

Dated: _____ **2015**

Between:

- [1] Lisa Jane Millard Christopher James Anthony White
Hannah Seydeh White and Kirsty Helen White [The Owner]**
 - [2] Arun District Council [ADC]**
 - [3] West Sussex County Council [WSCC]**
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AGREEMENT

**under Section 106 of the Town & Country Planning Act 1990
and other powers relating to Land North of Yapton C of E School on North End Road,
Yapton, BN18 0DU**

**Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex BN17 5LF
DX 57406 LITTLEHAMPTON
Reference: Y/93/14**

This Agreement is dated _____ 2015 and is made between:

[1] Lisa Jane Millard of Southview, Littleworth Lane, Littleworth, Partridge Green, Horsham, RH13 8JX and Christopher James Anthony White of Nash's Cottage, Maypole Lane, Yapton, Arundel, BN18 0DP and Hannah Seydeh White of Stakers Farm, North End Road, Yapton, Arundel, BN18 0DU and Kirsty Helen White of 155a Old Brompton Road, London, SW5 0LJ
[“the Owner”]

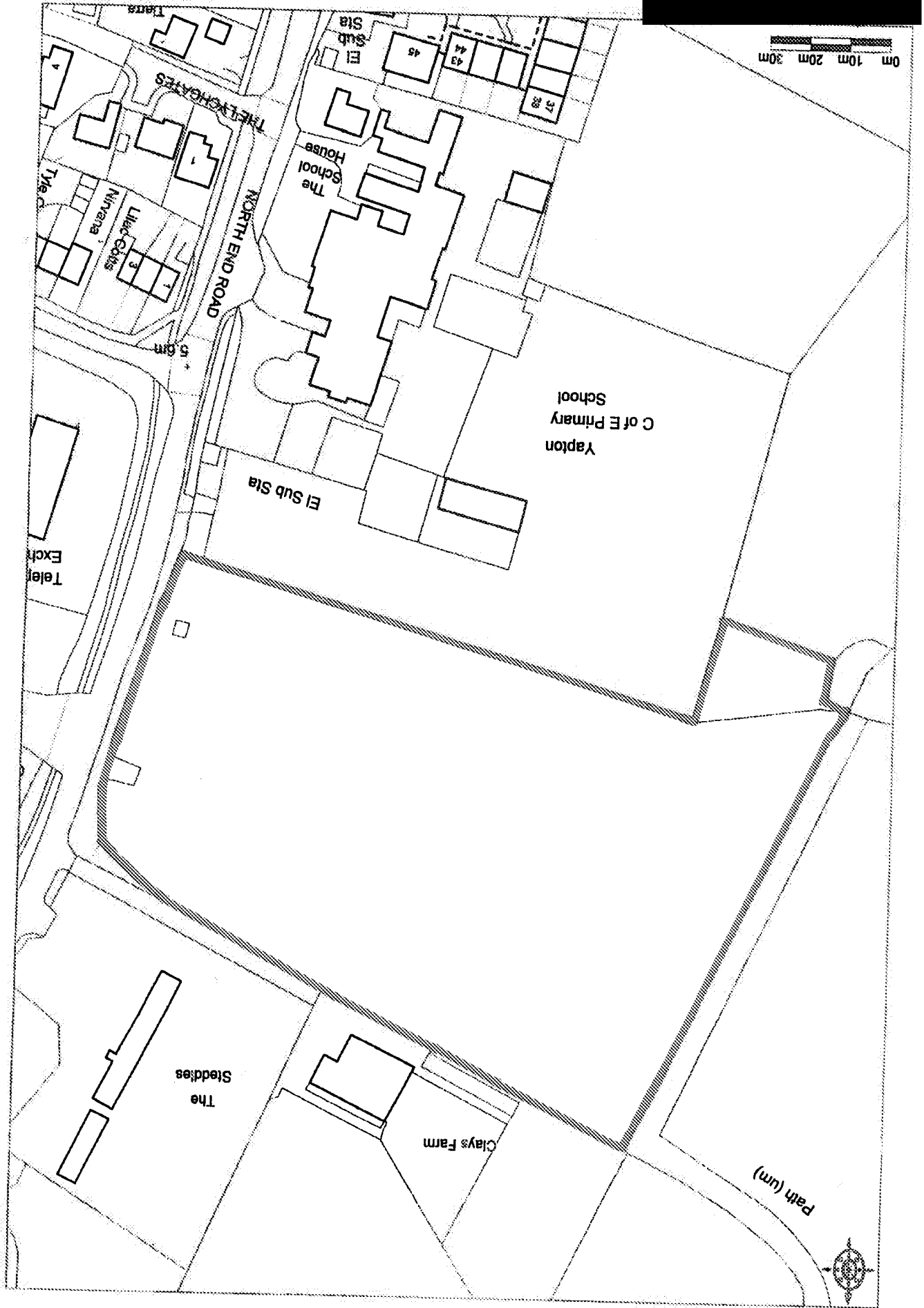
[2] Arun District Council of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF
[“ADC”]

[3] West Sussex County Council of County Hall, Chichester, West Sussex, PO19 1RQ
[“WSCC”]

1. Background

- 1.1. The Owner is seised in fee simple in possession/is the registered proprietor under title number WSX 285552 of the land North of Yapton C of E School on North End Road, Yapton, **BN18 0DU** shown for identification purposes only edged red on the attached plan [and hereinafter called “the Land”].
- 1.2. ADC is the local planning authority and the local housing authority and provider of public open spaces .
- 1.3. The WSCC is the Strategic Planning Authority and the local authority responsible for providing education, library and fire and rescue services.
- 1.4. Planning application number Y/93/14/OUT has been submitted to ADC applying to ADC for outline planning permission to develop the Land by the erection of 38 dwellings to comprise :-
 - 6 No 4 bed houses
 - 20 No 3 bed houses
 - 10 no 2 bed houses
 - 2 No 1 bed houses

Scale 1/1,250



each of all of the above houses with a garage and car parking space together with means of access off North End Road

2. Interpretation

In this Agreement:

- 2.1 Words importing the masculine include the feminine and vice versa.
- 2.2 Words importing the singular include the plural and vice versa.
- 2.3 A reference to a person includes a reference to a firm, company, authority, board, department or other body 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 Agreement.
- 2.6 Any reference to a colour or letter is to be on the plans attached to this Agreement.
- 2.7 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it.
- 2.8 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party unless specifically provisioned to the contrary and in the case of WSCC and ADC the successors to their respective functions.
- 2.9 "the Act" means the Town & Country Planning Act 1990
- 2.10 "agreed" or "approved" means agreed or approved in writing and given for the purpose of this Agreement.

- 2.11 "Affordable Housing" means affordable housing as defined in Annex 2 Glossary National Planning Policy Framework dated 27 March 2012 as amended from time to time
- 2.12 "Affordable Housing Units" means eleven 11 of the Dwelling Units to be provided as Affordable Housing comprising
- 4 Intermediate Ownership Units of the following mix:
- 4 x 2 bedroom houses
- 7 Rented Units of the following mix:
- 2 x 1 bedroom houses
- 5 x 2 bedroom houses
- in accordance with the terms of this Agreement
- 2.13 "Affordable Housing Units Land" that part of the Land upon which the Affordable Housing Units are intended to be built
- 2.14 "Affordable Housing Standard" means the Homes and Communities Agency "HCA" 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 HCA
- 2.15 "the Application" means the planning application number Y/93/14/OUT made by the Owner to develop the Land
- 2.16 "Commencement Notice" means the written notice annexed to this deed as Schedule 1 addressed to ADC's Head of Planning Services and WSCC's County Planning Officer
- 2.17 "Commencement of the Development" means the date of the implementation of the Planning Permission by the commencement of a material operation as defined in Section 56(4) of the Act in relation to the Development but for the avoidance of doubt disregarding decontamination treatment site remediation works site investigation works archaeological investigations and ground works and Commence the Development shall be construed accordingly.
- 2.18 "the Development" means the development of the Land proposed by the Application or permitted by planning permission granted pursuant to the Application or carried out substantially in accordance with such planning permission.

- 2.19 "Education Contribution" means the sum payable in accordance with Clause 8 being a financial contribution towards the cost of providing the additional primary education infrastructure required to accommodate the extra demands for primary education services at Yapton Church of England Primary School the need for which will be generated by the Development.
- 2.20 "Estate Roads" means roads hammerheads and adjacent footways that are within the Land.
- 2.21 "Fire and Rescue Services Contribution" means the sum payable in accordance with Clause 10 being a financial contribution towards the provision of enhanced smoke alarms within the village of Yapton over and above any that would be required by Building Regulations the need for which will be generated by the Development.
- 2.22 "First Occupation" means the beneficial occupation of any dwelling as a dwelling house other than occupation for the purpose of construction and fitting out.
- 2.23 "Interest Rate" means a rate of interest 4% above the HSBC Base rate from time to time
- 2.24 "Landscaped Buffer" means a landscaped ~~buffer~~ along the western boundary of the Land *ditto*
- 2.25 "Library Contribution" means the sum payable in accordance with Clause 9 being a financial contribution towards the cost of providing additional books, audio books, large print books and electronic reading materials at Littlehampton Library the need for which will be generated by the Development
- 2.26 "Market Housing Units" means Dwelling Units within the Development which are not Affordable Housing Units
- 2.27 "Planning Permission" means the grant of planning permission for the Development pursuant to the Application in the form of the draft annexed hereto
- 2.28 "the Public Open Space" means that part of the Land referred to in Clause 6.1.
- 2.29 "Retail Price Index" means the All Items Retail Price Index RPIJ published by the Office for National Statistics

- 2.30 "Qualifying Occupiers" means persons who qualify for Affordable Housing within Schedule 4 to this Agreement and including residents of the Arun District who are unable to resolve their housing needs in the local private sector market because of the relationship between housing costs and income
- 2.31 "Registered Provider " means a provider of affordable housing registered with the Tenants Services Agency [TSA] or equivalent or replacement and appearing within the Arun District Council List of Approved Registered Providers attached at Schedule 3 or specifically approved in writing for the purposes of the present Agreement
- 2.32 "Safer Route to Schools Contribution" means the sum payable in accordance with Clause 11 being a financial contribution towards the cost of providing a Safer Route to School facility at Yapton Church of England Primary School the need for which will be generated by the Development.
- 2.33 "Specified Date" means the date upon which an obligation arising under this Agreement is due to be performed.

3. Enabling Provisions

This Agreement is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, section 1 Localism Act 2011 and all other enabling powers.

4. Commencement

- 4.1 This Agreement shall come into effect upon the date of this Agreement but the obligations in Clauses 5, 6, 7, 8, 9, 10,11, 12 and 13 shall become effective only on or after the Commencement of the Development as appropriate PROVIDED THAT any obligations that are expressed to be performed prior to the Commencement of Development shall come into effect upon the date of this Agreement.
- 4.2 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.

COVENANTS IN FAVOUR OF ADC

5. On Site Affordable Housing Provision

- 5.1 to provide on the Land as part of the Development the Affordable Housing in accordance with the provisions of Schedule 3 and 4 hereto.
- 5.2 not to occupy more than 50% of the Market Housing Units until all provisions of Schedules 3 and 4 are complied with to the reasonable satisfaction of ADC.

6. Provision of Public Open Space

The Owner agrees with ADC

- 6.1 to provide and lay out an area of open space having an area of 2304m² within the Land and including a Local Area of Play (LAP) together with the Landscaped Buffer in a position and in accordance with a specification to be approved by ADC which specification shall include details of the on site Local Area of Play (LAP) and include an ongoing future management scheme and/or the transfer thereof as applicable such area of open space and Landscaped Buffer to be provided to ADC's reasonable satisfaction.
- 6.2 to ensure that there is easy public access to the Public Open Space and the LAP
- 6.3 to complete the works of provision and laying out in accordance with Clause 6.1 and to make the Public Open Space and LAP available for use by the public no later than the completion of the 25th Market Housing Unit.
- 6.4 within two months of the completion of the works referred to in Clause 6.3 to offer to transfer the Public Open Space, Landscaped Buffer and LAP to ADC or to such body as it may direct although the Public Open Space and LAP and Landscaped Buffer may by agreement with ADC be handed over to ADC or its nominee for public use and for maintenance purposes in advance of the transfer or retained for maintenance by the Owner in accordance with an agreed ongoing future management plan.
- 6.5 upon the handover or transfer referred to in Clause 6.4 [whichever is the earlier] to pay to ADC or its nominee the sum of £12,000 as a contribution towards the future maintenance thereof

COVENANTS IN FAVOUR OF WSCC

7. Education Contribution

The Owner agrees with WSCC:-

- 7.1 to pay to WSCC the Education Contribution prior to the Occupation of the 10th Market Housing Unit
- 7.2 not to cause or allow the Occupation of the 10th Market Housing Unit before the Education Contribution shall have been paid.
- 7.3 the Education Contribution shall be the sum of £90,982 (ninety thousand nine hundred and eighty two pounds) provided that if the Occupation of the 10th Market Housing Unit shall be after 31 March 2016 the sum shall be increased by an amount equal to the proportionate increase in the Retail Price Index between the figure for March 2016 and the last published figure preceding the date of payment of the Education Payment.

8. Library Contribution

The Owner agrees with WSCC:-

- 8.1 to pay to WSCC the Library Contribution on or before the Commencement of Development.
- 8.2 not to cause or allow the Commencement of Development before the Library Contribution shall have been paid.
- 8.3 the Library Contribution shall be the sum of £8,159 (eight thousand one hundred and fifty nine pounds) and if it has not been paid before 31st March 2016 then it will be increased by an amount equal to the proportionate increase in the Retail Price Index between the figure for March 2016 and the last published figure preceding the date of payment of the Library Contribution

9. Fire and Rescue Services Contribution

The Owner agrees with WSCC:-

- 9.1 to pay to WSCC the Fire and Rescue Services Contribution on or before the Commencement of Development.
- 9.2 not to cause or allow the Commencement of Development before the Fire and Rescue Services Contribution shall have been paid.

- 9.3 the Fire and Rescue Services Contribution shall be the sum of £900 (nine hundred pounds) and if it has not been paid before 31 March 2016 then it will be increased by an amount equal to the proportionate increase in the Retail Price Index between the figure for March 2016 and the last published figure preceding the date of payment of the Fire and Rescue Service Contribution.

10. Safer Route to Schools Contribution

The Owner agrees with WSCC:-

- 10.1 to pay to WSCC the Safer Route to Schools Contribution on or before the Commencement of Development.
- 10.2 not to cause or allow the Commencement of Development before the Safer Route to Schools Contribution shall have been paid.
- 10.3 the Safer Route to Schools Contribution shall be the sum of £60,000 (sixty thousand pounds) and if it has not been paid before 31st March 2016 then it will be increased by an amount equal to the proportionate increase in the Retail Price Index between the figure for March 2016 and the last published figure preceding the date of payment of the Safer Route to Schools Contribution.

11. Fire Hydrants and Access for Fire Fighting

The Owner agrees with WSCC:

- 11.1 Prior to the Commencement of Development to submit to WSCC for its approval a proposal for the location of a fire hydrant within the Land in accordance with the West Sussex Fire Brigade Guidance Notes contained in Schedule 6 to this Agreement and then prior to First Occupation to install at their own expense the fire hydrant in the approved location approved by WSCC (or such alternative location as shall be approved by WSCC subsequently) and to arrange for the fire hydrant to be connected to a water supply which is appropriate in terms of both pressure and volume for the purposes of fire fighting
- 11.2 Prior to the Commencement of Development to submit to WSCC for its approval a proposal for suitable access for fire brigade vehicles and equipment to the reasonable satisfaction of WSCC

12 Private Estate Roads

The Owner agrees with WSCC:

12.1 Prior to the Commencement of Development to submit to WSCC for approval a plan showing the intended status of the Estate Roads and associated footways, footpaths and cycleways (for the avoidance of doubt those roads, footways and footpaths and cycleways that will be offered for adoption under S38 of the Highways Act). Any plan should also include details of surfacing, materials and construction of the Estate Roads.

12.2 In the event that all or part of the Estate Roads are not to be offered for adoption then prior to First Occupation to submit to WSCC:

12.2.1 the name and contact details of the Management Company; and

12.2.2 a schedule for the approval of the street furniture that the Management Company will be responsible for maintaining and a regime of maintenance

12.3 It is agreed with WSCC that all Estate Roads that are stated to be privately maintained by the Owner or the Management Company shall be:

12.3.1 constructed to a standard that is suitable for its intended use;

12.3.2 maintained by the Owner or the Management Company at their own expense in good and substantial repair and condition; and

12.3.3 shall not be dedicated by the Owner or the Management Company as a public highway or become a private street (as defined in the New Roads and Street Works Act 1991)

12.4 Upon completion of the construction of the Estate Roads not being adopted under a S38 Agreement the Owner will provide a report to be prepared and signed by a Chartered Engineer at their own expense to confirm that the construction of the privately maintained Estate Roads have been designed and built to a suitable standard for their intended use.

12.5 The Owner or the Management Company covenant with WSCC:

12.5.1 that the privately maintained Estate Roads shall remain open and unobstructed at all times and available for use by both residents of the Development and members of the public in the latter case without charge; and

12.5.2 to erect and maintain signs in positions agreed with WSCC advising the public that they are permitted to use the privately maintained Estate Roads on foot and by bicycle but that it is not a public highway so as to prevent the dedication of the privately maintained Estate Roads and to prevent any presumption of dedication (whether arising under Section 31 of the Highways Act 1980 or otherwise)

13. **Certificates**

The Owner agrees with WSCC and ADC:

13.1 where this Agreement imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Specified Date the Owner shall give to the ADC and/or WSCC (as appropriate) written notice of the Specified Date not more than seven days after such Specified Date

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

14. **ADC Index Linking**

14.1 The Owner undertakes to ADC that any sums payable by the Owner under this agreement shall be increased by the application of the following formula:

$$A = B \times C \div D$$

where:

- A is the sum actually payable on the Specified Date/ Payment Date
 - B is the original sum mentioned in this agreement
 - C is the Retail Price Index for the quarter preceding the Specified Date
 - D is the Retail Price Index for the first quarter of 2016
- if $C \div D$ is greater than 1

15. **COVENANTS BY ADC IN FAVOUR OF THE OWNER**

ADC covenants with the Owner:

- 15.1 to accept a transfer of the Public Open Space Landscaped Buffer and LAP or to nominate a body which shall take such a transfer pursuant to clause 6.4 unless otherwise agreed with the Owner.
- 15.2 that in the event that the Public Open Space and the landscape buffer have been transferred to ADC or their nominee in accordance with Clauses 6.1 and 6.4 that such areas shall be used in perpetuity for purposes of public open space and as a landscaper buffer and for no other purpose.
- 15.3 that in the event that the payment has been paid in accordance with Clause 6.5 they or their nominee will thereafter carry out all ongoing works of maintenance improvement and repair of the Public Open Space and landscape buffer in perpetuity.
- 15.4 it shall issue the Planning Permission within 10 days of the date of this Agreement.

16. COVENANTS BY WSCC IN FAVOUR OF THE OWNER

WSCC covenants with the Owner:

- 16.1 that upon receipt of the Education Contribution paid to WSCC under Clause 7.1 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 towards the cost of providing the additional primary education infrastructure required to accommodate the extra demands for primary education services at Yapton Church of England Primary School the need for which will be generated by the Development.
- 16.2 that upon written request on or after five years of the date of receipt of the Education Contribution to issue to the Owner an account certified by the Director of Finance and Assurance for the time being of WSCC detailing how the Education Contribution has been expended by WSCC.
- 16.3 if or to the extent that the Education Contribution shall not have been spent by WSCC by the end of the period referred to in paragraph 16.2 above WSCC shall on such date refund to Christopher James Anthony White, Lisa Jane Millard, Hannah Seydeh White and Kirsty Helen White or their heirs or nominee and not their successors in title the party that paid the Education Contribution any unexpended part of the Education Contribution together with compound interest on the unexpended part from the date of receipt by WSCC of the Education Contribution to the date of repayment at the Interest Rate prevailing at the date when the relevant payment becomes due.

- 16.4 If at the end of the period referred to in clause 16.2 above WSCC shall have entered into a contract or other legally binding obligation to expend the Education Contribution or part thereof for the purposes specified in paragraph 16.1 above then WSCC shall not be required to refund any part of the Education Contribution required for that purpose 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 and refund any unexpended part of the Education Contribution in the manner set out in paragraph 16.3 above.
- 16.5 that upon receipt of the Library Contribution paid to WSCC under Clause 8.1 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 towards the cost of providing additional books, audio books, large print books and electronic reading materials at Littlehampton Library the need for which will be generated by the Development.
- 16.6 that upon written request on or after four years of the date of receipt of the Library Contribution to issue to the Owner an account certified by the Director of Finance and Assurance for the time being of WSCC detailing how the Library Contribution has been expended by WSCC.
- 16.7 if or to the extent that the Library Contribution shall not have been spent by WSCC by the end of the period referred to in Clause 16.6 WSCC shall on such date refund to Christopher James Anthony White, Lisa Jane Millard, Hannah Seydeh White and Kirsty Helen White or their heirs or nominee and not their successors in title the party that paid the Library Contribution any unexpended part of such contribution together with compound interest on the unexpended part from the date of receipt by WSCC of the Library Contribution to the date of repayment at the Interest Rate prevailing at the date when the relevant payment becomes due .
- 16.8 that upon receipt of the Fire and Rescue Services Contribution paid to WSCC under Clause 9.1 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 towards the provision of enhanced smoke alarms within the village of Yapton over and above any that would be required by Building Regulations the need for which will be generated by the Development.
- 16.9 that upon written request on or after four years of the date of receipt of the Fire and Rescue Services Contribution to issue to the Owner an account certified by the Director of Finance and Assurance for the time being of WSCC detailing how the Fire and Rescue Services Contribution has been expended by WSCC.

- 16.10 if or to the extent that the Fire and Rescue Services Contribution shall not have been spent by WSCC by the end of the period referred to in Clause 16.10 WSCC shall on such date refund to Christopher James Anthony White, Lisa Jane Millard, Hannah Seydeh White and Kirsty Helen White or their heirs or nominee and not their successors in title the party that paid the Fire and Rescue Service Contribution any unexpended part of such contribution together with compound interest on the unexpended part from the date of receipt by WSCC of the Fire and Rescue Service Contribution to the date of repayment at the Interest Rate prevailing at the date when the relevant payment becomes due.
- 16.11 that upon receipt of the Safer Route to Schools Contribution paid to WSCC under Clause 10.1 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 towards the cost of providing a Safer Route to School facility at Yapton Church of England Primary School the need for which will be generated by the Development.
- 16.12 that upon written request on or after three years of the date of receipt of the Safer Route to Schools Contribution to issue to the Owner an account certified by the Director of Finance and Assurance for the time being of WSCC detailing how the Safer Route to Schools Contribution has been expended by WSCC.
- 16.13 if or to the extent that the Safer Route to Schools Contribution shall not have been spent by WSCC by the end of the period referred to in Clause 16.14 WSCC shall on such date refund to Christopher James Anthony White, Lisa Jane Millard, Hannah Seydeh White and Kirsty Helen White or their heirs or nominee and not their successors in title the party that paid the Safer Route to Schools Contribution any unexpended part of such contribution together with compound interest on the unexpended part from the date of receipt by WSCC of the Safer Route to Schools Contribution to the date of repayment at the Interest Rate prevailing at the date when the relevant payment becomes due.

17. Interest

The Owner ADC and WSCC agree that interest shall be paid on sums due to ADC and WSCC under this Agreement but not paid on the Specified Date or which have been paid by the Owner but not expended by ADC or WSCC by the Specified Date shall be payable from the Specified Date until actual payment or from the date payment was made until it is repayable as appropriate. The rate of interest shall be the Interest Rate.

18. Legal Costs

The Owner agrees with ADC and WSCC to pay their reasonable respective legal costs on the completion of this Agreement as follows :-

Payee	Legal Costs Amounts
ADC	£700
WSCC	£750 / 1,100

Amended

19. **Payment Notice**

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

20. **General**

The parties agree that:

- 20.1 nothing in this Agreement grants planning permission or any other approval consent or permission required from WSCC or ADC in the exercise of any other statutory function
- 20.2 nothing in this Agreement fetters or restricts the exercise by WSCC and ADC of any of their powers
- 20.3 the obligations contained in Clauses 5, 6, 7, 8, 9, and 10 are planning obligations for the purpose of Section 106 of the Act
- 20.4 this Agreement constitutes a deed
- 20.5 this Agreement is enforceable by ADC as to Clauses 5 and 6 and by the WSCC as to Clauses 7, 8, 9, and 10, 11 and 12
- 20.6 nothing in this Agreement confers or is intended to confer a benefit on a third party under the Contracts [Rights of Third Parties] Act 1999
- 20.7 This Agreement shall apply to the Development as authorised by the Planning Permission or to the Development after variation or renewal of the Planning Permission from time to time

Amended

- 20.8 This Agreement is a Local Land Charge and shall be registered as such
- 20.9 No covenants or obligations contained in this Deed shall be binding upon any part of the Land that may in future be acquired by a statutory undertaker for the purposes of its undertaking or operational land as defined in the S262 of the Act.
- 20.10 For the avoidance of doubt it is confirmed that this Agreement sets out the obligations of the Owner in respect of the Land and the Land will not be subject to any of the provisions of the Community Infrastructure Levy.
- 20.11 Save as expressly provided (if at all) nothing in this Agreement shall be implied to prohibit or restrict the future development of the Land (or any part of it) in accordance with any planning permission granted after the date of the approval of the Application.
- 20.12 In the event that the Planning Permission is quashed lapses or is revoked or otherwise withdrawn or modified this Agreement will cease to have any further force or effect unless otherwise agreed in writing with ADC and WSCC.
- 20.13 No person shall be liable for any breach of an obligation under this Agreement committed after he shall have parted with all interest in the Land or the part in respect of which such breach occurs (but without prejudice to liability for any breach subsisting prior to parting with such interest).
- 20.14 No covenants or obligations in this Agreement shall be binding upon any purchaser or occupier of the individual Market Housing Units.
- 20.15 If at any time hereafter ADC or WSCC are requested in writing to confirm whether any of the obligations herein have been complied with and the same have been complied with to the reasonable satisfaction of ADC or WSCC as appropriate then the relevant Council shall issue a written certificate to the party making such request in writing within fourteen (14) days of being requested so to do.

21 Dispute Resolution

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 independent expert (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

22. Severability

The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

23. Execution

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

IN WITNESS of which the parties hereto have set their hands and seals and Corporate Seals hereto as applicable the day and year first above written

INDUSTRIAL YIB3

Pursuant to Clause 4.2 in Planning Obligation Described Below

Dated this _____ day of _____ 20_____

Signed _____

To:	[1] Head of Planning Services, 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 DATE & REFERENCE	
PLANNING OBLIGATION DATE & PARTIES	
START DATE:	

SCHEDULE 2
Payment Notice

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

Please answer all the questions.

1. Payment to be made by/on behalf of
2. Land at:
3. Agreement dated:
4. Planning application reference number [where applicable]
5. Obligation in Agreement

[a]	clause no.	
[b]	contribution towards	
[c]	amount of contribution due	
[d]	date upon which contribution is due	
[e]	amount of contribution enclosed	

SCHEDULE 3
LIST OF REGISTERED PROVIDERS APPROVED BY ADC

Affinity Sutton

(Sunita Aujla)
Cams Hall
Cams Hill
Fareham
Hampshire
PO16 8AB
sunita.aujla@affinitysutton.com
Tel: 01329 227555

Guinness Hermitage

(Damian Haley)
Hermitage House
7 St Georges Walk
Waterlooville
Hants
023 9271 4662
Damian.haley@guinness.org.uk

Hyde Martlet

(John Martin)
Martlett House
Southern Gate
Chichester
West Sussex
PO19 8SG
Tel: 01243 816960
John.martin@hyde-housing.co.uk

Hastoe Group

(Jane Gallifent)
Marina House
17 Marina Parade
Hampton House
Hampton Wick
Kingston upon Thames
KT1 4BH
Tel: 020 8973 0438
jgallifent@hastoe.com

Worthing Homes

1 Chapel Road (Chris Pelling-Fulford)
Worthing
West Sussex

Tel: 01903 703140

cpelling@fulford@worthing-homes.org.uk

Raglan Housing Association

(Jackie Burton)

2nd Floor Westover House

West Quay

Poole

Jacqueline.burton@raglan.org

Tel: 01202 645973

Southern Housing Group

(Liz Hills)

Spire Court

Albion way

Horsham

West Sussex

Liz.hills@shgroup.org.uk

01403 224814

SCHEDULE 4
ON SITE AFFORDABLE HOUSING PROVISIONS

The Owner agrees with ADC that :-

1. Obligation to Provide Affordable Housing

- 1.1 the location of the Affordable Housing Units within the Development shall be as shown on a plan to be agreed in writing by the Owner and ADC prior to implementation or commencement of the Development ;
- 1.2 to procure that the Affordable Housing Units are completed no later than the date on which the 10th of the Market Housing Units is completed;
- 1.3 (unless otherwise agreed in writing with ADC) not to occupy or permit or allow First Occupation of any of the Market Housing Units without first having exchanged contracts for the disposal of the Affordable Housing Units (either freehold or leasehold for a period of not less than 165 years) to a Registered Provider on terms which ensure that the Affordable Housing Units are and remain bound by the obligations in this Schedule .
- 1.4 With effect from the date on which they are completed the Affordable Housing Units shall not be occupied other than by Qualifying Occupiers and for the avoidance of doubt this restriction shall apply not just to the first occupier of any of the Affordable Housing Units but to all subsequent occupiers of them.

2. Mechanics and Terms of Transfer

FIRST OFFER

- 2.1 The Owner shall make an offer to a Registered Provider which offer shall include
 - (a) Sale of Land Contract
 - (b) A Draft Transfer
- 2.2 Such offer shall remain open for acceptance for no less than 3 months ("the first offer period") from the date of the offer being made ("the offer date ")

SECOND OFFER

- 2.3 In the event that the first offer made in accordance with the above is not accepted within 3 months of the offer date then the Owner shall make a second offer to another Registered Provider to enter into an Affordable Housing Land Sale Contract not later than one month

after the expiry of the first offer period ("the second offer") and such offer shall consist of the same as the first offer subject to revisions necessitated by lapse of time and shall remain open for acceptance for no less than 3 months ("the second offer period") from the date of the offer being made ("the second offer date ")

COMMUTED SUM PAYABLE IF FIRST AND SECOND OFFERS ARE NOT IMPLEMENTED

- 2.4 In the event the second offer not being accepted within the second offer period then the Owner will pay to ADC a sum equivalent to 35% of the open market value of the Affordable Housing Unit Land within the District of Arun

NOMINATION RIGHTS

- 2.5 To procure that the Registered Provider grants nomination rights in the form of or substantially in the form of the Draft Nominations Agreement at Schedule 5 hereto to ADC in relation to the first occupation of the Affordable Housing Units and nomination rights to 75% of all subsequent relets Provided that if ADC do not accept such offer then the Registered Provider shall in seeking to allocate the Affordable Housing Units have regard as far as possible to the following criteria:

2.5.1 any family association in the said administrative area in accordance with relevant housing allocation policies;

2.5.2 any period of ordinary residence in the said administrative area not immediately before the date on which any unit of accommodation becomes vacant;

2.5.3 any employment opportunity in the locality;

2.5.4 any other connection with the locality

but so that for the avoidance of doubt the satisfaction of such criteria hereof shall be determined by the body responsible for the allocation of the Affordable Housing Units from time to time

3 Further Provisions

- 3.1 nothing in this Deed shall be construed as imposing or otherwise implying any obligation on ADC to grant or make available any public subsidy or other financial support (or to assist the

Owner in obtaining such public subsidy or other financial support) in respect of the Affordable Housing Units;

3.2 the provisions of this Schedule above shall cease to bind any of the Affordable Housing Units if in relation to that Affordable Housing Unit:

3.2.1 a statutory right to acquire pursuant to the Housing Act 1985 or Housing Act 1996 (or any statutory re-enactment amendment or replacement thereof) has been exercised; or

3.2.2 it shall have been sold under a shared ownership lease and the leaseholder (or its mortgagee) has staircased his ownership under the lease to 100 percent; and

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

4. Mortgagee in Possession Clauses

4.1 In the event that any Affordable Housing Unit is the subject of a legal charge or mortgage and there is a default under any legal charge or mortgage of the Affordable Housing Units then any chargee or mortgagee ("the Chargee") shall be entitled to exercise its power of sale free from the restrictions set out in this Schedule provided that the Chargee shall first have followed the procedure set out below:

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

4.1.2 At the same time as giving the Sale Notice the Chargee shall make an offer ("the Offer") to sell the Affordable Housing Units to ADC for an amount to be agreed or determined ("the Purchase Price")

4.1.3 ADC may notify the Chargee in writing within one month of the date of the Offer whether or not it wishes to accept the Offer (in the case of an acceptance such acceptance to be conditional upon the Purchase Price being acceptable to ADC)

4.1.4 If ADC shall notify the Chargee within the time specified in sub-paragraph 4.1.3 that it does not wish to accept the Offer ADC shall then have one month from the date upon which it notifies in writing its refusal of the Offer within which to arrange for the

transfer of the Affordable Housing Units in consideration of the Purchase Price to a Registered Provider .

- 5 If ADC shall notify the Chargee within one month of the time specified within sub paragraph 4.1.3 that it wishes to accept the offer or if within the time specified in sub-paragraph 4. ADC gives written notice to the Chargee that arrangements can be made in accordance with sub-paragraph 4. then:
 - 5.1 the Chargee shall co-operate with ADC to secure the transfer; and
 - 5.2 ADC and the Chargee shall endeavour to agree the Purchase Price which shall represent the open market value of the Affordable Housing Units but subject to all or any tenancies of the Affordable Housing Units as may be subsisting at the date of the Sale Notice and disregarding the provisions of paragraph 4 of this Schedule AND in default of such agreement the Purchase Price shall be determined on the same basis of valuation by an independent surveyor ("the Surveyor") experienced in valuing residential land and property who shall act as an expert and whose costs shall be borne by ADC and the Chargee in equal shares and the Surveyor shall be appointed in default of agreement between the parties on the application of either party by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors (or successor organisation) and the Surveyor's determination shall be binding on both parties.
- 6 Subject to the provisions of paragraph 7. the transfer to ADC or to a Registered Provider shall be completed within two months of the date the Purchase Price is agreed (or such longer period as may be agreed between the Chargee and ADC) or determined in accordance with sub-paragraph 5.2 ("the Completion Period).
- 7 If the Chargee does not wish to exercise its power of sale at any time after giving the Sale Notice or the Council does not wish to continue with the exercise of its power under the provisions of paragraph 6 that party shall give to the other not less than seven days written notice of its intention to discontinue.
- 8 If either:
 - 8.1 ADC fails to give notification to the Chargee within the time specified in sub-paragraph 4.1.3 or

8.2 having given notification of refusal of the Offer in accordance with sub-paragraph 4.1.3. ADC fails to give notification to the Chargee within the time specified in sub-paragraph 4.1.4 ; or

8.3 ADC having complied with the time periods specified in sub-paragraph 4.1.3. and (in the case of a refusal of the Offer) sub-paragraph 4.1.4. the transfer to either ADC or to a Registered Provider shall not be completed within the Completion Period; or

8.4 ADC shall serve notice of its intention to discontinue under paragraph 7.

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

9. ADC shall in formulating or promoting any arrangements referred to in paragraph 4. give consideration to protecting the interests of the Chargee in respect of monies outstanding under the charge or mortgage.

**SCHEDULE 5
NOMINATION AGREEMENT**

DATED

20XX

XXXXXXXXXXXXXX

and

ARUN DISTRICT COUNCIL

DEED OF NOMINATION

for
XXXXXXXXXXXXXX

THIS DEED OF NOMINATION RIGHTS is made the day of 20XX

BETWEEN

- (1) **REGISTERED PARTNER XXXXXXXXXXXX**

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

1. DEFINITIONS

In this Deed :

- 1.1 **"Initial Let"** means the first tenancy of such newly constructed and previously unoccupied Rented Unit.

- 1.2 **"Nominee"** means a person named in the Nomination List who is specified by the Council as being suitable for taking a Tenancy Agreement of a Rented Unit.

- 1.3 **"Nomination List"** means the list to be supplied by the Council pursuant to clauses 3.3 and 3.10 (as may be updated from time to time in accordance with clause 3.16).

- 1.4 **"Property"** means the land at XXXXXXXXXXXXXXXXXXXX

- 1.5 **"Rented Units"** means xxxxxxxxxxxx.

- 1.6 "Subsequent Nominee" means a Nominee to be offered a Tenancy Agreement pursuant to clause 3.10.
- 1.7 "Tenancy Agreement" means an assured Tenancy Agreement in a form prepared by the Registered Partner (RP) and containing terms which accord with the form of Tenancy Agreement being used by the RP from time to time for its general lettings.
- 1.8 "Vacancy Notice" means a written notice given by the RP to the Council (in a form to be agreed between the RP and the Council within five weeks from the date of this Deed) the function of such notice being the notification to the Council by the RP that the construction and fitting out of the Rented Unit is completed.
- 1.9 "Void" means a Rented Unit which is vacant otherwise than as a result of the tenant having:
- 1.9.1 moved to other accommodation either by transfer or decant provided by the RP;
- 1.9.2 moved to other accommodation under a reciprocal arrangement provided by another registered partner registered with the Homes and Communities Agency under the Housing Act 1996.
- 1.10 "Void Notice" means a written notice given by the RP to the Council (in a form to be agreed between the RP and the Council within five weeks from the date of this Deed) the function of such a notice being the notification to the Council of a Void.

2. ENABLING PROVISIONS

This Agreement is made pursuant to s111 of the Local government Act 1972 s33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other enabling powers.

3. PROCEDURE

The parties agree that the following nomination procedure shall apply to the nomination of persons in respect of the Rented Units.

Initial Lets

- 3.1 The RP shall give the Council not less than eight weeks written notice of the date when the Initial Let units will be ready for occupation.
- 3.2 The RP shall serve on the Council a Vacancy Notice in respect of each Rented Unit not less than four weeks prior to such newly constructed and previously unoccupied Rented Unit becoming available for occupation.

- 3.3 The Council shall within ten working days of receipt of a Vacancy Notice serve upon the RP the Nomination List setting out a list of Nominees.
- 3.4 The Nomination List to be served by the Council under clause 3.3 shall:
- 3.4.1 specify the appropriate category of Rented Unit to which it relates; and
- 3.4.2 indicate the priority for the housing of the Nominees.
- 3.5 The RP shall have the right to let the Initial Let in respect of the Rented Units to persons of its own choosing in the event of the Council's failure to serve the Nomination List referred to in clause 3.3 within the period of ten working days of receipt of the Vacancy Notice.
- 3.6 The RP shall within five working days of the date of receipt of the Nomination List referred to in clause 3.3 select a Nominee from the Nomination List in priority order and shall use its reasonable endeavours to arrange viewing of the relevant Rented Unit and offer a Tenancy Agreement to such selected Nominee.
- 3.7 If the selected Nominee fails to enter into a Tenancy Agreement within five working days of receipt of the RP's offer of a Tenancy Agreement such selected Nominee shall be deemed to have rejected the RP's offer and the RP shall select another Nominee whereupon the procedure set out in clause 3.6 and this clause shall be repeated.
- 3.8 In the event of the second selected Nominee failing to accept the RP's offer of a Tenancy Agreement within the time prescribed by clause 3.7 then the RP shall make an offer to a third Nominee and the procedure set out in clauses 3.6 and 3.7 shall apply but in the event of such third selected Nominee failing to accept the RP's offer of a Tenancy Agreement within the prescribed time limits the RP shall not be bound to make any further offers of accommodation to Nominees in respect of such vacancy of the Rented Unit but shall be entitled to let the Rented Unit to a tenant of its own choosing.
- 3.9 The RP's obligations under clauses 3.1 to 3.8 shall cease when all of the Rented Units have been offered to Nominees in accordance with clauses 3.6 to 3.8.

Voids

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

- 3.10.1 the RP shall advertise the relevant vacant Rented Unit through a Choice Based Lettings system and request a nomination; and
- 3.10.2 within two working days of close of bidding the Council shall send the RP the Shortlist setting out a list of Subsequent Nominees which shall contain the information referred to in clause 3.4.
- 3.11 The RP shall have the right to let the relevant vacant Rented Unit to a person of its own choosing in the event of the Council's failure to serve the Nomination List referred to in clause 3.10 within two working days of close of bidding.
- 3.12 Upon receipt of the Nomination List referred to in clause 3.10 the RP shall follow the procedure mutatis mutandis set out in clauses 3.6 to 3.8.
- 3.13 The RP shall not be obliged to follow the procedure set out in clauses 3.10 to 3.12 if it would result in the Subsequent Nominees being nominated for more than 75 per cent of the Rented Units available after the Initial Let and shall have the right to let the relevant vacant Rented Unit to a person of its own choosing.

Provision of information and alteration of lists

- 3.14 The RP shall give notification to the Council of the occurrence of the following events within five working days of their occurrence:
 - 3.14.1 a Nominee or Subsequent Nominee failing to view a Rented Unit within 10 working days of an offer being made;
 - 3.14.2 a Nominee or Subsequent Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Agreement;
 - 3.14.3 a Nominee or Subsequent Nominee accepting an offer of a Tenancy Agreement;
 - 3.14.4 a person accepting an offer of a tenancy from the RP;
 - 3.14.5 the RP rejecting a Nominee or Subsequent Nominee in accordance with clause 3.20.
- 3.15 In the event of a notice being served pursuant to clause 3.14 then the name of such Nominee or Subsequent Nominee shall be removed from the Nomination List.
- 3.16 Within ten working days of the Council receiving notice served in accordance with clause 3.14 above save for notice under 3.14.4 the Council shall serve upon the RP the

name and address of a Nominee or Subsequent Nominee to add to the Nomination List such notice to include the information set out in clause 3.4.

- 3.17 If the Council shall within the period mentioned in clause 3.16 notify the RP that the Council then has no suitable Nominee or Subsequent Nominee the Council shall advise the RSL of a suitable replacement Nominee or Subsequent Nominee as soon as reasonably practicable.
- 3.18 The RP shall have the right to let a Rented Unit to a person of its choosing if the Council's failure to provide a Nominee or Subsequent Nominee creates a Void in respect of that Rented Unit.
- 3.19 On 1 April 1 July 1 October and 1 January in each year the RP shall serve the Council with details of the letting activities of the Rented Units in a format to be agreed between the RP and the Council.
- 3.20 The RP shall have the right to interview and make enquiries of each Nominee or Subsequent Nominee and by serving written notice upon the Council to that effect to reject any Nominee or Subsequent Nominee if in the opinion of the RP the grant of a Tenancy to such Nominee would be in contravention of the RP's registered rules or its letting criteria.
- 3.21 The Council shall immediately notify the RP in writing if any Nominee or Subsequent Nominee is withdrawn from the Nomination List.
- 3.22 When calculating percentage for the purposes of this Deed percentage equal to or in excess of 0.5 shall be rounded up and percentages less than 0.5 shall also be rounded up.
- 3.23 The Council and the RP agree that the nomination rights contained in this Deed may be varied from time to time but only by agreement in writing by the parties.

4. NOTICES

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 PARTNERS

The RP shall ensure that any registered social landlord to which the Property and Rented Units erected thereon are transferred otherwise than by direction of the Homes

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

9. AGREEMENTS AND DECLARATIONS

The parties agree:

- 9.1 nothing in this deed fetters or restricts the exercise by the Council of any of its powers;
- 9.2 the obligations contained in this Deed are covenants for the purpose of s33 of the Local Government (Miscellaneous Provisions) Act 1982.
- 9.3 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement."

THE CORPORATE SEAL OF
XXXXXX was hereunto annexed

In the presence of :-

WEST SUSSEX FIRE & RESUCE SERVICE

Guidance Note: The Provision of Fire Hydrants and an Adequate Water Supply for Fire Fighting

1.0 Water Undertakers

The water undertakers In the County are as follows:

Portsmouth Water Company
Southern Water Authority – Incorporating Hardham Brighton and
Worthing
South East Water
Sutton and East Surrey Water Company

2.0 Hydrants

Hydrants will be installed if required, in the following circumstances:

- i) when new water mains are laid
- ii) to cover new building development and
- iii) where fire risk is increased

2.1 Hydrants on New Mains

Water undertakers are required to notify the Fire Authority of proposals for new water mains. Details of such proposals are sent to Brigade Headquarters usually in plan form

2.2 New Hydrants on Existing Mains

Water undertakers are required to notify the Fire Authority of proposals for replacements of existing mains. The need may arise to provide additional hydrants where there has been new building development or where existing supplies have become inadequate

2.3 Location and spacing of Hydrants

Fire Hydrants should be sited in positions to be agreed by the Fire Authority and, where possible, such locations will be at main roads, feeder roads or road junctions where they are readily visible

Although no statutory distance is laid down for the spacing of hydrants, the distribution of hydrants relates to the location and degree of risk in accordance with the following general guidelines:

- I Residential (to include Sheltered Housing)

Approximately 360 metres apart

In effect, up to 350 metres apart and no more than 180 metres back to a hydrant in cul de sacs etc

II Industrial, Industrial Estate and Associated Risks:

In effect up to 180 metres apart and no more than 100 metres back to a hydrant in cul de sacs but these distances may be reduced in areas subject to higher risk

III Hospitals, Institutions, Hotels etc:

To conform to any relevant Code of Practice. In the absence of such guidance 180 metres and no further back to a hydrant than 100 metres from risk

IV Educational Establishments and Other County Council Premises excepting previously outlined:

To conform to any relevant Code of Practice. In the absence of such guidance 180 metres apart and no further back to a hydrant than 100 metres from risk

V Town Centres, Shopping Buildings, Malls and Other Major Commercial Developments:

To conform to any Code of Practice. In the absence of such guidance, as for Industrial.

VI Rural Areas:

In rural areas, particular attention is paid to specific risks. Therefore, it is not appropriate to indicate a general spacing standard for rural areas

VII Trunk Road and Motorways:

Where distribution systems allow, at 1 km intervals. At service centres (Little Chef, Happy Eaters etc) hydrants should be installed at the access position to the acceleration and deceleration points where they are readily visible

VIII Major Risks:

Such risks are considered individually to ensure that the overall position for fire fighting comprising, as

appropriate, internal water based protection systems, private fire hydrants, statutory fire hydrants and other 'open water' supplies, is adequate.

3.0 Water Supply

3.1 Diameter of Water Mains

Hydrants are to be fitted to water mains of not less than 100 mm in diameter in residential areas and not less than 150mm diameter in industrial and commercial areas.

3.2 Water Pressure

Water undertakers are under a statutory duty to cause the water in such of their water mains as have fire hydrants affixed to them to be laid on constantly and at such pressure as will cause the water to reach the top of the top-most storey of every building in the undertakers area

.....
SIGNED and DELIVERED

by Lisa Jane Millard

as her Deed in the

presence of:

Anthony Glasspool
Croft Cottage
Maypole Lane,
Arundel,
Yapton
BN18 0DP

SIGNED and DELIVERED

by Christopher James Anthony White

as his Deed in the

presence of:

KEITH WIDDOWS
15 CAMOLINA GARDENS
WESTERNGATE
POLO 3RL

carpenter

SIGNED and DELIVERED

by Hannah Seydeh White

as her Deed in the

presence of:

Astella Guildford.
8 The Millers
Yapton
West Sussex
BN15 0LE

Nanny

SIGNED and DELIVERED

by Kirstie Helen White

as her Deed in the

presence of:

ANTIGONE COGILL-ELLIS
12 KENTWINS
PRIORY CLOSE
N14 4NS

SEALED with the COMMON SEAL
of ARUN DISTRICT COUNCIL
in the presence of:

Seal Book No:
Authorised Signatory

SEALED with the COMMON SEAL
of WEST SUSSEX COUNTY COUNCIL
in the presence of: