

DATED 28th February 2019

- (1) ARUN DISTRICT COUNCIL
- (2) WEST SUSSEX COUNTY COUNCIL
- (3) PALLANT HOMES LIMITED
- (4) VICTOR ADOLF COUTIN
- (5) THE ROYAL BANK OF SCOTLAND PLC

Agreement pursuant to Section 106 of the Town and Planning Act 1990

Land at Bonhams, Hoe Lane, Flansham,
Bognor Regis, West Sussex, PO22 8NP
(Reference Y/20/18/OUT)

Arun District Council
Maltravers Road
Littlehampton
West Sussex
BN15 5LF
DX 57406 LITTLEHAMPTON

Date:

28th February

2019

PARTIES:

1. **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("the Council")
2. **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ ("the County Council")
3. **PALLANT HOMES LIMITED** of Peregrine House, Ford Lane, Ford, Arundel, West Sussex, BN18 0DF (Company registered Number 08730399) ("the Applicant")
4. **VICTOR ADOLF COUTIN** of Bonhams, Hoe Lane, Flansham, Bognor Regis, West Sussex, PO22 8NP ("the Owner")
5. **THE ROYAL BANK OF SCOTLAND PLC** of 36 St. Andrew Square, Edinburgh, Scotland, EH2 2YB (Scottish Company Registered Number SC083026) ("the Mortgagee")

WHEREAS

1. The District Council is the Local Planning Authority for the area in which the Land is situated
2. The County Council is the Education Authority, the Library Authority, and the Highway Authority for the area in which the Land is situated
3. The Owner is registered as freehold owner of the Land at HM Land Registry comprised in the title numbers WSX244443 and WSX316785
4. The Applicant has made the Application and is proposing to carry out the Development
5. The Mortgagee has a registered charge dated 29 September 2008 against the Land
6. This Agreement is made as a Deed

NOW THIS DEED WITNESSES as follows:

1. **Interpretation**

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

"Act"

means the Town and Country Planning Act 1990 as amended

"Application"	means an application for outline planning permission, with some matters reserved (access only) in respect of the Land for the Development lodged with the Council and validated on 19 March 2018 and given Council reference Y/20/18/OUT
"BCIS Index"	means the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institution of Chartered Surveyors
"CIL Regulations"	means the Community Infrastructure Regulations 2010 (as amended)
"CIL Tests"	means the requirements set out in Regulation 122(2) of the CIL Regulations
"Commencement"	means the carrying out of a material operation in respect of the Development in the Land within the meaning of Section 56 of the Act Save That (to the extent that the same is not inconsistent with the Permission) the term "material operation" in this context shall not include operations in connection with any work of, or associated with, demolition, site clearance, construction of the temporary access, remediation works, environmental and ground and site investigations, site and soil surveys, interim landscaping works, erection of contractors' work compounds, hoardings, erection of site offices, erection of fencing or reptile fencing, laying of any services or service media, or preparatory works below ground level and "Commence" and "Commenced" shall be construed accordingly
"Development"	means the development of the Land authorised by the Permission.
"District"	means the District of Arun
"Dwelling Units"	means the dwelling units to be constructed on the Land pursuant to this Permission and "Dwelling Unit" shall be construed accordingly

"Education Contribution"

means the Primary Education Contribution, the Secondary Education Contribution and the Sixth-Form Education Contribution added together

"First Occupation"

means the first time Occupation obtained of any Dwelling Unit other than occupation for the purposes of construction, fitting out or marketing

"Index"

means the "All Items" index figure of the Index of Retail Prices ("RPI") published by the Office for National Statistics or any successor government office, ministry or department

"Index Linked"

means indexation (which may increase or decrease) calculated by multiplying the relevant sum by
$$\frac{\text{Final Index Figure}}{\text{Base Index Figure}}$$

Where:

Base Index Figure equals the latest published figure in the Index at the date of this Agreement and

Final Index Figure equals the latest figure published in the index at the date of the relevant payment is made

"Interest Rate"

means the rate of 4% above the base rate from time to time of the Bank of England applicable at the date the relevant contribution under this Agreement is paid

"Land"

means land known as Bonhams, Hoe Lane, Flansham, Bognor Regis, West Sussex PO22 8NP shown edged red on the Plan and registered at the Land Registry under part of the title numbers WSX244443 and WSX316785

"LAP"

means a Local Area for Play for children of an early school age provided in a prominent position on the Open Space and offering a natural play experience including mounds, boulders and logs, in accordance with Arun District Council

Supplementary Planning Guidance on
Open Space and Recreation Standards
(October 2000)

“NPPF”

means the National Planning Policy Framework in force at the time that this Deed is completed or at the time any appeal is determined

“Occupation”

means the occupation of a Dwelling Unit constructed as part of the Development

“Open Space”

means those areas of open space and amenity space including a LAP to be provided within the Development the approximate location of which is to be shown on the Plan or such other areas as the Council may approve in writing to be laid out in accordance with the Open Space Scheme approved by the Council

**“Open Space and LAP
Maintenance Commuted Sum”**

means the Sum of £13.51 per m² to be paid by the Owner to the Council if the Open Space and LAP are transferred to the Council in accordance with Paragraph 1.8 of the First Schedule

“Open Space Scheme”

means a scheme to be submitted to the Council prior to Commencement of the Development setting out:

- a) the layout and materials for the LAP;
- b) the proposed timetable and programme for delivery of the Open Space and LAP to be provided at the Development by reference to the Occupation of a certain number of Dwelling Units at the Development or such other alternative trigger points for delivery of the scheme as may be approved by the Council in writing when approving the scheme; and
- c) a maintenance and management plan for any Open Space and LAP to be provided at the Development, including details of whether the areas in question are to be transferred to or managed by an Owner, a Management

Company or some other body or organisation; and details of the circumstances in which the Open Space and LAP may be closed to the public for maintenance, management, health and safety, and other reasons

“Owner”

means the Applicant and the Owner and includes their respective successors in title

“Permission”

means a planning permission for the Development granted pursuant to the Application and any amendment to or variation of that planning permission

“Plan”

means the Plan attached to this agreement

“Primary Education Contribution”

means the financial contribution to be calculated and paid to the County Council in accordance with paragraph 1.3 of the Second Schedule to be used towards additional equipment at Bishop Tufnell Church of England Primary School or an alternative primary school elsewhere in the District subject to meeting the CIL tests.

“Secondary Education Contribution”

means a sum to be calculated and paid to the County Council in accordance with paragraph 1.3 of the Second Schedule to be used towards additional equipment at Felpham Community College or an alternative secondary school elsewhere in the District subject to meeting the CIL tests.

“Sixth-Form Education Contribution”

means a sum to be calculated and paid to the County Council in accordance with paragraph 1.3 of the Second Schedule to be used towards additional equipment at Felpham Community College Sixth Form or an alternative sixth form elsewhere in the District subject to meeting the CIL tests.

“Specified Date”

means the date upon which an obligation arising under this Deed is due to be



Location Plan 1:1250 @ A3

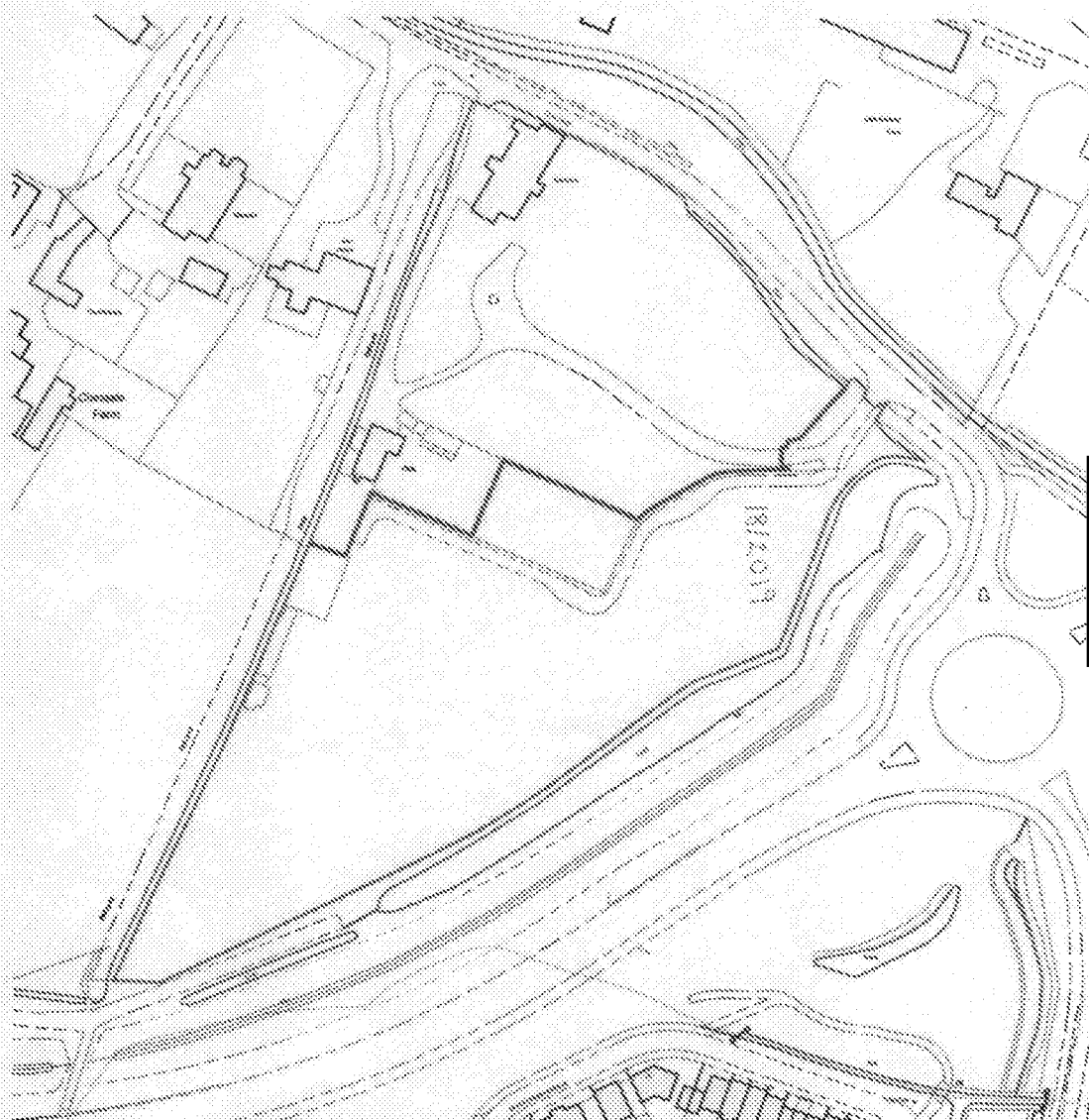
1:1250

Notes:

1. This drawing is the copyright of MH Architects Ltd
2. Do not scale this drawing except for Local Authority planning purposes
3. All dimensions must be checked on site by the contractor prior to commencement of the works.

Rev. Revision

No. Date Drawn Date



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regions & drawing 200

Land at Bonhams

Hoe Lane
Flansham, Felpham

S106 Plan

Drawn	Date	Checked	Date	Scale	1:1250
17-07-1	17-07-1	17-07-1	17-07-1	17-07-1	17-07-1

Drawn Date: 17/07/2018
Checked Date: 17/07/2018
Scale: 1:1250

17/07/2018
17/07/2018
17/07/2018



performed.

"Working Day"

means any day except Saturday, Sunday, a bank holiday or public holiday.

2. INTERPRETATION

- 2.1 Clause headings shall not affect the interpretation of this Deed.
- 2.2 A **"person"** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- 2.3 A reference to a **"company"** shall include any company, corporation or other body corporate, where and however incorporated or established.
- 2.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.5 Unless the context otherwise requires a reference to one gender shall include a reference to other genders.
- 2.6 A reference to any party shall include that party's representatives, successors and permitted assigns and to any person deriving title through or under the party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 2.7 Unless the context otherwise requires a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.8 Unless the context otherwise requires a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 2.9 A reference to **"writing"** and **"written"** does not include fax or email.
- 2.10 References to clauses and Schedules are to the clauses and schedules of this deed.
- 2.11 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 2.12 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.
- 2.13 Where an obligation falls to be performed by more than one person,

the obligation can be enforced against every person so bound jointly and against each of them individually.

3. LEGAL BASIS

- 3.1 This Deed is made under Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed are planning obligations for the purposes of Section 106 of the Act and are entered into by the Owner with the intention that they bind the interests held by the Owner and his successors and assigns.
- 3.3 The covenants, restrictions and obligations contained in this deed are enforceable by the Council and the County Council in accordance with section 106 of the Act.

4. CONDITIONALITY

- 4.1 This Deed is conditional upon:
 - 4.1.1 the grant of the Permission
 - 4.1.2 the Commencement of the Development,save for the provisions of Clauses 4, 9.1, 9.2, 12, 19 and 20 which shall come into effect immediately upon completion of this Deed.
- 4.2 In the event that the Planning Application or any planning condition is subject to an appeal then each planning obligation in this Deed is also conditional upon:
 - 4.2.1 The Secretary of State or the planning inspector deciding the appeal being satisfied that it is:
 - 4.2.1.1 Necessary to make the Development acceptable in planning terms; and
 - 4.2.1.2 Directly related to the Development; and
 - 4.2.1.3 Fairly and reasonably related in scale and kind to the Development; and
 - 4.2.1.4 Complies, in all other respects with Regulation 122 of the CIL Regulations

4.2.2 In the event that the Secretary of State or the planning inspector deciding the appeal expressly states in his decision letter that any individual planning obligation within this Deed:

- (a) is not compliant with the CIL Regulations and/or the NPPF; or
- (b) is immaterial to the grant of the 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 Council or the County Council adopt a charging schedule under the CIL Regulations prior to the Permission being granted, the Owner shall be released from any of the obligations in this Deed that relate to an item or project included on the Council and/or County Council's regulation 123 list of infrastructure.

5 THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council so as to bind the Land to perform the obligations as set out in First Schedule.
- 5.2 The Owner covenants with the County Council so as to bind the Land to perform the obligations as set out in Second Schedule.

6 THE COUNTY COUNCIL'S COVENANTS

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

7 DETERMINATION OF THIS DEED

- 7.1 The obligations in this deed (with the exception of clauses 9.1 and 9.2) shall cease to have effect if before the Commencement of Development, the Planning Permission:
 - (a) expires;
 - (b) is varied or revoked other than at the request of the Owner ; or
 - (c) is quashed following a successful legal challenge.

8 THE MORTGAGEE'S CONSENT

- 8.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the charge over the Land shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

9 MISCELLANEOUS

- 9.1 The Applicant shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed in the sum of £3,000.
- 9.2 The Applicant shall pay to the County Council on completion of this Deed the reasonable legal costs of the County Council incurred in the negotiation, preparation and execution of this Deed in the sum of £1320.60.
- 9.3 A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.
- 9.4 This Deed shall be registrable as a local land charge by the Council.
- 9.5 Where any agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 9.6 Following the performance and satisfaction of all the obligations contained in this Deed the Council and the County Council shall at the Owner's request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 9.7 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.
- 9.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the 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.

- 9.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Deed.
- 9.10 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council or the County Council under all statutes by laws statutory instruments orders and regulations in the exercise of their functions as a local authority

10 EXCLUSIONS OF LIABILITY

- 10.1 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 Land, or such part of the Land to which the breach relates, but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 10.2 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 Land in which it does not have an interest.
- 10.3 This Deed shall not be enforceable against any owner, occupier or tenant of any Dwelling Unit constructed pursuant to the Permission, or their mortgagees, nor against those deriving title from them.
- 10.4 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 Land for the purpose of providing apparatus pursuant to its statutory undertaking for the Development.
- 10.5 Any legal charge entered into in respect of the Land or any part of the Land after this Deed has been completed shall take effect subject to this Deed PROVIDED THAT the mortgagee under such a legal charge shall have no liability under this Deed unless it causes the breach after it becomes a mortgagee in possession of the land comprised in the legal charge and the mortgagee shall not be liable for any breach of this Deed that occurs prior to the mortgagee taking possession of the land.

11 WAIVER

No waiver (whether expressed or implied) by the Council or 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 Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

12 CHANGE IN OWNERSHIP

12.1 Subject to clause 12.2 the Owner agrees with the Council and County Council to give to the Council and County Council not less than 14 days written notice of any change in ownership of any of its interests in the Land 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 Land in respect of which ownership has changed by reference to a plan

12.2 The Owner shall not be required to give notice to the Council and County Council of any change of ownership affecting a Dwelling Unit.

13 FUTURE SECTION 73 CONSENTS

13.1 Subject to clauses 13.2 to 13.5 below, if any Section 73 Consent is granted after the date of this Deed:

13.1.1 the obligations in this Deed shall relate to and bind such Section 73 Consent; and

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

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

13.3 to the extent that any of the obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent;

13.4 the provisions of this clause 13 shall not apply to any Section 73 Consent which necessitates or requires amendments to the substantive terms or obligations of or contained within this Deed; and

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

14 FUTURE PERMISSIONS

Nothing in this agreement shall prohibit or limit the right to develop any part of the Land in accordance with any planning permission (other than the Permission or modification, variation or amendment thereof) granted after the date of the Permission.

15 INDEX LINKED

- 15.1 Unless there is an express provision to the contrary the Owner agrees with the Council that any sum payable by the Owner and referred to in the First Schedule shall be increased by the application of the following formula:

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

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

- 15.2 Unless there is an express provision to the contrary the Owner agrees with the County Council that any sum payable by the Owner and referred to in the Second Schedule shall be increased by the application of the following formula:

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

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 quarter preceding the Specified Date
D	is the BCIS Index for the quarter preceding the date that Planning Permission is granted
C/D	is equal to or greater than 1

- 15.3 Where reference is made to an index (including the RPI Index and the BCIS Index) and that index ceases 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 the Council or the County Council (as applicable) shall advise the Owner in writing.

16 INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

17 VAT

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

18 DISPUTES

Any dispute, controversy or claim arising out of or relating to this deed, including any question regarding its breach, existence, validity or termination or the legal relationships established by this deed, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

- (a) the tribunal shall consist of [one] arbitrator appointed jointly by the parties;
- (b) in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;
- (c) the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and
- (d) the seat of the arbitration shall be [London].

19 NOTICES

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

19.1.1 delivered by hand; or

19.1.2 sent by prepaid first class post or other next Working Day delivery service.

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

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

- 19.2.2 to the County Council at Monitoring and Records Team, Strategic Planning Division, County Hall, West Street, Chichester, West Sussex, PO19 1RQ quoting the Planning Application number;
 - 19.2.3 to the Owner at: Bonhams, Hoe Lane, Flansham, Bognor Regis, West Sussex, PO22 8NP;
 - 19.2.4 to the Applicant at: Peregrine House, Ford Lane, Ford, Arundel, BN18 0DF;
 - 19.2.5 To the Mortgagee at: 36 St. Andrew Square, Edinburgh, Scotland, EH2 2YB
or at such other address as the relevant party shall specify by notice to the other parties
- 19.3 Any notice or other communication given in accordance with clause 19.1 and clause 19.2 will be deemed to have been received:
- 19.3.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address provided that if delivery occurs before 9 am on a Working Day, the notice will be deemed to have been received at 9 am on that day, and if delivery occurs after 5 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9 am on the next Working Day;
 - 19.3.2 if sent by pre-paid first class post or other next Working Day delivery service at 9 am on the second Working Day after posting.
- 19.4 A notice or other communication given under this deed shall not be validly given if sent by email or fax.
- 19.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

20 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.

21 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.

22 COUNTERPARTS

22.1 This Deed may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

22.2 Each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter

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

SIGNED as a DEED by:

VICTOR ADOLF COUTIN

In the presence of:

Signature of witness:

Name (in BLOCK CAPITALS):

Address:

Occupation:

SIGNED as a DEED by)

PALLANT HOMES LIMITED)

acting by a Director

in the presence of:

Signature of witness:

Name (in BLOCK CAPITALS):

Address:

Occupation:

SIGNED as a DEED by [NAME OF ATTORNEY])

as attorney for **THE ROYAL BANK OF SCOTLAND PLC**)

under a power of attorney dated [DATE])

in the presence of:

Signature of witness:

Name (in BLOCK CAPITALS):

Address:

Occupation:

S.106 Agreement - Land at Bonhams, Hoe Lane, Flansham, Bognor Regis, West Sussex, PO22 8NP - Y/20/18/OUT

EXECUTED as a DEED by affixing
THE COMMON SEAL of
ARUN DISTRICT COUNCIL in the presence of:

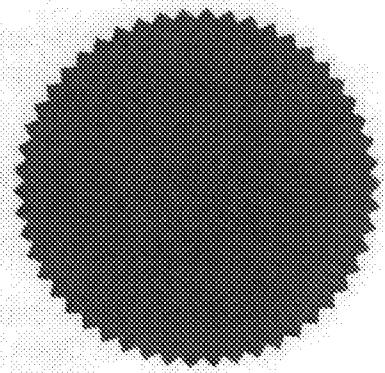
Authorised Sign

Signature
Name
Job Title
Seal Book No.



LAWYER

18/2019



EXECUTED as a DEED by affixing
THE COMMON SEAL of
WEST SUSSEX COUNTY COUNCIL

in the presence of:

Authorised Officer:

.....

FIRST SCHEDULE

The Owner's Covenants with the Council

The Owner covenants with the Council as follows:

1 PROVISION OF PUBLIC OPEN SPACE AND LOCAL AREA FOR PLAY

- 1.1 Prior to the Commencement of the Development to submit the Open Space Scheme to the Council for the Council's approval.
- 1.2 Not to cause or permit the Development to be Commenced until the Open Space Scheme has been submitted to, and approved by, the Council.
- 1.3 Prior to First Occupation of the final Dwelling Unit to have provided and laid out the Open Space, including LAP, in accordance with the approved Open Space Scheme.
- 1.4 Not to cause or permit the First Occupation of the final Dwelling Unit until the Open Space, including LAP, has been provided and laid out in accordance with the approved Open Space Scheme.
- 1.5 Prior to the First Occupation of the first (1st) Dwelling Unit the Owner shall elect whether to transfer the Open Space to a Management Company or to the Council.
- 1.6 Not to cause or permit First Occupation of the first (1st) Dwelling Unit until the Owner has notified the Council in writing as to whether it has elected to transfer the Open Space, to a Management Company or the Council
- 1.7 To supply to the Council not more than twenty-eight (28) days after practical completion of the final Dwelling Unit proposals for arrangements to secure the management and future maintenance of the Open Space, which shall state whether the Owner proposes to transfer the management and future maintenance of the Open Space, to
 - 1.7.1 a Management Company or such other third party which may be approved by the Council in writing, or
 - 1.7.2 the Council
- 1.8 If the Owner under paragraph 1.7 above elects to transfer the Open Space, to the Council, prior to First Occupation of the final Dwelling Unit in the Development, to pay to the Council the Open Space and LAP Maintenance Commuted Sum.
- 1.9 If the Owner under paragraph 1.7 above elects to transfer the management and maintenance of the Open Space to a Management Company or such other third party as approved by the Council that it shall remain responsible for the management and maintenance of the Open Space, in accordance with the Open Space Scheme, until the said transfer has completed.

SECOND SCHEDULE

The Owner's Covenants with the County Council

The Owner covenants with the County Council as follows:

1 EDUCATION CONTRIBUTION

- 1.1 To pay to the County Council the Education Contribution Index Linked on or before First Occupation of the first Dwelling Unit to be completed.
- 1.2 Not to cause or allow First Occupation of the second Dwelling Unit to be completed to occur before payment to the County Council of the Education Contribution has been made.
- 1.3 The Education Contribution shall be calculated in accordance with the following formula:
Education Contribution = Primary Education Contribution + Secondary Education Contribution + Sixth Form Education Contribution

where

x means "multiplied by"

Primary Education Contribution = DfE figure (Primary) x ACP

Secondary Education Contribution = DfE figure (Secondary) x ACP

Sixth Form Education Contribution = DfE figure (Sixth-Form) x ACP

Where x means "multiplied by"

ACP (Additional Child Product) = The estimated additional number of school age children likely to be generated by the Development calculated by reference to the total number of Dwelling Units as approved by the Application or, if the Application is amended [a subsequent reserved matters planning application] The current occupancy rates are as follows:

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

Using the latest published occupancy rates from the census statistics published by the Office for National Statistics to determine an overall population increase the following factors are applied. According to 2001 census data, there are 14 persons per 1000 population in each school year group for houses and 5 persons per 1000 population in each school year group for flats. There are 7 year groups for primary (years R to 6) and 5 for secondary (years 7 to 11).

DfE Figure Primary = Department for Education (DfE)
Primary school building costs per pupil place as adjusted for the West Sussex area which currently for the financial year 2018/2019 is £17,920)

DfE Figure Secondary = Department for Education (DfE)
Secondary school building costs per pupil place as adjusted for the West Sussex area which currently for the financial year 2018/2019 is £27,000

DfE Figure Sixth Form Sixth Form = Department for Education (DfE) Further Secondary school building costs per pupil place) as adjusted for the West Sussex area which currently for the financial year 2018/2019 is £29,283 for Sixth-Form

updated as necessary by the Royal Institute of Chartered Surveyors Building Cost Information Service All-In Tender Price Index.

THIRD SCHEDULE		
County Council Covenants		
The County Council covenants with the Owner as follows:		
1	EDUCATION CONTRIBUTION	
	1.1	Upon receipt of the Education Contribution paid pursuant to paragraph 1.1 of the Second Schedule it will hold it in a separately identified interest bearing section of the County Council'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 Land.
	1.2	Upon written request on or after ten (10) years of the date of receipt of the Education Contribution to issue to the party that paid the Education Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the Education Contribution has been expended by the County Council.
	1.3	If or to the extent that any of the Education Contribution shall not have been spent by the County Council by the end of the period referred to in paragraph 1.2 above the County Council shall on such date refund to the party that paid the Education Contribution any unexpended part of the Education Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
	1.4	If at the end of the period referred to in paragraph 1.2 of this Schedule the County Council shall have entered into a contract or other legally binding obligation to expend the Education Contribution or part thereof for the purposes specified in this Deed then the County Council shall not be required to refund any part of the 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 Education Contribution in the manner set out in paragraph 1.2 of this Schedule and refund any unexpended part of the Education Contribution in the manner set out in paragraph 1.3 of this Schedule

