of the land at Bonhams Field Main Road Yapton BN18 0DX.
- 1.2 The Applicant has the benefit of an option over the Site which is protected by way of restriction on the title of the Land
- 1.3 ADC is the local planning authority and the local housing authority and the local authority with responsibility for providing leisure services including public open spaces and the children's Play Area in the area of the Development.
- 1.4 WSCC is the strategic planning authority, the local highway authority and the local education authority and the local authority responsible for providing library services and fire and rescue services in the area of the Development.
- 1.5 Planning application number Y/1/17/OUT has been submitted by the Applicant applying to ADC for outline planning permission to develop the Site by the erection of 56 dwellings with associated open space and the creation of a new access. This application is a departure from the development plan and affects the character and appearance of the Yapton (Main Road) Conservation Area.

AGREED TERMS

1. Interpretation

The following definitions and rules of interpretation apply in this deed:

1.1 Definitions

"the Act" means the Town & Country Planning Act 1990

"Affordable Dwellings" means the 30% (or 16) of Dwellings to be provided as Affordable Housing in accordance with the Affordable Housing Scheme or the Affordable Housing Schemes for the Housing Phase

"Affordable Housing" means affordable housing as defined in Annex 2: Glossary to the NPPF as amended from time to time (including Affordable Rent and Shared Ownership) which is provided to eligible households whose needs are not met by the market;

"Affordable Housing Commuted Sum" means a sum not exceeding ONE MILLION TWO HUNDRED AND EIGHTY THOUSAND POUNDS (£1,280,000) payable in accordance with paragraph 1.9 of schedule 1 being a contribution towards the cost of providing or enabling the delivery of Affordable Housing elsewhere in Arun District.

"Affordable Housing Standard" means the Housing Corporation building standard applicable at the date of Commencement of the Development or equivalent or replacement or successor standard adopted by the successor body to the Housing Corporation

"Affordable Housing Provider" or "AHP" means either one or a combination of:

- a Registered Provider; or
- any other provider of Affordable Housing who is approved by ADC or such other body or organisation approved by ADC whose main object is the provision of Affordable Housing which can include ADC itself ;

"Affordable Housing Tenure Split" means a mix of tenure type whereby:-

- 50% of the Affordable Dwellings to be provided on the Site (or the nearest full number) shall be provided as units for Affordable Rent and
- the remainder being 50% of the Affordable Dwellings (or the nearest full number) shall units be for Shared Ownership

"Affordable Housing Scheme" means a scheme for the provision of Affordable Housing for the Housing Phase which specifies:

- the location, layout, mix, size, type and tenure of the Affordable Dwellings in the Housing Phase; and
- whether any variations to the Indicative Mix are sought and, if so, the reasons for those variations;

and which may be amended from time to time with the written approval of ADC or replaced by another scheme for the Affordable Dwellings;

"Affordable Rent" means rented housing let by a Affordable Housing Provider or the local housing authority which has the same characteristics as social rented housing save that it is outside the national rent regime but is subject to other rent controls that it is offered to eligible persons at a rent of no more than 80% of the local market rent (including service charges where applicable);

"Agreed" or "Approved" means agreed or approved in writing for the purpose of this Deed.

"Application" means the planning application number Y/1/17/OUT made by the Applicant to develop the Site for the Development

"BCIS Index" means the All-In tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors BCIS All Tender Index;

"Chargee" means any mortgagee or chargee of the Affordable Housing Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;

"CIL Regulations" means the Community Infrastructure Regulations 2010;

"Commencement of Development" means the date on which the first material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and **"Commence"**, **"Commencement"** **"Commence Development"**, **"Commenced"** and **"Commences"** shall be construed accordingly;

"Commencement Date" means the date of Commencement of Development;

"Development" means the development of the Site proposed by the Application or permitted by the Planning Permission for the erection of 56 dwellings with associated open space and the creation of new access

"Dwelling" means any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission. "Dwellings" shall be constructed accordingly;

"Fire and Rescue Contribution" means the sum payable in accordance with paragraph 1 of Schedule 2 of this Deed being a contribution towards the cost of the supply and installation of additional fire safety equipment/smoke alarms to vulnerable person's homes in West Sussex Fire Rescue Services Southern Area serving Yapton;

"Further Education Contribution" means the sum payable in accordance with paragraph 4 of Schedule 2 of this Deed being a contribution towards the cost of additional facilities at St Philip Howard Sixth Form.

"Highways Act" means Highways Act 1980;

"Homes and Communities Agency" means the Homes and Communities Agency or any body undertaking the existing functions of the Homes and Communities Agency within the meaning of Part 1 of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement, or re-enactment of that Act);

"Housing Phase" means a phase of the Development comprising the construction of the Dwellings in the Development together with all associated development;

"Indicative Mix" means the following mix of housing type and tenure for the Affordable Housing:

	Shared Ownership	Affordable Rent
1 bedroom	1	3
2 bedroom	4	3
3 bedroom	2	1
4 bedroom	1	1

"Land" means the land owned by the Owner comprised in Title Number WSX343983 which incorporates the Site

"Library Contribution" means the sum to be paid in accordance with paragraph 5 of Schedule 2 being a financial contribution towards a proposed Tier 7 Library within a community space for Six Villages;

"Management Company" means a company (either controlled by the residents of the Development or such alternative form of management company or body as the Owners may propose and the Council approves in writing) incorporated for the purpose of or capable of collecting an income and/or maintenance fees or similar to be used for the long term maintenance of communal parts of the Development;

"Market Units" means the Dwellings within the Development which are not Affordable Housing;

"NHS Contribution" means a contribution of £1,002.18 per Dwelling, up to a maximum sum of £56,122.00 to be used to make good a deficiency in healthcare provision arising from the Development and specifically for Avisford GP Surgery to meet increased patients demands from the Development

"NPPF" or "Framework" means the National Planning Policy Framework published by the Department for Communities and Local Government on 27 March 2012 (as amended from time to time);

"Occupation" and "Occupied" means first occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;

"Off-site Play Area Contribution" means a contribution of £1,600 per Dwelling up to a maximum sum of £89,600 to be used to fund improvements to the Yapton Parish Play area

"Open Space" means those areas of open space and amenity space to be provided within the Development to be laid out in accordance with the Open Space Scheme approved by ADC;

"Open Space Scheme" means a scheme submitted prior to the Commencement of any Dwellings setting out:

- (a) the precise make-up and layout of the Open Space to be provided, including details of whether or not a community orchard is to be provided, as originally envisaged, or whether following consultation with the parish council an alternative form of community led open space is to be provided in its place
- (b) the proposed timetable and programme for delivery of the Open Space including landscaping to be provided at the Development;

- (c) a maintenance and management plan for any Open Space, to be provided at the Development, including details of whether the areas in question are to be transferred to or managed by the Owner, a Management Company or some other body or organisation; the level of any maintenance funding or contributions to be paid to the body accepting responsibility for maintaining the Open Space; and how this amount has been calculated or determined; and details of the circumstances in which the Open Space may be closed to the public for maintenance, management, health and safety or other reasons;

"Planning Inspector" means a planning inspector appointed by the Secretary of State

"Planning Permission" means the planning permission for the Development of the Site subject to conditions to be granted pursuant to the Application

"Play Area" means the unequipped children's play area to be provided as part of the Development;

"Play Area Specification" means a scheme submitted prior to the Commencement of any Dwellings setting out:

- (a) the proposed timetable and programme for delivery of the Play Area including landscaping to be provided as part of the Development;
- (b) a maintenance and management plan for each Play Area to be provided as part of the Development, including details of whether the areas in question are to be transferred to or managed by the Owner, a Management Company or some other body or organisation; the level of any maintenance funding or contributions to be paid to the body accepting responsibility for maintaining the Play Area; and how this amount has been calculated or determined; and details of the circumstances in which the Play Area may be closed to the public for maintenance, management, health and safety or other reasons;

"Primary School Contribution" means the sum calculated in accordance with paragraph 2 of Schedule 2 being a contribution towards the cost of Yapton Primary School;

"Protected Occupier" means any person who:

- (a) has exercised a right to buy or acquire their Affordable Dwelling; or
- (b) has accomplished final staircasing in accordance with the terms of the Shared Ownership Lease relating to an Affordable Dwelling; or
- (c) has purchased a unit of Intermediate Housing;

"Qualifying Occupiers" means persons who qualify for Affordable Housing within Schedule 1 to this Deed 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

"Registered Provider" means a provider of Affordable Housing registered with the Homes and Communities Agency or equivalent or replacement and appearing within the Arun District Council List of preferred registered providers attached at Appendix 3 or specifically approved in writing for the purposes of the present Deed

"Reserved Matters" means any matters reserved for later approval by virtue of a condition imposed in the Planning Permission;

"Reserved Matters Application" means an application for Reserved Matters for any part of the Development and shall include any amendment to it or fresh application for Reserved Matters made in substitution therefore or an alternative application for Reserved Matters Approval;

"Reserved Matters Approval" means an approval to Reserved Matters pursuant to a Reserved Matters Application;

"Review Period" means a period of 21 days from the date of submission of a draft calculation to WSCC under paragraphs 1, 2, 3, 4 or 5 of Schedule 2 (as appropriate)

"RPI Index" means the Retail Price Index All Items Index Published by the Office for National Statistics or any successor organisation;

"Secondary Education Contribution" means the sum payable in accordance with paragraph 3 of Schedule 2 of this Deed being a contribution towards the cost of additional facilities at Ormiston Six Villages Academy;

"Secretary of State" means the Secretary of State for Communities and Local Government

"Shared Ownership" means Affordable Dwellings to be provided as shared ownership units for sale under a Shared Ownership Lease as part of the Development

"Shared Ownership Lease" means a shared ownership lease for a term of at least 125 (one hundred and twenty five) years in the form as regulated by the Homes and Communities Agency from time to time and which shall accord with the requirements and be consistent with any model shared ownership lease from time to time established by the Homes and Communities Agency (or replacement or successor body);

"Site" means that part of the Land shown for the purposes of identification only edged Red on Plan 1

"Specified Date" means the date upon which an obligation arising under this Deed is due to be performed.

"Tier 7 Library" means a small selection of books and a pick-up point for requested items (a 'click and collect' service). This is not staffed by library staff, except the minimum required to sustain the service, chiefly book delivery. Instead it is likely to be in a shared facility, where staff already employed by partner organisations provide the very limited supervision needed

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

2. In this Deed:

- 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 or attached to this Deed.
- 2.6 Any reference to a colour or letter is to be on the plans attached to this Deed.
- 2.7 In the absence of a 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 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 WSCC and ADG the successors to their respective functions.

3. Enabling Provisions

This Deed is made pursuant to Section 106 of the Act, Sections 111 and 135 of the Local Government Act 1972, s1 Localism Act 2011 and all other enabling powers.

4. Conditionality

4.1 This Deed is conditional upon:

4.1.1 the grant of the Planning Permission; and

4.1.2 the Commencement of Development,

save for the provisions of clauses 1 to 4, 7, 8, 12, 14, 15 and 18 which shall come into effect immediately upon completion of this Deed.

4.2 In the event that the Application is subject to an appeal or called in for determination by the Secretary of State then each obligation in this Deed is also conditional upon:

4.2.1 The Secretary of State or the Planning Inspector determining the Application being satisfied that it is:

- (a) necessary to make the Development acceptable in planning terms; and
- (b) directly related to the Development; and
- (c) fairly and reasonably related in scale and kind to the Development; and
- (d) complies in all other respects with Regulation 122 of the CIL Regulations; and
- (e) Commencement of Development.

4.2.2 In the event that the Secretary of State or the Planning Inspector determining the Application expressly states in their decision letter that any individual planning obligation within this Deed 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 Deed and shall have no effect and the Owner shall not be obliged to comply with the terms of that obligation and the remaining clauses will remain in full force and effect provided that severance is achievable.

4.3 In the event that the ADC or the 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 Deed that relate to an item or project included on the ADC and/or WSCC's Regulation 123 list of infrastructure.

- 4.4 On Commencement of the Development the Owner will give to ADC and WSCC notice in writing of that commencement in the form of The Commencement Notice annexed to this Deed as Appendix 1 addressed to ADC's Head of Planning Services and WSCC's County Planning Officer or equivalent successor posts.

5. The Owner's Covenants

- 5.1 The Owner covenants with ADC so as to bind the Site to perform the obligations as set out in Schedule 1.
- 5.2 The Owner covenants with WSCC so as to bind the Site to perform the obligations as set out in Schedule 2.

6. Councils' Covenants

- 6.1 ADC covenants with the Owner and WSCC as set out in Schedule 3.
- 6.2 WSCC covenants with the Owner and ADC as set out in Schedule 4.

7. Applicant's Consent

The Applicant, as the holder of an option over the Site protected by a restriction on title, consents to the Owner entering into this Deed and acknowledges that this Deed is binding over the Site.

8. Exclusions of Liability

- 8.1 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site, or such part of the Site to which the breach relates, but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed which relate to a part of the Site in which it does not have an interest.
- 8.3 This Deed shall not be enforceable against any owner, occupier or tenant of any Dwelling constructed pursuant to the Planning Permission, or their mortgagees, nor against those deriving title from them.

8.4 Notwithstanding any other provision of this Deed the obligations under this Deed shall not be binding or enforceable against:

8.4.1 Any mortgagee of any tenant or person to whom an Affordable Housing Provider grants a shared ownership lease or any receiver appointed by such mortgagee or any person deriving title through any such mortgagee or receiver.

8.4.2 Any person to whom a shared ownership lease of an Affordable Dwelling is granted.

8.4.3 Any person who has acquired either a reversionary interest or a new lease in an Affordable Dwelling pursuant to the terms of a shared ownership lease.

8.4.4 Any Affordable Housing Provider

8.5 The obligations in this Deed shall not bind or be enforceable against any statutory undertaker who has or takes in future an interest in the Site for the purpose of providing apparatus pursuant to its statutory undertaking for the Development.

8.6 The obligations in this Deed shall not bind or be enforceable against any mortgagee, chargee or receiver of an Affordable Housing Provider or any successor in title to such mortgagee chargee or receiver.

8.7 Any legal charge taken over the Site after this Deed has been completed shall take effect subject to this Deed PROVIDED THAT any new mortgagee shall have no liability under this Deed unless it becomes a mortgagee in possession in which case it too will be bound by the obligations in this Deed as if it were a person deriving title from the Owner

9. Certificates

The Owner agrees with WSCC and ADC:

9.1 where this Deed 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 Applicant shall give to the ADC notice of the Specified Date not more than seven days after such Specified Date

9.2 if the Owner fails to give the notice required under this clause the ADC shall be entitled in its absolute discretion to determine the Specified Date and shall give notice to the Owner of its determination

10. Index Linking

- 10.1 The Owner undertakes to ADC that any sums payable by the Owner under Schedule 1 of this Deed shall be increased by the application of the following formula:

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

where:

- A is the sum actually payable on the Specified Date/ Payment Date
- B is the original sum mentioned in this Deed
- C is the Retail Price Index for the quarter preceding the Specified Date
- D is the Retail Price Index for the quarter preceding the date of this Deed
- $\frac{C}{D}$ is equal to or greater than 1

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

- 10.3 The Owner agrees with WSCC that any sum payable by the Owner and referred to in Schedule 2 shall be increased by the application of the following formulae:

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

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

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

11. Interest

- 11.1 The Owner agrees with the ADC and WSCC to pay interest on sums due to ADC and WSCC under this Deed but not paid on the Specified Date from the Specified Date until actual payment. The rate of interest shall be 4% above the Lloyds Bank base rate from time to time.
- 11.2 ADC and WSCC agree to pay interest on sums to the Owner under this Deed but not paid on the Specified Date from the Specified Date until actual payment. The rate of interest shall be 4% above the Lloyds Bank base rate from time to time.

12. Legal and Administrative Costs

The Owner agrees with ADC and WSCC:

Legal Costs

- 12.1 to pay on completion of this Deed to ADC and WSCC their respective legal costs incurred in preparing and entering into this Deed in the following amounts :-

Payee	Amounts and Purposes
ADC	up to £1,500 Legal Fees
WSCC	up to £ 1,000 Legal Fees

- 12.2 For the avoidance of doubt and in addition to the above charges ADC shall be entitled to utilise a proportion of any monetary payment specified in this Deed for related project costs up to a maximum of 5% of any payment or £15,000 which ever shall be the larger
- 12.3 For the avoidance of doubt the above charges are standard charges and shall not preclude ADC from claiming and receiving any additional monitoring and legal or enforcement costs above and beyond these standard charges when circumstances require that they be incurred in pursuing full compliance with this Deed whether through the courts or otherwise

13. Payment Notice

The parties to this Deed hereby agree that all payments due under this Deed shall be forwarded to the ADC and /or WSCC and shall have attached to them a copy of the Payment Notice contained in Appendix 2 to this Deed duly completed.

14. General

The parties agree that:

- 14.1 nothing in this Deed constitutes an obligation to grant Planning Permission

- 14.2 nothing in this Deed grants Planning Permission or any other approval consent or permission required from WSCC or ADC in the exercise of any other statutory function
- 14.3 nothing in this Deed fetters or restricts the exercise by the WSCC and ADC of any of their powers
- 14.4 the obligations contained in Schedules 1 and 2 of this Deed are planning obligations for the purpose of Section 106 of the Act
- 14.5 this Deed constitutes a deed
- 14.6 this Deed is enforceable by ADC as to Schedule 1 and by WSCC as to Schedule 2
- 14.7 nothing in this Deed confers or is intended to confer a benefit on a third party under the Contracts (Rights of Third Parties) Act 1999
- 14.8 This Deed is a Local Land Charge and shall be registered as such
- 14.9 Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing arising out of or connected with this Deed shall be referred to the decision of a single arbitrator (acting as an expert and not as an arbitrator) to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force
- 14.10 The invalidity or unenforceability of any provisions of this Deed shall not affect the validity or enforceability of any other provision of this Deed, which shall remain in full force and effect.

15 Jurisdiction

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

16 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.

SCHEDULE 1 – COVENANTS IN FAVOUR OF ADC

The Owner agrees with ADC that :-

1. Affordable Housing

- 1.1 That not less than 30% (16) of the Dwellings shall be provided as Affordable Dwellings to be provided in accordance with the Affordable Housing Tenure Split.
- 1.2 Not to Commence the construction of any Dwellings at the Development until an Affordable Housing Scheme has been submitted and approved by ADC.
- 1.3 To construct the Affordable Housing in the Housing Phase in accordance with the approved Affordable Housing Scheme.
- 1.4 Subject to the provisions of this paragraph 1 the Affordable Dwellings shall only be disposed of to an Affordable Housing Provider save by way of mortgage or charge.
- 1.5 Subject to the following provisions of this paragraph the Owner shall not allow Occupation of more than 25% of the Market Units at the Development prior to a contract or contracts for the transfer of the Affordable Housing in the Development to an Affordable Housing Provider or Providers being agreed and 25% Affordable Dwellings have been constructed and made available for Occupation
- 1.6 Subject to the following provisions of this paragraph the Owner shall not allow Occupation of more than 50% of the Market Units at the Development prior to a contract or contracts for the transfer of the Affordable Housing in the Development to an Affordable Housing Provider or Providers being entered into and 50% Affordable Dwellings have been constructed and made available for Occupation
- 1.7 Subject to the following provisions of this paragraph, the Owner shall not allow Occupation of 100 % of the Market Units at the Development prior to a contract or contracts for the transfer of all the Affordable Housing in the Development to an Affordable Housing Provider or Providers being entered into and all the Affordable Dwellings have been constructed and made available for Occupation.

1.8 Mechanics of Transfer

A. FIRST OFFER

- 1.8.1 The Owner shall offer to transfer the Affordable Dwellings to an Affordable Housing Provider on terms which reflect market value and conditions at the time of the offer ("**First Offer**"), which offer shall include:
 - 1.8.1.1 A contract for the sale of land; and
 - 1.8.1.2 A draft transfer which shall include the provisions set out in paragraph 1.10 below.
- 1.8.2 The First Offer shall remain open for acceptance for no less than two [2] months ("**First Offer Period**") from the date of the First Offer being made.

B. SECOND OFFER

- 1.8.3 In the event that the First Offer made in accordance with paragraph 1.A above is not accepted within the First Offer Period then the Owner shall make a second offer to transfer the Affordable Dwellings to an Affordable Housing

Provider ("Second Offer") not later than one month after the expiry of the First Offer Period.

- 1.8.4 The Second Offer shall consist of the same terms as the First Offer subject to revisions necessitated by the lapse of time and shall remain open for acceptance for no less than two [2] months ("Second Offer Period") from the date of the Second Offer being made.

1.9 IF FIRST AND SECOND OFFER NOT IMPLEMENTED

- 1.9.1 In the event that the Second Offer is not accepted within the Second Offer Period then the Owner may:

- a) pay on or before the occupation of 25% of the Market Units the Affordable Housing Commuted Sum to the ADC whereupon once such sum has been paid to ADC the Owner and any successors in title shall be released from the provisions of this paragraph insofar as it relates to the Affordable Dwellings and the Affordable Dwellings may be sold on the open market as Market Units; or
- b) Dispose of all or any of the Affordable Dwellings as Shared Ownership units to an Affordable Housing Provider; or
- c) Dispose of all or any of the Affordable Dwellings to purchasers nominated through (Help to Buy South East at a discount of 20% of the open market value (such discount to be secured in perpetuity)); or
- d) Dispose of all or any of the Affordable Dwellings to an Affordable Housing Provider or other investor to be approved by ADC to be let at a market rent; or
- e) Dispose of all or any of the Affordable Dwellings under the starter homes initiative or any other tenure as may be included with the NPPF or its supporting guidance from time to time.

- 1.9.2 the Affordable Housing Commuted sum shall be calculated in accordance with the following formula:

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

Where:

$X = £80,000$; and

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

Form of Transfer and Nominations Agreement

- 1.10 The Owner covenants with ADC that any transfer of Affordable Dwellings to an Affordable Housing Provider will contain the following provisions:

- 1.10.1 The grant by the Owner of all rights and access and passage of services and other rights reasonably necessary to the beneficial enjoyment of those Affordable Dwellings;
- 1.10.2 A reservation of all rights and access and passage of services and other rights reasonably necessary for the benefit of the remainder of the Dwellings on the Site; and

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

1.11 The Owner covenants with ADC that:

1.11.1 upon the transfer of any Affordable Dwelling to an Affordable Housing Provider it will procure that the Affordable Housing Provider shall enter into a Nominations Agreement with ADC substantially in the relevant form set out in Appendix 4 of this Deed or in such other form as may be agreed between the ADC and the Affordable Housing Provider providing the right for ADC to nominate 100% of first occupiers and a minimum of 75% of subsequent occupiers for any relevant Affordable Rent Units; and

1.11.2 written notification of the Disposal shall be provided to ADC

1.12 The Owner and ADC agree that the provisions of this paragraph shall not apply to:

1.12.1 any mortgagee or chargee (a **Chargee**) of the Affordable Housing Provider that is the owner of the Affordable Dwellings or any of them (or any receiver including an administrative receiver) appointed by such Chargee of any other person appointed under any security documentation to enable such Chargee realise its security or any administrator (howsoever appointed) including a housing administrator (each referred to in this Deed as a **Receiver**) and any persons or bodies deriving title through such Chargee or Receiver.

1.12.2 the owner of a Unit of Shared Ownership Housing or other form of intermediate tenure who shall have acquired or staircased his interest in that unit such that he owns 100% of the equity in that Unit and any mortgagee chargee or Receiver and all successors and assigns.

1.12.3 the owner of an Affordable Dwelling who shall have exercised a statutory right to acquire that unit and any mortgagee chargee or Receiver and all successors and assigns.

1.13 the Owner covenant with ADC:

1.13.1 to take all reasonable and prudent steps within its power to avert the repossession of the Affordable Dwellings by any Chargee of the Affordable Housing Provider or the exercise by any Chargee of a power of sale and for these purposes in the event of a default under the security or likely default to cooperate fully with ADC to assist in arranging the transfer of the Affordable Dwellings with sitting tenants to another Affordable Housing Provider or, at ADC's option, to ADC;

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

1.13.3 in the event of the Owner become aware of any notice, order or direction having been served, made or given under the Housing Act 1996 Schedule 1 Part IV that relates to the Affordable Dwellings, to notify ADC of this as soon as reasonably practicable.

1.14 the Owner and the ADC hereby agree that:

1.14.1 in the event of a default under any security referred to in paragraph 1.13.3 or in other circumstances warranting the intervention of the Homes and Communities Agency (whether under the Housing Act 1996 or otherwise) nothing in this paragraph shall prevent the transfer of the freehold of the

Affordable Dwellings or any part of them to another Affordable Housing Provider;

- 1.14.2 subject to and without prejudice to the powers and requirements of the Homes and Communities Agency under the Housing Act 1996 that in the event of a default under any security referred to in paragraph 1.13.3 the disposal of any interest in the Affordable Dwellings by the Chargee in the exercise of its power of sale will not be prevented.

2 OPEN SPACE

- 2.1 To submit to ADC an Open Space Scheme for the Open Space within the Development prior to the Commencement of the development of the Dwellings at the Development.
- 2.2 Not to Commence the development of the Dwellings at the Development until ADC has approved the Open Space Scheme.
- 2.3 To lay out landscape areas in accordance with the approved Open Space Scheme and complete each area of Open Space in accordance with the approved Open Space Scheme prior to occupation of 25 Dwellings.
- 2.4 Not to Occupy or cause or allow to be Occupied more than 25 Dwellings until the Open Space has been provided in accordance with the approved Open Space Scheme.
- 2.5 Upon completion of any area of Open Space to maintain the relevant area in accordance with the relevant provisions of the approved Open Space Scheme and to transfer or make the Open Space available to the relevant organisation or body which is to take over responsibility for the Open Space in accordance with the approved Open Space Scheme.

3 PLAY AREAS

- 3.1 To submit to ADC a Play Area Scheme for the Play Area within the Housing Phase prior to the Commencement of the development of the Dwellings at the Development.
- 3.2 Not to Commence Development of any Dwellings until ADC has approved the Play Area Scheme.
- 3.3 To lay out landscape areas install equipment in accordance with the approved Play Area Scheme and complete each Play Area in accordance with the approved Play Area Scheme prior to occupation 25 Dwellings.
- 3.4 Not to Occupy or cause or allow to be Occupied more 25 Dwellings until the Play Area has been provided in accordance with the approved Play Area Scheme.
- 3.5 Upon completion of any Play Area to maintain that Play Area in accordance with the relevant provisions of the approved Play Area Scheme and to transfer or make the Play Area available to the relevant organisation or body which is to take over responsibility for the Play Area in accordance with the approved Play Area Scheme.

4 NHS CONTRIBUTION

- 4.1 On or before the Occupation of the first Dwelling, to pay the NHS Contribution to ADC, acting as agent for the NHS
- 4.2 Not to Occupy any Dwellings before the NHS Contribution has been paid to ADC

5 OFF-SITE PLAY AREA CONTRIBUTION

- 5.1 To pay the Off-Site Play Area Contribution to ADC prior to the Occupation of the first Dwelling
- 5.2 Not to Occupy any Dwellings until the Off-Site Play Area Contribution has been paid to ADC

SCHEDULE 2 – COVENANTS IN FAVOUR OF WSCC

1 FIRE AND RESCUE CONTRIBUTION

- 1.1 To submit to WSCC as part of the Reserved Matters Application for the Housing Phase a worked calculation demonstrating the amount of the Fire and Rescue Contribution due in relation to all Dwellings at the Development.
- 1.2 Not to Commence Development of any Dwellings at the Development until:
 - 1.2.1 WSCC has approved the calculation of the Fire and Rescue Contribution relating to those Dwellings in writing; or,
 - 1.2.2 the Review Period has come to an end
- 1.3 To pay to WSCC the Fire and Rescue Contribution on or before the Occupation of the first Dwelling.
- 1.4 Not to Occupy any Dwellings before the Fire and Rescue Contribution has been paid to WSCC.
- 1.5 The Fire and Rescue Contribution shall be calculated by reference to the following formula:

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

Where:

Y = The estimated adjusted increase in population generated by the Development calculated by reference to the total number of Market Units as approved in the Housing Phase calculated by reference to the following table:

Dwelling Size	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 = £5,530,000 being the estimated cost of providing additional Fire and Rescue Infrastructure in the Southern Service Division of the West Sussex

M = 429,647 being the projected population of the Fire and Rescue Service Southern Service Division of the West Sussex.

2 PRIMARY SCHOOL CONTRIBUTION

- 2.1 To submit to WSCC a worked calculation demonstrating the amount of the Primary Education Contribution due in relation to any Market Units at the Development prior to Commencement of any Dwellings.
- 2.2 Not to Commence Development of any Dwellings until:
- 2.2.1 WSCC has approved the calculation of the Primary Education Contribution in writing; or
- 2.2.2 the Review Period has come to an end
- 2.3 to pay to WSCC the Primary Education Contribution as follows:
- 2.3.1 to pay to WSCC 50% of the Primary Education Contribution on or before the Occupation of the first of the Market Units;
- 2.3.2 Not to Occupy any of the Market Units until 50% of the Primary Education Contribution has been paid
- 2.3.3 to pay to WSCC 50% of the Primary Education Contribution on or before the Occupation of the 25th Market Unit
- 2.3.4 Not to Occupy more than 25 of the Market Units until the Primary Education Contribution has been paid in full.
- 2.4 The Primary Education Contribution shall be calculated in reference to the following formula:

$$\text{DfE Figure} \times \text{ACP} = \text{Primary Education Contribution}$$

Where:

ACP = The estimated additional number of primary school age children likely to be generated by the Development, calculated by reference to the total number of Market Units as approved in a Reserved Matters Approval.

The following criteria are used to calculate the ACP:

Dwelling Size	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 then applied to determine the ACP. According to 2001 census data, there are 14 persons per 1000 population in each school year group for houses and five persons per 1000 population in each school year group for flats. There are seven year groups for primary (years R to 6), five for secondary (years 7 to 11) and two for further education (years 12 and 13).

DfE Figure = Department of Education Primary school building costs per pupil place as adjusted for the West Sussex Area which is £15,558 Index Linked.

3 SECONDARY EDUCATION CONTRIBUTION

- 3.1 To submit to WSCC a worked calculation demonstrating the amount of the Secondary Education Contribution due in relation to any Market Units contained in the Housing Phase prior to commencement of the Development of any Dwellings.
- 3.2 Not to Commence Development of any Dwellings until
 - 3.2.1 WSCC has approved the calculation of the Secondary Education Contribution relating to those Dwellings in writing; or
 - 3.2.2 the Review Period has come to an end.
- 3.3 To pay to WSCC on or before the Occupation of the first of the Market Units 50% of the Secondary Education Contribution.
- 3.4 Not to Occupy any of the Market Units until 50% of the Secondary Education Contribution has been paid.
- 3.5 To pay to WSCC on or before the Occupation of the 25th Market Unit 50 % of the Secondary Education Contribution.
- 3.6 Not to Occupy more than 25 Market Units until the Secondary Education Contribution has been paid in full.
- 3.7 The Secondary Education Contribution shall be calculated in reference to the following formula:

$$\text{DfE Figure} \times \text{ACP} = \text{Secondary Education Contribution}$$

Where:

ACP = The estimated additional number of secondary school age children likely to be generated by the Development, calculated by reference to the total number of Market Units as approved in a Reserved Matters Approval.

The following criteria are used to calculate the ACP:

Dwelling Size	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 then applied to determine the ACP. According to 2001 census data, there are 14 persons per 1000 population in each school year group for houses and five persons per 1000 population in each school year group for flats. There are seven year groups for primary (years 1 to 6), five for secondary (years 7 to 11) and two for further education (years 12 and 13).

DfE Figure = Department of Education Secondary school building costs per pupil place for the West Sussex Area which shall be £23,442 Index Linked,

4 FURTHER EDUCATION CONTRIBUTION

- 4.1 To submit to WSCC a worked calculation demonstrating the amount of the Further Education Contribution due in relation to any Market Units contained in the Development prior to Commencement of any Dwellings.
- 4.2 Not to Commence Development of any Dwellings until:
 - 4.2.1 WSCC has approved the calculation of the Further Education Contribution in writing; or
 - 4.2.2 the Review Period has come to an end
- 4.3 to pay to WSCC on or before the Occupation of the first of the Market Units 50 % of the Further Education Contribution.
- 4.4 Not to Occupy any of the Market Units until 50% of the Further Education Contribution has been paid.
- 4.5 To pay to WSCC on or before the Occupation of the 25th Market Unit 50 % of the Further Education Contribution.
- 4.6 Not to Occupy more than 25 of the Market Units until the Further Education Contribution has been paid in full.
- 4.7 The Further Education Contribution shall be calculated in reference to the following formula:

$$\text{DfE Figure} \times \text{ACP} = \text{Further Education Contribution}$$

Where:

ACP = The estimated additional number of secondary school age children likely to be generated by that part of the Development, calculated by reference to the total number of Market Units in the Development.

The following criteria are used to calculate the ACP:

Dwelling Size	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 then applied to determine the ACP. According to 2001 census data, there are 14 persons per 1000 population in each school year group for houses and five persons per 1000 population in each school year group for flats. There are seven year groups for primary (years R to 6), five for secondary (years 7 to 11) and two for further education (years 12 and 13).

DfE Figure = Department of Education Further Education building costs per pupil place as adjusted for the West Sussex Area which is £24,424 Index Linked

5 LIBRARY CONTRIBUTION

- 5.1 To submit to WSCC a worked calculation demonstrating the amount of the Library Contribution due in relation to any Market Units at the Development prior to Commencement of the development of any Dwellings.
- 5.2 Not to Commence the Development of any Dwellings until
 - 5.2.1 WSCC has approved the calculation of the Library Contribution in writing; or
 - 5.2.2 the Review Period has come to an end
- 5.3 To pay to WSCC on or before the Occupation of the first of the Market Units 50 % of the Library Contribution.
- 5.4 Not to Occupy any of the Market Units until 50% of the Library Contribution has been paid.
- 5.5 To pay to WSCC on or before the Occupation of the 25th Market Unit 50% of the Library Contribution.
- 5.6 Not to Occupy more than 25 of the Market Units until the Library Contribution has been paid in full.
- 5.7 The Library Contribution shall be calculated by reference to the following formula:

$$L/1000 \times AP = \text{Library Contribution}$$

Where:

AP = The estimated number of additional persons likely to be generated by that part of the Development, calculated by reference to the total number of Market Units in the Housing Phase calculated from the following table.

Dwelling Size	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 square metres per 1,000 population x the library cost multiplier (35 square metres and £4,560 Index Linked per square metre respectively).

SCHEDULE 3- COVENANTS BY ADC

ADC covenants with the Owners as follows:

1 NHS CONTRIBUTION

- 1.1 ADC covenants that upon receipt of each instalment of the NHS Contribution under paragraph 4 of Schedule 1 it will hold it in a separately identified interest bearing section of ADC's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Site.
- 1.2 ADC covenants upon written request on or after ten (10) years of the date of receipt of final instalment of the NHS Contribution to issue to the party that paid the NHS Contribution an account certified by the Director of Finance for the time being of ADC detailing how the NHS Contribution has been expended by ADC.
- 1.3 If or to the extent that any of the NHS Contribution shall not have been spent by ADC by the end of the period referred to in paragraph 1.2 above ADC shall on such date refund to the party that paid the NHS Contribution any unexpended part of any of NHS Contribution together with compound interest on the unexpended part(s) from the date of receipt by ADC of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 1.4 If at the end of the period referred to in paragraph 1.2 of this Schedule ADC shall have entered into a contract or other legally binding obligation to expend the NHS Contribution or part thereof for the purposes specified in paragraph 1.1 then ADC shall not be required to refund any part of the NHS Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid NHS Contribution in the manner set out in paragraph 1.2 of this Schedule and refund any unexpended part of the NHS Contribution in the manner set out in paragraph 1.3 of this Schedule.

2 OFF-SITE PLAY AREA CONTRIBUTION

- 2.1 ADC covenants that upon receipt of each instalment of the Off-Site Play Area Contribution under paragraph 5 of Schedule 1 it will hold it in a separately identified interest bearing section of ADC's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Site.
- 2.2 ADC covenants upon written request on or after ten (10) years of the date of receipt of final instalment of the Off-Site Play Area Contribution to issue to the party that paid the Off-Site Play Area Contribution an account certified by the Director of Finance for the time being of ADC detailing how the Off-Site Play Area Contribution has been expended by ADC.
- 2.3 If or to the extent that any of the Off-Site Play Area Contribution shall not have been spent by ADC by the end of the period referred to in paragraph 2.2 above ADC shall on such date refund to the party that paid the Off-Site Play Area Contribution any unexpended part of any of Off-Site Play Area Contribution together with compound interest on the unexpended part(s) from the date of receipt by ADC of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 2.4 If at the end of the period referred to in paragraph 2.2 of this Schedule ADC shall have entered into a contract or other legally binding obligation to expend the Off-Site Play Area Contribution or part thereof for the purposes specified in paragraph 2.1 then ADC shall not be required to refund any part of the Off-Site Play Area Contribution required for those purposes but shall as soon as possible following the completion of

the said contract or other legally binding commitment account to the party that paid Off-Site Play Area Contribution in the manner set out in paragraph 2.2 of this Schedule and refund any unexpended part of the Off-Site Play Area Contribution in the manner set out in paragraph 2.3 of this Schedule

SCHEDULE 4 – COVENANTS BY WSCC

WSCC covenants with the Owners as follows:

1 FIRE AND RESCUE CONTRIBUTION

Approval of Contribution Calculations

- 1.1 WSCC covenants to review and approve any calculation of the Fire and Rescue Contribution submitted under paragraph 1.1 of Schedule 2 within the Review Period.
- 1.2 WSCC accepts that if it does not comply with paragraph 1.1 (above) at the end of the Review Period, the Owners shall be entitled to rely on the calculations submitted to WSCC under paragraph 1.1 of Schedule 2 as correct.

Treatment of Contributions Received

- 1.3 WSCC covenants that upon receipt of each instalment of the Fire and Rescue Contribution under paragraph 1 of Schedule 2 it will hold it in a separately identified interest bearing section of WSCC's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Site.
- 1.4 WSCC covenants upon written request on or after ten (10) years of the date of receipt of final instalment of the Fire and Rescue Contribution to issue to the party that paid the Fire and Rescue Contribution an account certified by the Director of Finance for the time being of WSCC detailing how the Fire and Rescue Contribution has been expended by WSCC.
- 1.5 If or to the extent that any of the Fire and Rescue Contribution shall not have been spent by WSCC by the end of the period referred to in paragraph 1.4 above WSCC shall on such date refund to the party that paid the Fire and Rescue Contribution any unexpended part of any of Fire and Rescue Contribution together with compound interest on the unexpended part(s) from the date of receipt by WSCC of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 1.6 If at the end of the period referred to in paragraph 1.4 of this Schedule WSCC shall have entered into a contract or other legally binding obligation to expend the Fire and Rescue Contribution or part thereof for the purposes specified in paragraph 1.3 then WSCC shall not be required to refund any part of the Fire and Rescue Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Fire and Rescue Contribution in the manner set out in paragraph 1.4 of this Schedule and refund any unexpended part of the Fire and Rescue Contribution in the manner set out in paragraph 1.5 of this Schedule.

2 LIBRARY CONTRIBUTION

Approval of Contribution Calculations

- 2.1 WSCC covenants to review and approve any calculation of the Library Contribution submitted under paragraph 5.1 of Schedule 2 within the Review Period.

- 2.2 WSCC accepts that if it does not comply with paragraph 2.1 (above) at the end of the Review Period, the Owners shall be entitled to rely on the calculations submitted to WSCC under paragraph 5.1 of Schedule 2 as correct.

Treatment of Contributions Received

- 2.3 WSCC covenants that upon receipt of each instalment of the Library Contribution under paragraph 5 of Schedule 2 it will hold it in a separately identified interest bearing section of WSCC's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Site.
- 2.4 WSCC covenants upon written request on or after ten (10) years of the date of receipt of final instalment of the Library Contribution to issue to the party that paid the Library Contribution an account certified by the Director of Finance for the time being of WSCC detailing how the Library Contribution has been expended by WSCC.
- 2.5 If or to the extent that any of the Library Contribution shall not have been spent by WSCC by the end of the period referred to in paragraph 2.4 above WSCC shall on such date refund to the party that paid the Library Contribution any unexpended part of any of Library Contribution together with compound interest on the unexpended part(s) from the date of receipt by WSCC of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 2.6 If at the end of the period referred to in paragraph 2.4 of this Schedule WSCC shall have entered into a contract or other legally binding obligation to expend the Library Contribution or part thereof for the purposes specified in paragraph 2.3 then WSCC shall not be required to refund any part of the Library Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Library Contribution in the manner set out in paragraph 2.4 of this Schedule and refund any unexpended part of the Library Contribution in the manner set out in paragraph 2.5 of this Schedule.

3 Further Education Contribution

Approval of Contribution Calculations

- 3.1 WSCC covenants to review and approve any calculation of the Further Education Contribution submitted under paragraph 4.1 of Schedule 2 within the Review Period.
- 3.2 WSCC accepts that if it does not comply with paragraph 3.1 (above) at the end of the Review Period, the Owners shall be entitled to rely on the calculations submitted to WSCC under paragraph 4.1 of Schedule 2 as correct.

Treatment of Contributions Received

- 3.3 WSCC covenants that upon receipt of each instalment of the Further Education Contribution under paragraph 4 of Schedule 2 it will hold it in a separately identified interest bearing section of WSCC's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Site.
- 3.4 WSCC covenants upon written request on or after ten (10) years of the date of receipt of final instalment of the Further Education Contribution to issue to the party that paid the Further Education Contribution an account certified by the Director of Finance for the time being of WSCC detailing how the Further Education Contribution has been expended by WSCC.

- 3.5 If or to the extent that any of the Further Education Contribution shall not have been spent by WSCC by the end of the period referred to in paragraph 3.4 above WSCC shall on such date refund to the party that paid the Further Education Contribution any unexpended part of any of Further Education Contribution together with compound interest on the unexpended part(s) from the date of receipt by WSCC of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 3.6 If at the end of the period referred to in paragraph 3.4 of this Schedule WSCC shall have entered into a contract or other legally binding obligation to expend the Further Education Contribution or part thereof for the purposes specified in paragraph 3.3 then WSCC shall not be required to refund any part of the Further Education Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Further Education Contribution in the manner set out in paragraph 3.4 of this Schedule and refund any unexpended part of the Further Education Contribution in the manner set out in paragraph 3.5 of this Schedule.

4 Secondary Education Contribution

Approval of Contribution Calculations

- 4.1 WSCC covenants to review and approve any calculation of the Secondary Education Contribution submitted under paragraph 3.1 of Schedule 2 within the Review Period.
- 4.2 WSCC accepts that if it does not comply with paragraph 4.1 (above) at the end of the Review Period, the Owners shall be entitled to rely on the calculations submitted to WSCC under paragraph 3.1 of Schedule 2 as correct.

Treatment of Contributions Received

- 4.3 WSCC covenants that upon receipt of each instalment of the Secondary Education Contribution under paragraph 3 of Schedule 2 it will hold it in a separately identified interest bearing section of WSCC's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Site.
- 4.4 WSCC covenants upon written request on or after ten (10) years of the date of receipt of final instalment of the Secondary Education Contribution to issue to the party that paid the Secondary Education Contribution an account certified by the Director Finance for the time being of WSCC detailing how the Secondary Education Contribution has been expended by WSCC.
- 4.5 If or to the extent that any of the Secondary Education Contribution shall not have been spent by WSCC by the end of the period referred to in paragraph 4.4 above WSCC shall on such date refund to the party that paid the Secondary Education Contribution any unexpended part of any of Secondary Education Contribution together with compound interest on the unexpended part(s) from the date of receipt by WSCC of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 4.6 If at the end of the period referred to in paragraph 4.4 of this Schedule WSCC shall have entered into a contract or other legally binding obligation to expend the Secondary Education Contribution or part thereof for the purposes specified in paragraph 4.3 then WSCC shall not be required to refund any part of the Secondary Education Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Secondary Education Contribution in the manner set out in paragraph 4.4 of this Schedule and refund any unexpended part of the

Secondary Education Contribution in the manner set out in paragraph 4.5 of this Schedule.

5

PRIMARY EDUCATION CONTRIBUTION

Approval of Contribution Calculations

- 5.1 WSCC covenants to review and approve any calculation of the Primary Education Contribution submitted under paragraph 2.1 of Schedule 2 within the Review Period.
- 5.2 WSCC accepts that if it does not comply with paragraph 5.1 (above) at the end of the Review Period, the Owners shall be entitled to rely on the calculations submitted to WSCC under paragraph 2.1 of Schedule 2 as correct.

Treatment of Contributions Received

- 5.3 WSCC covenants that upon receipt of each instalment of the Primary Education Contribution under paragraph 2 of Schedule 2 it will hold it in a separately identified interest bearing section of WSCC's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Site.
- 5.4 WSCC covenants upon written request on or after ten (10) years of the date of receipt of final instalment of the Primary Education Contribution to issue to the party that paid the Primary Education Contribution an account certified by the Director Finance for the time being of WSCC detailing how the Primary Education Contribution has been expended by WSCC.
- 5.5 If or to the extent that any of the Primary Education Contribution shall not have been spent by WSCC by the end of the period referred to in paragraph 5.4 above WSCC shall on such date refund to the party that paid the Primary Education Contribution any unexpended part of any of Primary Education Contribution together with compound interest on the unexpended part(s) from the date of receipt by WSCC of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 5.6 If at the end of the period referred to in paragraph 5.4 of this Schedule WSCC shall have entered into a contract or other legally binding obligation to expend the Primary Education Contribution or part thereof for the purposes specified in paragraph 5.3 then WSCC shall not be required to refund any part of the Primary Education Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Primary Education Contribution in the manner set out in paragraph 5.4 of this Schedule and refund any unexpended part of the Primary Education Contribution in the manner set out in paragraph 5.5 of this Schedule.

Appendix 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:	
Deed Date:	
Parties subject to the Deed:	
Start Date:	

Appendix 2

Payment Notice

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

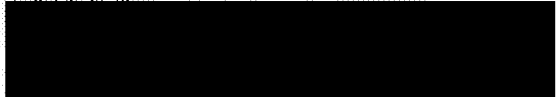
1. Payment to be made by/on behalf of:
2. Development at:
3. Agreement dated:
4. Planning application reference number:
5. Obligation in Agreement (Please continue on a separate sheet if necessary):

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>	

Appendix 3

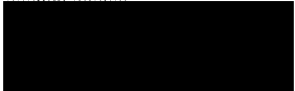
List of ADC Preferred Registered Providers

Affinity Sutton
(Steven Connolly)
Cams Hall
Cams Hill
Fareham
Hampshire
PO16 8AB



The Guinness Partnership

33 East Street
Havant
Hampshire
PO9 1AA



The Hyde Group
(Joshua Boots)
Telecom House
125 – 135 Preston Road
Brighton
West Sussex
BN1 6AF



Worthing Homes
(Damian Haley)



Worthing
West Sussex



Stonewater
(Jackie Burton)



Southern Housing Group

(Liz Hills)
Spire Court
Aibion way
Horsham
West Sussex



Saxon Weald

(Stephen Humphreys)
Saxon Weald House
38-42 Worthing Road
Horsham
West Sussex
RH12 1DT



Hastoe

Karen Hillhouse



Appendix 4

Pro Forma Deed of Nomination

DATED

20

and

ARUN DISTRICT COUNCIL

DEED OF NOMINATION

for

rented units

at Bonhams Field Main Road, Yapton

THIS DEED OF NOMINATION RIGHTS is made the day of 20

BETWEEN

(1)

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

1. DEFINITIONS

In this Deed :

Part 1 "Initial Let" means the first tenancy of such newly constructed and previously unoccupied Rented Unit.

Part 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.

Part 3 "Nomination List" means the list to be supplied by the Council pursuant to clauses Part 13 and Part 20 (as may be updated from time to time in accordance with clause Part 26).

Part 4 "Property" means the land at shown edged red on the attached plan.

Part 5 "Rented Units" residential units in the form of houses.

Part 6 "Subsequent Nominee" means a Nominee to be offered a Tenancy Agreement pursuant to clause Part 20.

Part 7 "Tenancy Agreement" means an assured Tenancy Agreement in a form prepared by the RSL and containing terms which accord with the form of Tenancy Agreement being used by the RSL from time to time for its general lettings.

Part 8 "Vacancy Notice" means a written notice given by the RSL to the Council (in a form to be agreed between the RSL and the Council within five weeks from the date of this 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.

Part 9 "Void" means a Rented Unit which is vacant otherwise than as a result of the tenant having:

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

Part 10 "Void Notice" means a written notice given by the RSL to the Council (in a form to be agreed between the RSL and the Council within five weeks from the date of this 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

Part 11 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.

Part 12The 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.

Part 13The 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.

Part 14The Nomination List to be served by the Council under clause Part 13 shall:

i. specify the appropriate category of Rented Unit to which it relates; and

ii. indicate the priority for the housing of the Nominees.

Part 15The RSL shall have the right to let the Initial Let in respect of the Rented Units to persons of its own choosing in the event of the Council's failure to serve the Nomination List referred to in clause 3.3 within the period of ten working days of receipt of the Vacancy Notice.

Part 16The RSL shall within five working days of the date of receipt of the Nomination List referred to in clause Part 13 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.

Part 17If the selected Nominee fails to enter into a Tenancy Agreement within five working days of receipt of the RSL's offer of a Tenancy Agreement such selected Nominee shall be deemed to have rejected the RSL's offer and the RSL shall select another Nominee whereupon the procedure set out in clause Part 16 and this clause shall be repeated.

Part 18In the event of the second selected Nominee failing to accept the RSL's offer of a Tenancy Agreement within the time prescribed by clause Part 17 then the RSL shall make an offer to a third Nominee and the procedure set out in clauses Part 16 and Part 17 shall apply but in the event of such third selected Nominee failing to accept the RSL's offer of a Tenancy Agreement within the prescribed time limits the RSL shall not be bound to make any further offers of accommodation to Nominees in respect of such vacancy of the Rented Unit but shall be entitled to let the Rented Unit to a tenant of its own choosing.

Part 19The RSL's obligations under clauses Part 11 to Part 18 shall cease when all of the Rented Units have been offered to Nominees in accordance with clauses Part 16 to Part 18.

Voids

Part 20Should a Rented Unit become a Void after the Initial Let or the RSL has reasonable cause to believe it will become a Void then and in each case:

i. the RSL shall serve a Void Notice in respect of the relevant vacant Rented Unit; and

ii. within ten working days of receipt of the said notice the Council shall serve upon the RSL the Nomination List setting out a list of Subsequent Nominees which shall contain the information referred to in clause Part 14.

Part 21The RSL shall have the right to let the relevant vacant Rented Unit to a person of its own choosing in the event of the Council's failure to serve the Nomination List referred to in clause 3.10 within ten working days of receipt of the Void Notice.

Part 22Upon receipt of the Nomination List referred to in clause Part 20 the RSL shall follow the procedure mutatis mutandis set out in clauses Part 16 to Part 18.

Part 23The RSL shall not be obliged to follow the procedure set out in clauses Part 20 to Part 22 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

Part 24The RSL shall give notification to the Council of the occurrence of the following events within five working days of their occurrence:

- i. a Nominee or Subsequent Nominee failing to view a Rented Unit within 10 working days of an offer being made;
- ii. a Nominee or Subsequent Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Agreement;
- iii. a Nominee or Subsequent Nominee accepting an offer of a Tenancy Agreement;
- iv. a person accepting an offer of a tenancy from the RSL;
- v. the RSL rejecting a Nominee or Subsequent Nominee in accordance with clause Part 30.

Part 25 In the event of a notice being served pursuant to clause Part 24 then the name of such Nominee or Subsequent Nominee shall be removed from the Nomination List.

Part 26 Within ten working days of the Council receiving notice served in accordance with clause 3.14 above save for notice under Part 24iv 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 Part 14.

Part 27 If the Council shall within the period mentioned in clause Part 26 notify the RSL that the Council then has no suitable Nominee or Subsequent Nominee the Council shall advise the RSL of a suitable replacement Nominee or Subsequent Nominee as soon as reasonably practicable.

Part 28 The RSL shall have the right to let a Rented Unit to a person of its choosing if the Council's failure to provide a Nominee or Subsequent Nominee creates a Void in respect of that Rented Unit.

Part 29 On 1 April 1 July 1 October and 1 January in each year the RSL shall serve the Council with details of the letting activities of the Rented Units in a format to be agreed between the RSL and the Council.

Part 30 The RSL shall have the right to interview and make enquiries of each Nominee or Subsequent Nominee and by serving written notice upon the Council to that effect to reject any Nominee or Subsequent Nominee if in the opinion of the RSL the grant of an Assured Tenancy to such Nominee would be in contravention of the RSL's registered rules or its letting criteria.

Part 31 The Council shall immediately notify the RSL in writing if any Nominee or Subsequent Nominee is withdrawn from the Nomination List.

Part 32 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.

Part 33 The Council and the RSL 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

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

5. TRANSFERS TO OTHER REGISTERED SOCIAL LANDLORDS

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

6. MORTGAGEES IN POSSESSION

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

7. **DISPUTES**

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

8. **COSTS**

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

9. **AGREEMENTS AND DECLARATIONS**

The parties agree:

Part 34 nothing in this deed fetters or restricts the exercise by the Council of any of its powers; and
Part 35 the obligations contained in this Deed are covenants for the purpose of s33 of the Local Government (Miscellaneous Provisions) Act 1982.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED as a DEED by
SEAWARD PROPERTIES LIMITED

acting by:

Director

Director/Secretary

SIGNED and DELIVERED
by SHEILA MARY LYONS

as her Deed in the

presence of:

Witness Signature

Witness Name

Witness Address
Irwin Mitchell LLP
Thomas Eggar House
Friary Lane
Chichester
West Sussex
PO19 1UF

Witness Occupation
TRAINEE SOLICITOR

SIGNED and DELIVERED
by RICHARD GWYNN BENEDICT LYONS

as his Deed in the

presence of:

Witness Signature

Witness Name
ELISE BURTON

Witness Address
Irwin Mitchell LLP
Thomas Eggar House
Friary Lane
Chichester
West Sussex
PO19 1UF

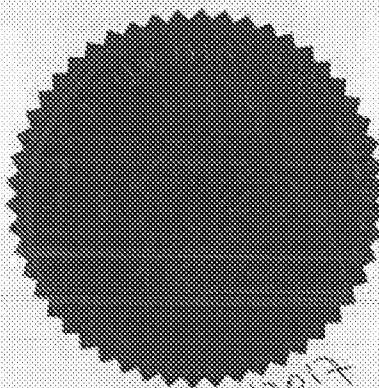
Witness Occupation
TRAINEE SOLICITOR

SEALED with the COMMON SEAL
of ARUN DISTRICT COUNCIL

in the presence of:



Salvator
Authorised Signatory



SEALED with the COMMON SEAL
of WEST SUSSEX COUNTY COUNCIL

in the presence of:



Authorised Signatory

