DATED 16 November **2023**

PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990 RELATING TO LAND AT 5 BRIGHTON ROAD, SHOREHAM-BY-SEA

By:

FREDERICK HENRY HOWARD KENT AND SHEILA KENT

and

CAYUGA 011 LIMITED

TO:

ADUR DISTRICT COUNCIL

AND

WEST SUSSEX COUNTY COUNCIL

Planning application reference: AWDM/1962/22

Appeal reference: APP/Y3805/W/23/3320322

THOMPSON ALLEN

Tel +44 (0)1273 608003
Fax +44 (0)1273 608004
E-mail info@thompsonallen.co.uk
www www.thompsonallen.co.uk

6 Marlborough Place
Brighton, E. Sussex
BN1 1UB
DX 2754 Brighton

THIS DEED is dated 16 November 2023 and made

By:

(1) **FREDERICK HENRY HOWARD KENT** and **SHEILA KENT** both of Nightingales, Ditchling, Ditchling Common, Hassocks, West Sussex BN6 8SG (**Owner**); and

(2) **CAYUGA 011 LTD** incorporated and registered in England and Wales with company number 13033145 whose registered office is at Cayuga House, 2a Addison Road, Hove, England, BN3 1TN (**Developer**).

To:

(3) **ADUR DISTRICT COUNCIL** of Worthing Town Hall, Chapel Road, Worthing, West Sussex BN11 6PR (**Council**); and

(4) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ (**County Council**).

BACKGROUND

(A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.

(B) The County Council is the local highway authority, the county planning authority and the education authority for the area that the Property is situated.

(C) The Owner owns the Property which is registered at the Land Registry under title numbers WSX211681, WSX154528, WSX154527 and WSX386876.

(D) The Developer made the Planning Application and is proposing to carry out the Development.

(E) The Developer intends to develop the Property and entered into a sale contract with the Owner dated 8 January 2021 which was conditional on planning permission being obtained, and which was subsequently varied by a supplemental agreement dated 5 May 2022 and a further supplemental agreement dated 21 December 2022.

(F) By the Notice of Refusal the Council refused the Planning Application on the 9 March 2023. In April 2023 the Developer appealed to the Secretary of State against the refusal and enters into this obligation in support of its appeal.

(G) In accordance with the Council's local plan on planning contributions the Owner and the Developer give this undertaking to perform the obligations set out in this deed.

AGREED TERMS

1. INTERPRETATION

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

1.1 Definitions:

1980 Act: The Highways Act 1980.

Additional Affordable Housing Contribution: such sum, if any, calculated in accordance with clause 5.2.

Adjoining Property: the property shown edged blue on the plan at ANNEX B, which is part of the property known as land at Kingston Beach, Brighton Road, Shoreham by Sea registered at HM Land Registry with absolute title under title number WSX318839.

Affordable Housing: Housing which complies with the definition of affordable housing in Annex 2 of the National Planning Policy Framework 2023 that is provided on the Property for Qualifying Applicants who are unable to meet their needs in the local housing market.

Affordable Housing Unit: That part of the Development comprising the Affordable Housing provision in accordance with Schedule 1.

Affordable Housing Provider A housing association, trust, Registered Provider or company or body specialising in the delivery of Affordable Housing as agreed in writing with the Council.

Affordable Housing Contribution: the sum of £427,500.

Air Quality Contribution: a sum to be used by the Council towards air quality monitoring and mitigation measures necessary because of the Development in the Shoreham Town Centre Air Quality Management Area and/or on Brighton Road within the Council's administrative area to be approved as part of the Air Quality Mitigation Plan and calculated as follows:

$X = Y - Z$

Where

X is the amount (£) of the Air Quality Contribution;

Y is £8,980.00; and

Z is the cost (£) of on-site air quality mitigation measures proposed as part of the Development relating to the Dwellings.

Air Quality Mitigation Plan: the plan to be submitted to the Council in accordance with Paragraph 2 of Schedule 2 which shall:

(a) set out in full the proposed operational phase air quality mitigation measures in connection with the Dwellings; and

(b) confirm the amount (if any) of the Air Quality Contribution in the event that on-site mitigation to the value of £8,980 shall not be achieved.

Base Rate: the higher of 5% and the base rate from time to time of the Bank of England.

Car Club: a car club operated by a Car Club Operator for which residents may join and which makes cars available for hire to members.

Car Club Membership in respect of the household to first Occupy each Dwelling, free membership to the Car Club for a period of 2 years commencing on the date when that household first takes Occupation of the Dwelling including an initial one-off credit of £50 for each membership PROVIDED THAT free membership shall only be offered to one person per Dwelling.

Car Club Operator a company that is accredited by CoMoUK to operate Car Clubs, or such other company operating a Car Club as is agreed with the Council in writing.

CIL Regulations: the Community Infrastructure Levy Regulations 2010.

Chargee: a mortgagee or charge (or any receiver (including an administrative received)) appointed by such mortgagee or charge or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Chargee**) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such Chargee.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; remedial work in respect of any contamination or adverse ground conditions; site survey works; diversion and laying of services, temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property and the temporary display of site notices or advertisements and the term "**Commence**" shall be construed accordingly.

Commencement Date: the date of Commencement of Development.

CoMoUK: the national charity promoting responsible car use.

Contribution: any one of the Council Contributions or the County Council Contributions.

Council Contributions: Affordable Housing Contribution, Air Quality Contribution, Health Contribution and Open Space Contribution.

County Council Contributions: Education (Secondary) Contribution, Education (Sixth Form) Contribution, Fire and Rescue Service Contribution, Highway Contribution and Libraries Contribution.

County Council Monitoring Fee: means the total sum of £2,160 payable to the County Council for monitoring the delivery and performance of a Qualifying Trigger contained in this Deed over the lifetime of the Development.

Default Interest Rate: 4% per annum above the Base Rate.

Development: the development of the Property described in the Planning Application.

Dwelling: any dwelling (including a house, flat or maisonette) to be constructed pursuant to the Planning Permission.

Education (Secondary) Contribution: the sum of £160,934 being a financial contribution to be used by the County Council towards additional facilities at Shoreham Academy.

Education (Sixth Form) Contribution: the sum of £37,700 being a financial contribution to be used by the County Council towards additional facilities at Shoreham Academy Sixth Form.

Employment & Skills Plan: an employment and skills plan to include provisions for working with local learning, skills and employment group(s) and/or colleges and/or training establishments, in order to procure local labour and arrange apprenticeship(s) and skills training during the construction phase of the Development prepared pursuant to the relevant Council's policy and guidance.

Energy Centre: a facility to accommodate high efficiency gas boilers, a combined heat and power unit, cold water storage and associated ancillaries where the heat and power is generated to supply the Shoreham Heat Network.

Financial Contribution Trigger: means a trigger contained within this Deed applicable to the County Council Contributions.

Fire and Rescue Service Contribution: the sum of £1,580 being a financial contribution to be used by the County Council towards the redevelopment or relocation of fire stations and associated vehicles and equipment in West Sussex Fire and Rescue Services southern area serving Shoreham/Southwick.

Footpath: the land within the Property shown edged yellow on the plan at ANNEX B which is to be laid out as a footpath and used by the those in Occupation and the public in accordance with the Footpath Plan approved pursuant to this deed.

Footpath Plan: a plan securing the management and maintenance of the Footpath to provide accessibility for members of the public on foot or by cycle 24 hours per day 364 days a year and to ensure that the Footpath is managed and maintained in such a way to provide an unobstructed link to the Riverside Footpath PROVIDED THAT the obligation to provide public access shall be deemed not to be breached in the case of any Permitted Closure.

Health Contribution the sum of £60,271.00 to be paid to the Council towards either a refurbishment, improvement, replacement or expansion of Harbour View GP Surgery (Shoreham Health Centre) or towards a new health hub for primary care within the wards of St Marys, St Nicholas, Buckingham, Southlands, Hillside, Southwick Green or Eastbrook (or any future equivalent areas), as may be first agreed between the Council and the Developer.

Heat Network: an energy network identified by the Council to provide heating and hot water more energy efficiently to reduce local carbon emissions in a medium such as hot water or steam, from central sources of production, to multiple buildings or sites across a geographical area.

Highways Agreement: an agreement made under section 38 and/or section 278 of the 1980 Act to secure the carrying out of Highway Works as highway maintainable at the public expense, on such terms agreed between the Owner and the County Council acting reasonably.

Highway Contribution: the sum of £145,074, with £35,680 to be used towards improvements to the A27 Steyning and Hangleton junctions required in connection with the development of the Property and £109,394 towards sustainable transport improvements in accordance with the Shoreham Harbour Joint Area Action Plan.

Highway Works: The construction of a new kerb line, widened footway and dedication of land to facilitate the future delivery of a segregated footway and cycleway along the A259.

Homes England: The trading identity of the Homes and Communities Agency (formerly the Housing Corporation) as defined in Part 3 of the Housing Act 1985 being a public body whose role is to regulate and fund Registered Providers of Social Housing (formerly Registered Social Landlords) or such successor organisation that shall be constituted to administer the delivery of grant funding for Affordable Housing.

Index Linked: increased in accordance with the following formulas:

(a) in relation to a Council Contribution:

Amount payable = the Council Contribution x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date of actual payment.

B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this deed.

(b) in relation to a County Council Contributions:

$$A = B \times \frac{C}{D} \text{ is equal to or greater than } 1$$

where A is the sum actually payable on the date of payment

B is the original sum mentioned in this Deed

C is the BCIS Index for the quarter preceding 7 February 2023

D is the BCIS Index for the quarter preceding the date of this Deed.

Intermediate Units: Housing which complies with the definition of Affordable Housing paragraph (d) in Annex 2 of the National Planning Policy Framework 2023 provided at prices or rents above those of Social Rented Units but no greater than 80% of open market dwellings and which can comprise Shared Ownership Units and/or Shared Equity Units.

Libraries Contribution: the sum of £21,848 such contribution being a financial contribution to be used by the County Council towards additional facilities at the new library for Shoreham.

Maintenance Access Plan: a plan to be submitted by the Owner to the Council for its written approval detailing how access shall be given to the Council and County Council and statutory undertakers responsible for river, harbour or drainage maintenance (including, but not limited to, the Environment Agency and Shoreham Port Authority) to carry out maintenance and/or repairs to the riverside wall within the Property subject to the following:

(a) notice is given to the Owner at least two months prior to any maintenance and/or repair (unless the maintenance and/or repair is urgent to protect life or property;

(b) the programme for any maintenance and/or repair is to be agreed with the Owner in advance and is to be kept to a minimum period as reasonably possible; and

(c) the Council, County Council or statutory undertaker for river, harbour or drainage maintenance (as applicable) shall restore the Property and repair any damage to the Property arising out of any maintenance and/or repair).

Market Value: means the price at which the whole interest in the Affordable Housing Unit would be expected to command if sold by a willing seller to a willing purchaser for residential purposes free of the restrictions and obligations contained in this deed.

Non-Financial Trigger: means a trigger contained within this Deed applicable to the Highway Works/Highways Agreement

Notice of Refusal: notice of refusal of the Planning Application dated the 9 March 2023.

Occupy occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and **Occupation** shall be construed accordingly.

Open Market Dwelling: those Dwellings for sale, lease or other disposal on the open market excluding the Affordable Housing Units.

Open Space Contribution: means the sum of £130,939 to be used by the Council towards improvements to the Kingston Beach Village Green.

Permitted Closure: a temporary closure or obstruction of the Footpath or any part thereof in the following circumstances:

(a) in the case of emergency where such closure is necessary in the interests of public safety or otherwise for reasons of public safety or at the request of the police or fire service;

(b) for a maximum of one day per year to assert rights of proprietorship preventing public rights from coming into being by means of prescription or any process of law PROVIDED THAT:

(i) the Owner provides the Council with prior notification of any such closure;

(ii) no such closure shall occur on a weekend; and

(iii) there shall be no such closure if the entire Footpath has been closed for an entire day or more for any of the reasons pursuant to clause (d) of this definition during the preceding year.

(c) in the interests of public safety generally or for the purposes of maintenance, repair, cleaning, renewal or resurfacing works; and

(d) with the prior written approval of the Council, for any other reasonable and proper purpose;

PROVIDED THAT the Owner shall:

(a) take reasonable steps to minimise the duration and extent of any such closures; and

(b) re-open the Footpath as soon as is reasonably practicable;

Plan: the plan attached as ANNEX A.

Planning Application: the planning application lodged with the Council under application number AWDM/1962/22 for a mixed-use re-development between 3 and 8 storeys comprising of 21 townhouses, mixed-use apartment block of 24 flats, commercial unit, riverside walk, play area, landscaping, and parking.

Planning Permission: the planning permission for the Development that may be granted pursuant to the Planning Appeal

Property: means the land to be bound by this deed and shown edged red on the Plan

Public Art Plan: a plan to be submitted by the Developer to the Council for its written approval setting out proposals for the delivery of public art within the Property PROVIDED that the value of any such proposal shall be not less than £5,294.

Planning Appeal: an appeal registered with the Planning Inspectorate on the 9th March 2023 under reference number APP/Y3805/W/23/3320322.

Planning Permission: the planning permission to be granted by the Planning Inspector on behalf of the Secretary of State in respect of the Planning Appeal.

Practical Completion: completion of the whole of the Development such that it is fit for its intended purpose (and, in the case of any highway works, physically completed and available for use by the public) and, free from

defects other than minor snagging as confirmed by a certificate of practical completion or sectional practical completion issued by an architect or other suitably qualified professional.

PROW Improvement Works: works to a length of existing public right of way known as footpath 3556 the approximate location of which is shown edged blue and red on the plan at ANNEX B which shall comprise a consistent tarmac surface on a suitably constructed base, with tactile paving at its intersection with the footpath, and appropriate signage relating to cyclists on the adjoining footpath and comply with the County Council's Public Rights of Way Standard Details January 2022 (or any update or replacement of the same), such works to be detailed in a specification to be submitted to and agreed in writing with the Council and the County Council.

Riverside Footpath: means a contiguous length of footway which will run alongside the River Adur and connect into the Footpath.

Qualifying Applicant: A person or household in need of Affordable Housing who can demonstrate a local connection with the Council's area through residence employment or close family connection and upon terms as agreed between the Affordable Housing Provider and the Council.

Qualifying Trigger: means any trigger contained within this Deed including a Financial Contribution Trigger and a Non-Financial Trigger that attracts the County Council Monitoring Fee because its implementation and/or adherence requires monitoring by the County Council.

Registered Provider: a registered provider of Social Housing as listed on the register held by the Homes and Communities Agency pursuant to Chapter 3 of Part 2 of the Housing and Regeneration Act 2008 and that is approved by the Council.

Retained Equity: the proportion of Market Value in a Shared Ownership Unit represented by such share of unsold equity.

Shared Equity Units: Affordable Housing Units where an Affordable Housing Provider disposes of the freehold or long leasehold interest at a price no higher than 75% of the open market value with no rent paid on the discounted share and where the Affordable Housing Provider retains a legal charge to protect the discounted element.

Shared Ownership Units: a form of tenure granted by lease by a Registered Provider to be disposed pursuant to shared ownership arrangements within the meaning of section 70(4) Housing and Regeneration Act 2008 whereby a purchaser is able to purchase a share of the equity in an Affordable Housing Unit from 25% to a maximum of 75% initially (at the option of the buyer) and pay an annual rent of up to 2.75% on the Retained Equity with no limitation in the aggregate equity that can be subsequently acquired by the lessee and such form of lease shall comply with Homes England's model lease for shared ownership housing (as varied from time to time) or such other form of lease as maybe agreed in writing by the Council and Shared Ownership Housing Unit(s) shall be interpreted accordingly.

Shoreham Academy: Shoreham Academy of Kingston Lane Shoreham-by-Sea West Sussex BN43 6YT.

Shoreham Heat Network the Heat Network proposed for the Shoreham Harbour Regeneration Area in which the Property is situated.

Shoreham Port Authority means the Shoreham Port Authority of Nautilus House, 90-100 Albion Street, Southwick, Brighton BN42 4ED.

Site Management Plan: a plan to secure the long term future management of the Property to include:

(a) The provision and maintenance of cycle storage;

(b) The provision and maintenance of all roads, footpaths and common areas;

(c) Sustainable drainage, including arrangements for maintenance and end-of-life replacement;

(d) Green roofs and other landscaped areas on buildings;

(e) On-site heating system;

(f) Bin stores and litter bins;

(g) The management of the car parking, including Car Club spaces; and

(h) Implementation of the Travel Plan.

Specified Date: the date on which a Contribution arising under this deed becomes due.

TCPA 1990: Town and Country Planning Act 1990.

Travel Plan: the travel plan to be prepared pursuant to and in accordance with the relevant County Council policy and guidance subject to any amendments agreed in writing by the County Council from time to time. The Travel Plan shall set out clear targets and strategies to be employed in order (a) to promote and facilitate walking, cycling, public transport use and car sharing by occupiers of and visitors to the development; and (b) to prevent overspill parking on the public highway.

Travel Plan Co-ordinator: the person appointed by the Owner responsible for securing the implementation of the Travel Plan

Travel Plan Monitoring Fee: the sum of £1,500 being a financial contribution to be used by the County Council for the costs associated with approving, monitoring and enforcing the Travel Plan and related liaison/coordination activities.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

1.2 Clause headings shall not affect the interpretation of this deed.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.

1.7 A reference to the Council or the County Council shall include the successors to its respective statutory functions.

1.8 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.

1.9 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.

1.10 A reference to **this deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.

1.11 References to clauses are to the clauses of this deed.

1.12 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.

1.13 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.

1.14 Words defined in this clause shall have the same meaning when used in the Background above.

2. STATUTORY PROVISIONS

2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972 and any other enabling powers.

2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner and the Developer with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.

2.3 With the exception of clauses 2, 9, 11, 12, 13, 14 and 15 this deed shall come into effect on the date of grant of the Planning Permission.

2.4 The obligations contained in clause 4 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. ENFORCEABILITY EXCLUSION

3.1 The obligations contained in this deed shall not be enforceable against:

(a) Any land held by any of the statutory utilities for their operational purposes or whose apparatus may be situated within the Property, or who acquires any part of the Property or an interest in the Property for the supply of any utilities; and

(b) With the exception of paragraph 9.4 of Schedule 2 (artificial lighting), any freehold or leasehold owners or occupiers of the Dwellings constructed pursuant to the Planning Permission (or their respective mortgagees) or land held by any of the statutory utilities for their operational purposes.

4. COVENANTS WITH THE COUNCIL AND COUNTY COUNCIL

4.1 The Developer and Owner covenant with the Council to:

(a) comply with the covenants contained Schedule 1, Schedule 2 and Schedule 4;

(b) give at least 10 Working Days written notice to the Council of the anticipated Commencement Date;

(c) give notice of the actual Commencement Date within ten Working Days of it occurring; and

(d) give 5 Working days' prior notice of the date of Occupation of the first Dwelling,

4.2 The Developer and Owner covenant with the County Council to comply with the covenants contained in Schedule 3 and Schedule 4

5. ADJUSTMENTS TO CONTRIBUTIONS

5.1 Where it is determined under the Planning Appeal by the Planning Inspector that any Contribution, or parts thereof, payable to the Council or County Council, excluding the Affordable Housing Contribution and Additional Affordable Housing Contribution, are not justified under Regulation 122 of the CIL Regulations, clause 5.2 shall apply.

5.2 Any Contribution, or parts thereof, that are found not to be justified pursuant to clause 5.1, shall be construed as not having been due or form part of that Contribution as from the date of this deed but will be construed as having formed part of the Additional Affordable Housing Contribution as from the date of this deed and be payable accordingly. Where the full amount of any Contribution determined pursuant to clause 5.1 is determined to be Nil, or no Additional Affordable Housing Contribution is calculated to be due in accordance with this clause, the covenants to make payment of the Contribution or the Additional Affordable Housing Contribution (as applicable) will be considered discharged.

6. INDEXATION OF CONTRIBUTION

6.1 All financial contributions payable to the Council and to the County Council shall be Index Linked.

6.2 Where reference is made to an 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 shall advise the Owner and the Developer in writing.

7. RELEASE

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

8. DETERMINATION OF DEED

This deed shall be determined and have no further effect (with the exception of clause 11) if the Planning Permission:

(a) expires before the Commencement of Development;

(b) is varied or revoked other than at the request of the Owner or Developer; or

(c) is quashed following a successful legal challenge.

9. LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the Council.

10. INTEREST ON LATE PAYMENT

If any Contribution has not been paid to the Council and/or County Council prior to or on the Specified Date, the Owner and the Developer shall pay the Council and/or the County Council, as appropriate, interest on the Contribution at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the Specified Date to and including the date of payment.

11. COSTS

11.1 The Developer shall pay to the Council and the County Council on the date of this deed the Council and County Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

11.2 The Owner shall pay to the Council the sum of based on £300 per trigger as a contribution towards the Council's costs of monitoring the implementation of this deed on the Commencement Date; and

11.3 The Developer shall pay to the County Council on the date of this deed the County Council Monitoring Fee.

12. OWNERSHIP

12.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property.

12.2 Until the obligations in clause 4 have been complied with, the Owner will give to the Council within ten Working Days the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

(a) the name and address of the person to whom the disposition was made; and

(b) the nature and extent of the interest disposed of.

13. NOTICES

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

(a) delivered by hand; or

(b) sent by pre-paid first class post or other next working day delivery service.

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

(a) to the Council at: Adur District Council, Worthing Town Hall, Chapel Road, Worthing, West Sussex BN11 6PR marked for the attention of the Head of Planning;

(b) to the County Council at: County Hall, West Street, Chichester, West Sussex PO19 1RH marked for the attention of the S106 Monitoring Team;

(c) to the Owner at: Nightingales, Ditchling, Ditchling Common, Hassocks, West Sussex BN6 8SG marked for the attention of Frederick and Sheila Kent; and

(d) to the Developer at: Cayuga House, 2a Addison Road, Hove, England, BN3 1TN marked for the attention of Ed Deedman;

or as otherwise specified by the relevant person by notice in writing to each other person.

13.3 Any notice or other communication given in accordance with clause 13.1 and clause 13.2 will be deemed to have been received:

(a) 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 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 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 9.00 am on the next Working Day; or

(b) if sent by pre-paid first-class post or other next working day delivery service at 9.00 am on the second Working Day after posting.

13.4 A notice or other communication given under this deed shall not be validly given if sent by e-mail.

13.5 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.

14. THIRD PARTY RIGHTS

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.

15. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

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

Schedule 1 Affordable Housing

The Owner covenants with the Council as follows:

1. Affordable Housing Provision

1.1 To serve written notice on the Council prior to the Commencement of Development to confirm whether it will either (i) provide Affordable Housing on the Property as part of the Development (in which case paragraphs 2 to 5 of this Schedule shall apply and paragraph 6 of this Schedule shall not apply); or (ii) whether it will pay the Affordable Housing Contribution (in which case paragraph 6 of this Schedule shall apply and paragraphs 2 to 5 of this Schedule shall not apply).

On site Affordable Housing

The following paragraphs 2 to 5 shall apply in the event that the Owner serves written notice on the Council to confirm that Affordable Housing is to be provided on the Land as part of the Development.

2. Affordable Housing Amount

2.1 The Affordable Housing shall comprise 5 Dwellings, delivered through an Affordable Housing Provider, and shall comply with the Affordable Housing mix outlined in paragraph 3 below.

3. Affordable Housing Mix

3.1 The Affordable Housing shall be provided:-

(a) in the following mix:

- 3 x 1 bed flat at not less than 51sqm
- 2 x 2 bed flats at not less than 63.2sqm

(b) in the following tenure: Shared Equity Units or Shared Ownership Units; and

(c) at a location to be agreed in writing with the Council prior to Commencement of the Development.

4. Construction and Transfer of affordable units to an affordable Housing Provider

4.1 Not to Occupy or permit Occupation of 50% of the Open Market Dwellings until the Owner has entered into a contract with an Affordable Housing Provider for the transfer of the Affordable Housing Units and the Affordable Housing Units are ready for Occupation.

4.2 If the Owner cannot secure a sale (by way of an exchange of contracts) of the Affordable Housing Units (or part thereof) to an Affordable Housing Provider within 6 months from the Commencement of Development (having used all reasonable endeavours to achieve the same) then the Owner will offer the Affordable Housing Units to the Council for a further period of 3 months but at the end of that period if the Affordable Housing Units have not been sold to either an Affordable Housing Provider or the Council then the Affordable Housing Units will be delivered exclusively as Intermediate Units with all other provisions of this Deed remaining in place as appropriate to that tenure.

5. Use of Affordable Housing Units

5.1 From the date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing save that this obligation shall not be binding on:

(a) any Protected Tenant or any mortgagee or charge of the Protected Tenant or any person deriving title from the Protected Tenant or any successors in title thereof and their respective mortgagees and charges; or

(b) any Chargee provided that the Chargee shall have first complied with the Chargee's obligations in paragraph 5.2 of Schedule 1.

(c) any purchase from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.

(d) any mortgagee or chargee holding a mortgage or legal charge over an individual Affordable Housing Unit if either a power of sale has arisen and become exercisable in favour of the mortgagee or chargee or such mortgagee or chargee or its receiver enters into possession.

5.2 The Chargee shall prior to seeking to dispose of an Affordable Housing Unit pursuant to any default under terms of its mortgage or charge give not less than 3 months' prior notice to the Council of its intention to dispose and:

(a) in the event the Council responds within 3 months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use all reasonable endeavours to secure such transfer.

(b) if the Council does not serve its response to the notice served within 3 months then the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule 1.

(c) if the Council or any other person cannot within 3 months of the date of service of its response under paragraph 5.2(a) secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 5.2(a) the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule 1.

PROVIDED THAT at all times the right and obligations in this paragraph 5 shall not require the Chargee to act contrary to its duties under the charge or mortgage.

Off Site Affordable Housing

The following paragraph 6 shall apply in the event that the Owner serves written notice on the Council to confirm that it will pay the Affordable Housing Contribution

6. To pay the Affordable Housing Contribution to the Council prior to first Occupation of the Dwellings and not to Occupy the Dwellings until the Affordable Housing Contribution has been paid.

Schedule 2 Covenants with the Council

The Owner covenants with the Council as follows:

1. ADDITIONAL AFFORDABLE HOUSING CONTRIBUTION

1.1 If and only if clause 5.2 applies and an Additional Affordable Housing Contribution is therefore required, to pay the Additional Affordable Housing Contribution to the Council prior to first Occupation of the Dwellings.

1.2 Not to Occupy the Dwellings until the payment, if due, has been made pursuant to paragraph 1.1 of Schedule 2.

2. AIR QUALITY CONTRIBUTION

2.1 Not to Commence or permit Commencement of Development above podium level until the Air Quality Mitigation Plan has been approved in writing by the Council.

2.2 To pay the Air Quality Contribution to the Council prior to first Occupation of the Dwellings.

2.3 Not to Occupy the Dwellings until the payment has been made pursuant to paragraph 2.1 of Schedule 2.

3. OPEN SPACE CONTRIBUTION

3.1 To pay the Open Space Contribution to the Council prior to first Occupation of the Dwellings.

3.2 Not to Occupy the Dwellings until the payment has been made pursuant to paragraph 3.1 of Schedule 2.

4. HEALTH CONTRIBUTION

4.1 To pay the Health Contribution to the Council prior to first Occupation of the Dwellings.

4.2 Not to Occupy the Dwellings until the payment has been made pursuant to paragraph 4.1 of Schedule 2.

5. PUBLIC ART PLAN

5.1 To discuss the draft Public Art Plan with the Council following Commencement of Development.

5.2 To submit the Public Art Plan to the Council for approval prior to Commencement of Development above podium level.

5.3 Not to cause or permit Commencement of Development above podium level until the Council has approved the Public Art Plan.

5.4 To implement the Public Art Plan approved by the Council pursuant to paragraph 5.2 of Schedule 2 in full prior to first Occupation of the Dwellings.

6. HEAT NETWORK

6.1 To safeguard the main pipe route of the proposed heat network through the Property and ensure that this route remains accessible for future installation of the network.

6.2 To connect the Development to a centralised communal system for space heating and hot water according to the following specifications unless otherwise agreed in writing between the Council and the Developer:

(a) heat in the building should operate at an appropriate temperature for future connection to a Heat Network;

(b) plant rooms should be situated to consider potential future-pipe routes and sufficient space must be allowed for building/network interface equipment (such as heat exchangers); and

(c) pipe runs from the plant room along the internal road network to the proposed main heat route at Brighton Road must be protected and remain accessible for future installation.

6.3 On written request to provide information to the Council, or its appointed Heat Network contractor(s), with respect to the anticipated heat requirements and the potential for reliance upon the Energy Centre and proposed Shoreham Heat Network.

6.4 To engage constructively with the Council to identify and explore the potential for the Development to be connected to the proposed Shoreham Heat Network and to purchase heat generated at an off-site Energy Centre which the Council proposes to install to serve buildings, occupiers and users, and to meet anticipated space heating and hot water consumption requirements in the vicinity of the Development.

6.5 To engage constructively with the Council to identify and explore the potential for heating plant installed during construction of the Development.

6.6 To permit the Council, or its appointed Heat Network contractor(s), reasonable and necessary access to the Property, including plant rooms, in order to:

(a) lay underground infrastructure within the roads, footpaths, open spaces and public areas of the Development;

(b) carry out any works required to connect the site to the proposed Shoreham Heat Network; and

(c) carry out maintenance and repair works to any Heat Network infrastructure

provided that any access to the Property shall be subject to the Council or its appointed Heat Network contractor(s) entering into appropriate legal agreements acceptable to the Owner, including lift and shift and removal provisions and being responsible for all costs and expenses associated with any such works and making good and damaged caused to the Property or Development and fully indemnifying the Owner and Developer against all costs expenses claims and liabilities arising out of these works.

6.7 to use reasonable and commercially prudent endeavours to negotiate and enter into a connection and supply agreement with the Council, or its appointed Heat Network contractor(s), on reasonable commercial terms subject to such connection being financially and technically viable and the proposed Shoreham Heat Network being available to connect on Practical Completion of the relevant part of the Development PROVIDED THAT the Energy Centre and Heat Network are completed and fully operational by that date, and if the Energy Centre is not completed and fully operational by that date the connection to and purchase of heat from the Energy Centre should take place within a period of one year following the date when the Energy Centre is completed and fully operational PROVIDED FURTHER THAT if the Energy Centre is not completed and fully operational within three years of Practical Completion of the relevant part of the Development then all obligations under this paragraph 6.7 of Schedule 2 shall be discharged.

7. CAR CLUB

7.1 To use reasonable endeavours to enter into a contract with a Car Club operator to provide:

(a) one Car Club vehicle on the Property within two months of first Occupation of any Dwelling and to provide a copy to the Council of any such contract that has been entered into with a Car Club Operator; and

(b) a further Car Club vehicle on the Site on or prior to Occupation of 50% of the Dwellings and to provide a copy to the Council of any such contract that has been entered into with a Car Club Operator.

7.2 To offer Car Club Membership to the first household to Occupy each Dwelling or (if later) when a contract with a Car Club operator is first agreed.

7.3 Not to Occupy the Dwellings (or any part of them) unless and until written evidence has been provided to the Council to demonstrate that paragraphs 7.1 and 7.2 of Schedule 2 have been complied with.

7.4 to retain and maintain the two car parking spaces within the Development provided pursuant to the Planning Permission for sole use by Car Club vehicles (unless and for so long as paragraph 7.1 is complied with and no contract has been agreed).

8. FOOTPATH

8.1 to submit the Footpath Plan to the Council for approval prior to Development taking place above ground level.

8.2 not to Occupy the Dwellings until the Footpath Plan has been approved by the Council in writing.

8.3 to make available for public use the Footpath in accordance with the timetable set out in the approved Footpath Plan.

8.4 to manage and maintain the Footpath in accordance with the approved Footpath Plan for the lifetime of the Development (as may be amended from time to time with the Council's written agreement).

9. RIVER AND RIVERSIDE

9.1 to submit the Maintenance Access Plan to the Council for approval prior to Occupation of the Dwellings.

9.2 not to Occupy the Dwellings until the Maintenance Access Plan has been approved by the Council in writing.

9.3 to comply with the approved Maintenance Access Plan for the lifetime of the Development (as may be amended from time to time with the Council's written agreement).

9.4 to use reasonable endeavours to minimise the impact on the safe navigation of vessels in the Shoreham harbour from any artificial lighting that emanates from the Property at all times, whether or not directly requested by Shoreham Port Authority, and to highlight this requirement to all future owner/occupiers/tenants of the Property.

10. SITE MANAGEMENT PLAN

10.1 To submit the Site Management Plan to the Council for approval prior to Occupation of the Dwellings.

10.2 Not to Occupy the Dwellings until the Site Management Plan has been submitted to and approved by the Council in writing.

10.3 To comply with the approved Site Management Plan for the lifetime of the Development (as may be amended from time to time with the Council's written approval).

11. EMPLOYMENT AND SKILLS PLAN

11.1 To submit the Employment & Skills Plan to the Council one calendar month before the intended Commencement of Development.

11.2 Prior to submission of the Employment & Skills Plan to liaise with the Council's Economy & Skills Project Coordinator to obtain timely information and support in the production of the Employment & Skills Plan from the Council and its partners.

11.3 To implement the approved Employment & Skills Plan (or any variation to the Employment & Skills Plan approved by the Council).

11.4 Not to Commence Development until the Employment & Skills Plan has been submitted to and approved by the Council in writing provided always that if the Council has not approved the Employment & Skills Plan before the Commencement of Development and the Owner has submitted the Employment & Skills Plan to the Council in accordance with this paragraph 11 of Schedule 2 and has responded to any requests for further information by the Council in a timely matter the Owner shall be permitted to Commence Development and shall comply with the Employment & Skills Plan as it would if the Council had approved the Employment & Skills Plan.

Schedule 3 Covenants with the County Council

1. EDUCATION (SECONDARY) CONTRIBUTION

1.1 To pay the Education (Secondary) Contribution to the County Council prior to first Occupation of the Dwellings, or such other period as may be agreed by the County Council.

1.2 Not to Occupy the Dwellings until the payment has been made pursuant to paragraph 1.1 of Schedule 3.

2. EDUCATION (SIXTH FORM) CONTRIBUTION

2.1 To pay the Education (Sixth Form) Contribution to the County Council prior to first Occupation of the Dwellings, or such other period as may be agreed by the County Council.

2.2 Not to Occupy the Dwellings until the payment has been made pursuant to paragraph 2.1 of Schedule 3.

3. FIRE AND RESCUE SERVICE CONTRIBUTION

3.1 To pay the Fire and Rescue Service Contribution to the County Council prior to first Occupation of the Dwellings, or such other period as may be agreed by the County Council.

3.2 Not to Occupy the Dwellings until the payment has been made pursuant to paragraph 3.1 of Schedule 3.

4. HIGHWAY CONTRIBUTION

4.1 To pay the Highway Contribution to the County Council prior to first Occupation of the Dwellings, or such other period as may be agreed by the County Council.

4.2 Not to Occupy the Dwellings until the payment has been made pursuant to paragraph 4.1 of Schedule 3.

5. LIBRARIES CONTRIBUTION

5.1 To pay the Libraries Contribution to the County Council prior to first Occupation of the Dwellings, or such other period as may be agreed by the County Council.

5.2 Not to Occupy the Dwellings until the payment has been made pursuant to paragraph 5.1 of Schedule 3

6. TRAVEL PLAN

6.1 Not to Commence Development unless the Travel Plan Monitoring Fee has been paid to the County Council.

6.2 Not to Commence Development unless a Travel Plan Co-ordinator has been appointed.

6.3 To notify the Council in writing of the name, address, email address and telephone number of the person appointed.

6.4 To submit the Travel Plan to the County Council for approval prior to Occupation of the Development.

6.5 Not to Occupy or permit the Occupation of the Development unless the Travel Plan has been approved by the County Council.

6.6 To comply and implement the Travel Plan (as may be amended from time to time with the County Council's written approval).

7. HIGHWAYS AGREEMENT

7.1 Not to Commence Development until the Owner has entered into the Highways Agreement with the County Council to secure the carrying out of the Highway Works.

Schedule 4 Covenants with the Council and the County Council

The Owner covenants with the Council and the County Council as follows:

1. PUBLIC RIGHT OF WAY IMPROVEMENT WORKS

1.1 To submit to the Council and the County Council prior to Commencement of Development a specification for the PROW Improvement Works.

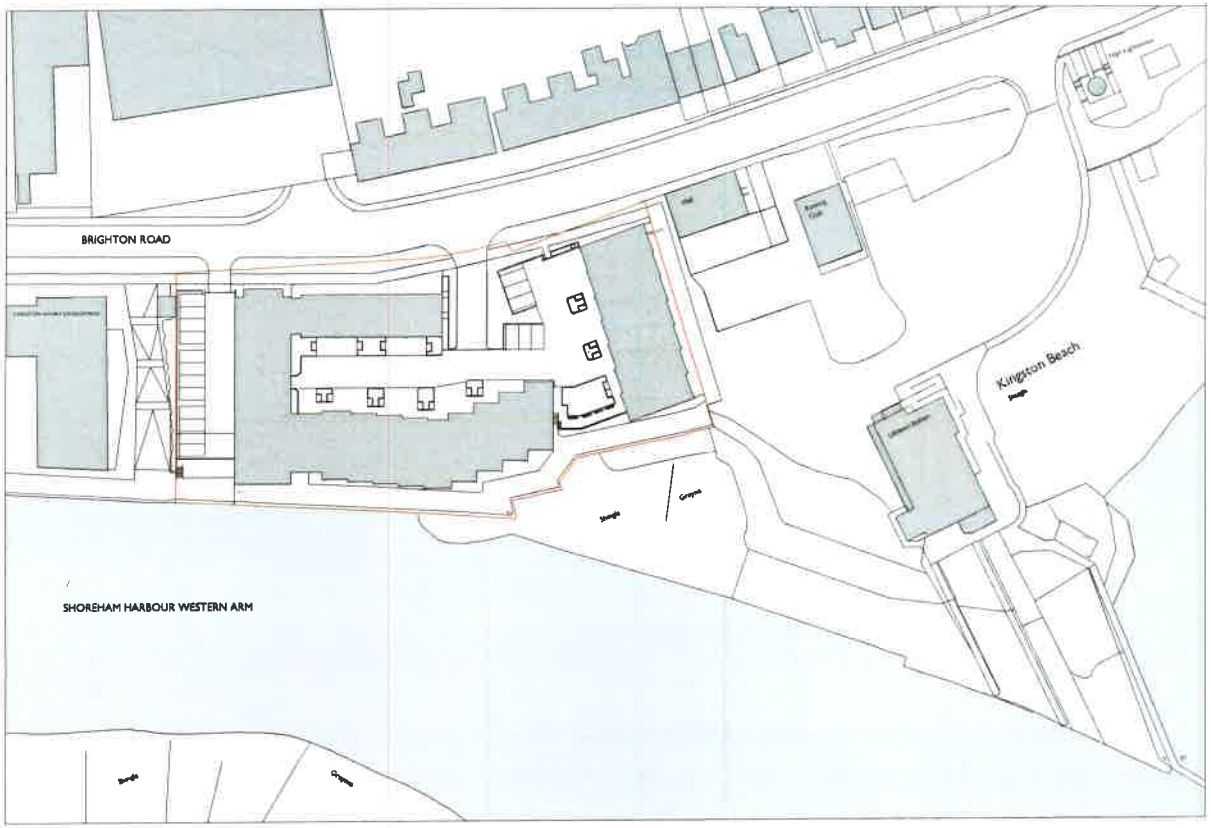
1.2 To undertake the PROW Improvement Works in accordance with the approved specification prior to first Occupation of the Development (or, if approved after first Occupation, within 6 months of that approval.)

ANNEX A Plan showing the Property

Only figured dimensions are to be used. All dimensions to be checked on site.

Please note: Refer to 'type' of drawing below; planning drawings should only be treated as such

Notes



+SP Site plan - scale 1: 500 at A1

Scale in Metres

0 5 10 15 20 30 40 50

N



+LP Location plan - scale 1: 1250 at A1

Scale in Metres

0 10 20 30 40 50 100

N

[redacted]

[redacted]

[redacted]

APPLICATION FOR DETAILED
PLANNING CONSENT

D	27:06:22	plan updated following comments from WSCC highways
C	05:05:22	plan updated following discussions with ADC
B	20:01:22	flats block & courtyard re-designed larger site plan included
A	12:08:21	[illegible] added

LRA

LONDON · BRIGHTON · PANCRESTER

JOB FORMER HOWARD KENT SITE 5 BRIGHTON ROAD SHOREHAM	CHECKED LRA
	DRAWN MC
CLIENT CAYUGA DEVELOPMENTS LTD	DATE 06:22
	SCALE 1:250 500 @ A1 1:500 1000 @ A2
DRAWING LOCATION PLAN & PROPOSED SITE PLAN	REVISION D
	NUMBER 1545 PA 01

DO NOT SCALE FROM THIS DRAWING. THIS DRAWING IS COPYRIGHT ©

ANNEX B Footpath and Public Rights of Way Plan

SCHEDULE OF ACCOMMODATION

4B6P house: 16
4B5P house: 1
3B4P house: 4
3B5P flat 1
2B3P flat: 20
1B2P flat: 3
Total 45

Commercial space: 55.6 sqm

Car parking
Flats: 16
Flats (disabled):2
Commercial: 1
Houses: 17 + driveway spaces
Houses: 2 without driveway
Houses: 2 separate
Visitors: 4

Total 44 + 17 driveway spaces

REFUSE & RECYCLING

HOUSE BIN STORAGE :
21 houses: 2 no. 240 litre bins per house in individual storage containers adjoining houses

FLATS BIN STORAGE
280 litres combined per flat = 6720 litres
6 no. 1100 litre bins in communal bin store

HEATING
Air source heat pumps to each house and a centralised system for the flats, subject to detailed design.

SOLAR PANELS
Shown indicatively & subject to detailed design

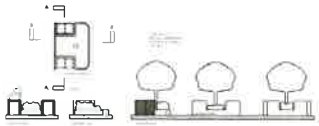
CYCLE /PEDESTRIAN PRIORITY
to be in accordance with WSCC Informal Guidance November 2020, Version 1.2 at detailed design stage

BUS STOP
Bus stop to accord with figure 10 page 14 of WSCC Informal guidance November 2020, Version 1.2 at detailed design stage

Landscaping to maximise width of footway/cycleway adajcent to new bus stop. Specifics to be agreed at detailed design stage

USE OF THE COURTYARD
As a typical practice with this type of development, casual parking in the courtyard would be controlled with rules for the development. Visitor & unallocated spaces could be controlled with a booking system

COURTYARD PLANTER UNIT scale 1:200



Only figured dimensions are to be used. All dimensions to be checked on site.

Please note: Refer to 'type' of drawing below; planning drawings should only be treated as such.

Notes

flats block & 4 storey houses to have sprinkler systems

[redacted]

+PL ground floor plan - scale 1: 200 on A1

[redacted]

APPLICATION FOR DETAILED
PLANNING CONSENT

LRA-R RETINUE

JOB
FORMER HOWARD KENT SITE
S BRIGHTON ROAD
SHOREHAM

CHECKED
DRAWN
DATE
SCALE
REVISION

CLIENT
CAYUGA DEVELOPMENTS LTD

DRAWING
GROUND FLOOR PLAN

NUMBER

Signed as deed by **Frederick Henry Howard Kent**, in the presence of:

[redacted] .....
Signature

Witness Signature : [redacted]

Witness Name* : RODNEY ARTHUR FORD FRICS

Witness Address* : 9 THE POTTERIES, FOLDERS LANE EAST DITCHLING COMMON, BN6 8SJ

Witness Occupation* : CHARTERED SURVEYOR

*insert in BLOCK CAPITALS

Signed as deed by **Sheila Kent**, in the presence of:

[redacted] ..
Signature

Witness Signature : [redacted]

Witness Name* : RODNEY ARTHUR FORD FRICS

Witness Address* : 9 THE POTTERIES, FOLDERS LANE EAST DITCHLING COMMON, BN6 8SJ

Witness Occupation* : CHARTERED SURVEYOR

*insert in BLOCK CAPITALS

Executed as deed by Cayuga 011 Ltd acting by a director, in the presence of:

[redacted] .....
Director Signature

SA DEEDMAN
Print Name (in BLOCK CAPITALS)

Witness Signature : [redacted]

Witness Name* : SABRINA PARROODIAL

Witness Address* : 6 MARLBOROUGH PLACE BRIGHTON BN1 1UB

Witness Occupation* : PARALEGAL

*insert in BLOCK CAPITALS