Adur & Worthing councils

Legal and Democratic Services

Internal Memo

From:	Victoria Clothier	Our Ref: 005419-st/171952
To:	Keith Morgan, Planning Services Development Control, Worthing Portland House	Your ref:
Cc:	Sarah Woodflowers, Senior Land Charges Officer Town Hall	
Date:	**29 November, 2011**	
Re:	**S106: Parcelforce Site, Shoreham**	

Please find enclosed herewith a copy of the completed Section 106 Agreement relating to the above mentioned site.

I would be grateful if you could issue planning permission on this matter.

Sarah, please register this Unilateral Undertaking as a Land Charge against the property.

Should you have any queries, please do not hesitate to contact me.

Victoria Clothier
Solicitor
Town Hall, Chapel Road
Tel: 01903 221029
Fax: 01903 221429
e-mail: victoria.clothier@adur-worthing.gov.uk

DATED 22nd November **2011**

(1) W. N. DEVELOPMENTS LIMITED

- and -

(2) ADUR DISTRICT COUNCIL

- and -

(3) WEST SUSSEX COUNTY COUNCIL

AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 AND OTHER POWERS

relating to

land at Former Parcelforce Site, 79/81 Brighton Road, Shoreham-by-Sea BN43 6RE

I hereby certify this to be a true copy of the original document.

Signed ..... Date 29/11/11

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THIS AGREEMENT is made on 22nd November 2011

BETWEEN:

(1) **W. N. DEVELOPMENTS LIMITED** (registered in England and Wales with company number 02101798) whose registered office is 13 College Road, Bedford MK42 9PL (**"Owner"**);

(2) **ADUR DISTRICT COUNCIL** of Civic Centre, Ham Road, Shoreham-by-Sea, West Sussex BN43 6PR (**"Council"**); and

(3) **WEST SUSSEX COUNTY COUNCIL** of County Hall, Chichester, West Sussex PO19 1RQ (**"County Council"**)

BACKGROUND:

A The Owner is the registered proprietor under title numbers WSX54850 and WSX322434 of the Former Parcelforce Site at 79-81 Brighton Road, Shoreham-by-Sea BN43 6RE shown edged red on the Site Plan.

B The Council is the local planning authority and the local housing authority.

C The County Council is the highways authority and the authority responsible for the provision of the fire service and the library service.

D Urban Life (Shoreham Waterside) Limited (the Owner's predecessor in title to the Property) by planning application number ADC/0088/07 applied to the Council for planning permission to develop the Site. The Council resolved to grant this planning application subject to an agreement under Section 106 of the Town and Country Planning Act 1990.

E A Section 106 agreement between Urban Life (Shoreham Waterside) Limited, Council, County Council and Investec Bank (UK) Limited was entered into on 30 November 2007. This agreement was altered by a deed of variation dated 21 December 2007.

F Planning permission ADC/0215/10 lapsed on 30 November 2010 and the obligations contained within the Section 106 agreement dated 30 November 2007 are no longer of effect.

G Agents for Bank of Scotland PLC (as mortgagee of Urban Life (Shoreham Waterside) Limited) by application number ADC/0215/10 applied to the Council for an extension of time to implement planning permission ADC/0088/07. On 13 September 2010 the Council resolved to approve application number ADC/0215/10 subject to the completion of this agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement (unless the context otherwise requires):

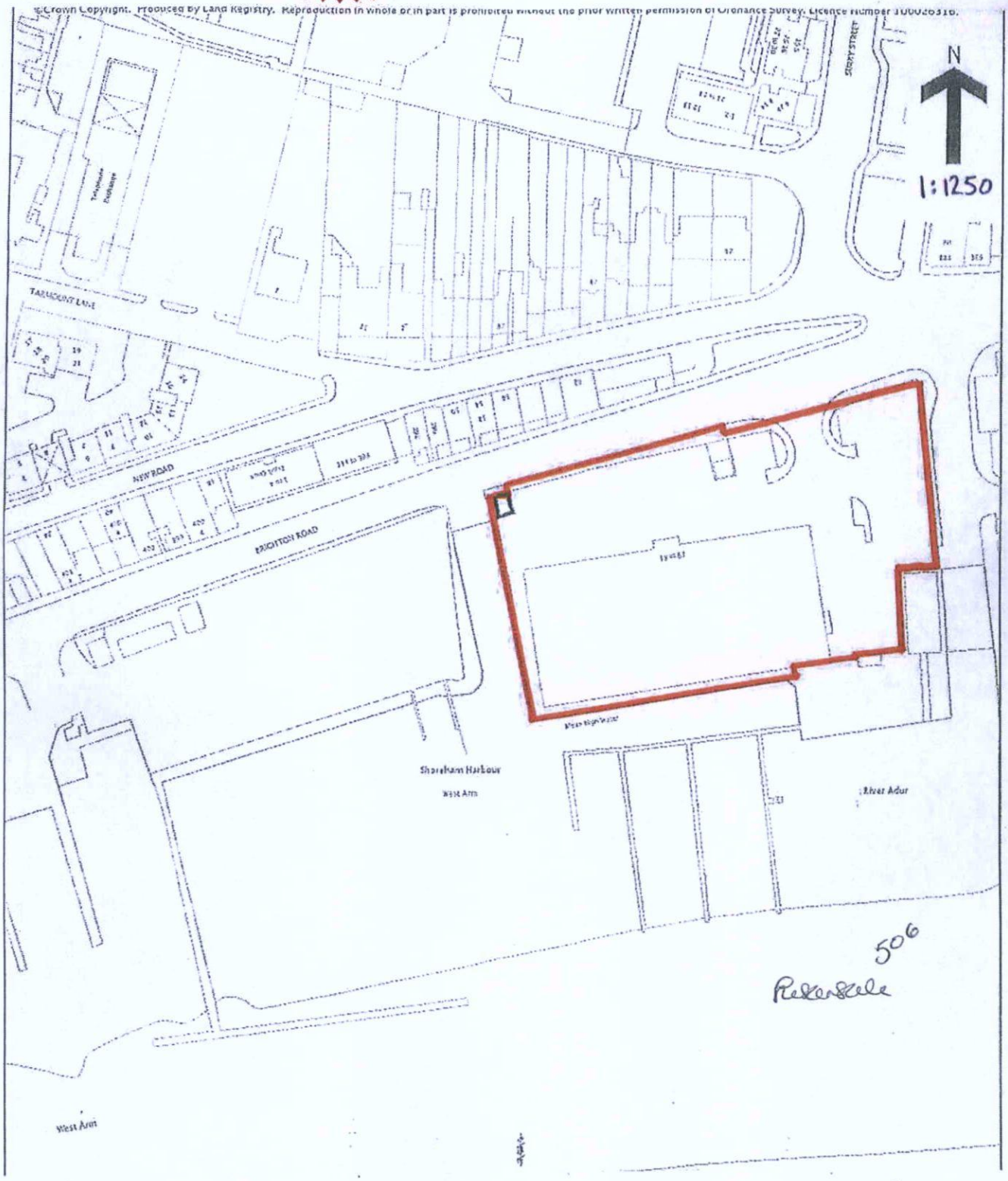
"Act" means the Town and Country Planning Act 1990.

"Affordable Housing Units" means 24 dwellings, including 16 Rental Units and eight Shared Ownership Units, to be constructed in accordance with Housing Corporation "Design and Quality Standards (April 2007)" (and any variations to those standards that may be agreed

Rickerscale

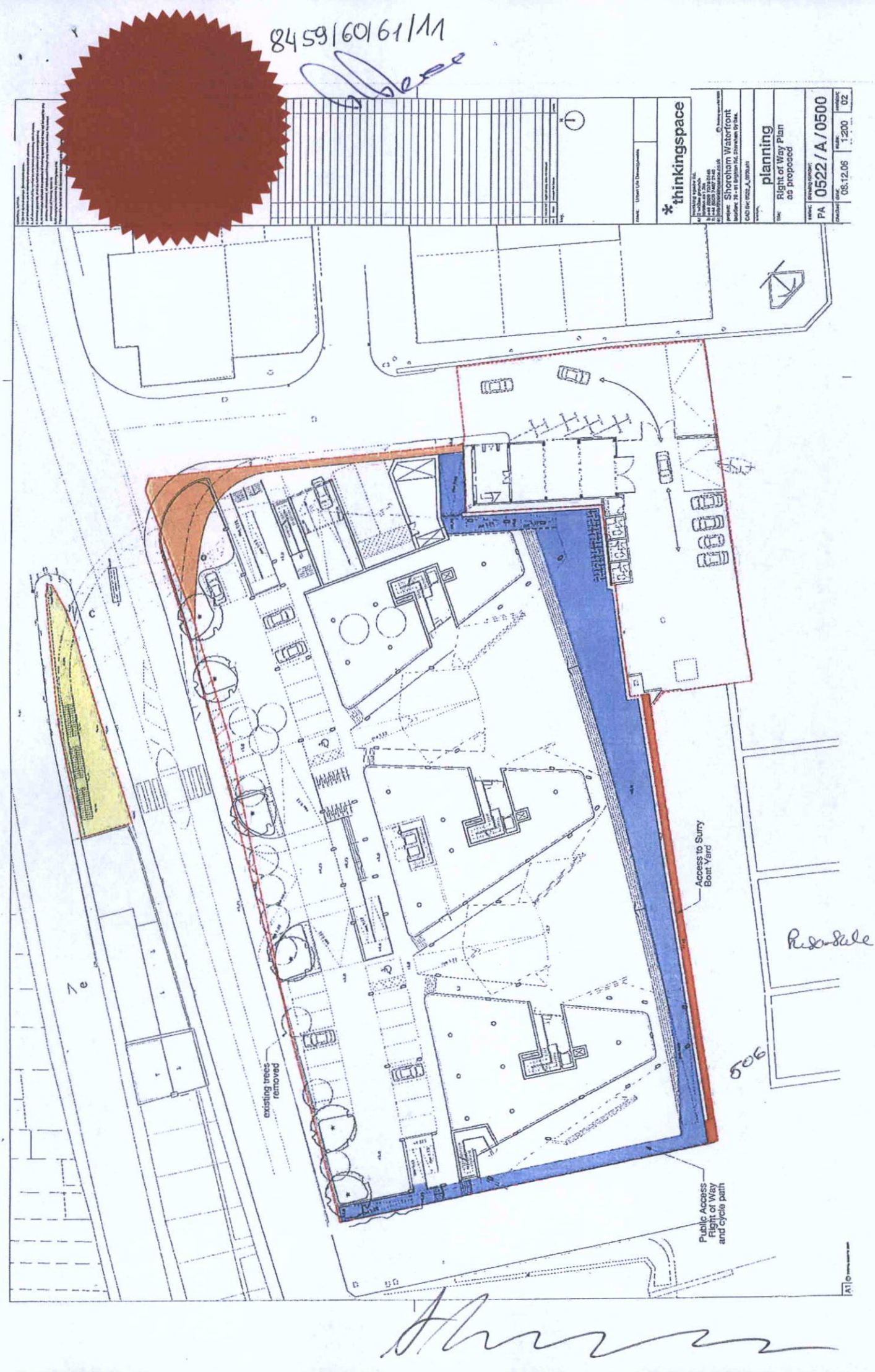
SITE PLAN

8459/60/61/11



506

Rickerscale


thinkingspace
planning
Right of Way Plan as proposed
PA 0522/A/0500
08.12.06
1:200
02
Shoreham Waterfront
existing trees removed
Access to Surry Boat Yard
Public Access Right of Way and cycle path
506

in writing with the Council) pursuant to the Permission and to be provided on the basis set out in clause 5 and Schedule 3 of this Agreement.

"agreed" or **"approved"** means agreed or approved in writing and given for the purpose of this agreement.

"Air Quality Monitoring Contribution" means the payment of £3,000 (three thousand pounds only) in accordance with clause 14.

"All Requisite Consents" means all requisite consents, orders, agreements, authorisations, licences and permissions required to implement the Pedestrian Bridge Scheme.

"Application" means the planning application number ADC/0215/10 being an application for an extension of time to Implement planning application number ADC/0088/07 made by the Owner to develop the Site.

"Commercial or Retail Units" means any commercial or retail units to be constructed pursuant to the Permission.

"Contributions" means the Fire and Rescue Contribution Library Contribution, Highways Improvement Contribution and the Transport Contribution or any of them as the case may be.

"Development" means the development of the Site substantially in accordance with the Permission.

"Eastern Access" means the access marked on the Plan as the Eastern Access.

"Fire and Rescue Contribution" means the payment of £1,209 (one thousand two hundred and nine pounds) as referred to in clause 6.

"Highways Improvement Contribution" means the payment of £375,000 (three hundred and seventy-five thousand pounds) as referred to in clause 8.

"Highways Improvement Works" means those works and measures and any orders or authorisations required in connection with the Development to improve safety in the vicinity of and on the A259 as referred to in clause 8.

"Hotel" means any hotel to be constructed pursuant to the Permission.

"Index Linked" means index linked in accordance with the provisions of clause 19.

"Implementation" means the implementation of the Permission by the carrying out of any Material Operation and **"Implement"** and **"Implemented"** and cognate expressions will be interpreted in accordance with this definition.

"Library Contribution" means the payment of £10,100 (ten thousand and one hundred pounds) as referred to in clause 9.

"Material Operation" means a material operation as defined in section 56(4) of the Act but not including such operations as site assessment and remediation, archaeological investigation, demolition, site clearance, site preparation, diversion and laying of services, the erection of fences and hoardings and the construction of temporary access or service roads.

"Nomination Rights" means the rights of the Council to nominate to the Registered Social Landlord under the terms of a separate nomination agreement to be entered into between the Council and the Registered Social Landlord the names of persons to be allocated the Affordable Housing Units.

"Occupy" means first occupy for any use for which the building in question was designed other than occupation for the purpose of construction, decoration, fitting-out security, marketing or repair.

"Open Market Dwellings" means those dwellings to be constructed pursuant to the Permission excluding the Affordable Housing Units.

"Payment Notice" means a payment notice in the form attached at Schedule 1.

"Pedestrian Bridge" means a private footbridge over Brighton Road (A259) to be built, maintained and owned by the Owner at their expense as set out in clause 16.

"Pedestrian Bridge Scheme" means a scheme to include but not limited to the detailed design of the Pedestrian Bridge.

"Permission" means a planning permission granted in accordance with the Application subject to conditions in the form attached at Schedule 2.

"Plan" means the plan attached to this Agreement reference 0522-A-0500 rev 2.

"Public Access Land" means that area shown for identification purposes shaded blue on the Plan.

"Registered Social Landlord" means a registered social landlord within the meaning of the Housing Act 1996.

"Rental Units" means 16 units to be transferred to a Registered Social Landlord and let by the Registered Social Landlord by way of an assured tenancy in accordance with Housing Corporation guidance pursuant to s36 of the Housing Act 1996.

"Shared Ownership Units" means eight units forming part of the Development to be transferred to a Registered Social Landlord and disposed of by the Registered Social Landlord by way of a shared ownership lease being a lease enabling the leaseholder to purchase an initial percentage of the market value of the unit and from time to time purchase an additional percentage of the market value up to a maximum of 100 per cent.

"Site" means the land shown for identification purposes edged red on the Site Plan.

"Site Plan" means the plan attached to this Agreement so marked.

"Transport Contribution" means the payment of £66,060 (sixty six thousand and sixty pounds) as referred to in clause 7.

1.2 Interpretation

In this Agreement (unless the context otherwise requires):

1.2.1 Words importing the masculine include the feminine and vice versa.

1.2.2 Words importing the singular include the plural and vice versa.

1.2.3 Words importing persons include companies and corporations and vice versa.

1.2.4 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.

1.2.5 Any reference to a clause or schedule or plan is one in, to or attached to this Agreement.

1.2.6 Any reference to a colour or letter is to be to a colour or letter on the plans attached to this Agreement.

1.2.7 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.

1.2.8 Save to the extent specified in this Agreement, references to any party to this Agreement shall include the successors in title to that party and to any party deriving title through or under that party and in the case of the Council and County Council the successors to their respective functions as referred to in recitals B and C.

2. ENABLING PROVISIONS

2.1 This Agreement is made pursuant to section 106 of the Act and section 111 of the Local Government Act 1972 and all other enabling powers and has been entered into by the Council pursuant to its Planning and Regulatory Committee's resolution of 4 June 2007 and this Agreement will be enforceable by the Council and the County Council as appropriate.

2.2 No person will be liable for any breach of this Agreement unless they hold an interest in that part of the Site in respect of which such breach occurs or held such an interest at the date of the breach.

2.3 If the Permission expires within the meaning of sections 91, 92 and 93 of the Act or is revoked or otherwise withdrawn or modified by any statutory procedure without the consent of the Owner, this Agreement will cease to have effect.

2.4 Nothing in this agreement will be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission (other than the Permission) granted by the local planning authority or by the Secretary of State on appeal or by reference to her after the date of this Agreement.

2.5 Nothing in this Agreement will be binding on the individual purchasers or lessees or occupiers of the Open Market Dwellings and the Affordable Housing Units or the Commercial or Retail Units or the Hotel nor the mortgagees or chargees of any such person nor a receiver appointed by a mortgagee or chargee of any such person.

2.6 The obligations contained in this Agreement including for the avoidance of doubt clause 5 shall not be binding or enforceable against any mortgagee or chargee of a Registered Social Landlord exercising any of its powers by or pursuant to its mortgage or anyone deriving title from such mortgagee or chargee nor a receiver appointed by such a mortgagee or chargee.

2.7 Nothing in this Agreement, apart from the relevant provisions of clause 5, will bind a Registered Social Landlord to which the Affordable Housing Units are transferred pursuant to clause 5.

2.8 The obligations contained in this Agreement shall not be binding upon any and all statutory undertakers who have as part of their statutory undertaking any interests in the Site nor the mortgagee or chargee of any such persons nor any receiver appointed by a mortgagee or chargee of any such person.

3. COMMENCEMENT

This Agreement shall come into effect upon the date of this Agreement or grant of the Permission (whichever is the later) but the obligations in clauses 5 to 16 inclusive shall become effective only on Implementation.

4. REPAYMENT OF CONTRIBUTIONS

4.1 The Council or County Council as appropriate will issue to the party that paid the relevant Contribution at the end of a period of 10 years from the date of payment of the Contribution (or final instalment of the Contribution if appropriate) an account in respect of the relevant Contribution detailing how the relevant Contribution (together with interest accrued thereon) have been expended by the Council or County Council.

4.2 If or to the extent that the relevant Contribution shall not have been spent by the Council or County Council as appropriate at the date of the accounts referred to in clause 4.1 above the Council or County Council as appropriate shall on such date refund to the party that paid the relevant Contribution any unexpended part thereof together with compound interest thereon from the date of receipt of the respective Contribution by the Council or County Council as appropriate to the date of repayment at the base lending. rate of the HSBC Bank plc applicable at the date of repayment calculated on a day to day basis.

4.3 If at the date referred to in clause 4.1 above the Council or County Council as appropriate shall have entered into a contract or other legally binding obligation to expend any of the relevant Contributions or part thereof then the Council or County Council as appropriate shall not be required to refund any part of the relevant element thereof 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 relevant Contribution in the manner set out in clause 4.1 hereof and refund any unexpended part of the relevant Contribution in the manner set out in clause 4.2 hereof.

5. AFFORDABLE HOUSING

5.1 Unless the Council consents otherwise in writing:

5.1.1 the Owner shall not commence construction of the dwellings comprised in the Development (but may for the avoidance of doubt undertake Material Operations) until:

5.1.1.1 the anticipated date of Occupation of the first Open Market Dwelling (the "**Anticipated Occupation Date**") has been agreed between the Council and the Owner (such agreement not to be unreasonably withheld or delayed); and

5.1.1.2 it has demonstrated to the Council's reasonable satisfaction that there is a reasonable prospect of the 16 Rental Units to be delivered as set out in the Schedule being completed prior to the Anticipated Occupation Date (but subject to clause 5.3.2); and

5.1.2 subject to clause 5.3 the Owner shall not Occupy or cause to be Occupied any Open Market Dwellings until it has transferred to the Registered Social Landlord the completed Affordable Housing Units, comprising the eight Shared Ownership Units provided as part of the Development and the sixteen Rental Units provided as set out in Schedule 3.

5.2 Following transfer the Affordable Housing Units shall be managed at all times by the Registered Social Landlord in accordance with:

5.2.1 the normal objects of such organisation;

5.2.2 Schedule 3 of this Agreement; and

5.2.3 any Nomination Rights of the Council.

5.3 In the event that any of the Rental Units are to be provided permanently on another site or sites in the district (the "**Offsite Units**") and the Council is satisfied that despite the use of reasonable endeavours by the Owner the Offsite Units will not be constructed and transferred to a Registered Social Landlord before the Anticipated Occupation Date THEN the Council may agree (such agreement not to be unreasonably withheld or delayed) that:

5.3.1 a specified number of Open Market Dwellings may be Occupied prior to completion and transfer of the Offsite Units to a Registered Social Landlord taking into consideration the viability of the Development and the prospects of the Offsite Units being delivered in a reasonable timescale; and/or

5.3.2 a number of two bedroom flats within the Development (the "**Temporary Replacement Units**") equal to the number of Offsite Units may be provide as affordable housing available for rent on assured tenancies through a Registered Social Landlord on a temporary basis until the Offsite Units have been constructed and transferred to a Registered Social Landlord in which case:

5.3.2.1 the Owner shall not Occupy or cause to be Occupied any Open Market Dwellings until it has made available the Temporary Replacement Units as affordable housing available for rent on assured tenancies through a Registered Social Landlord;

5.3.2.2 the occupation restriction in clause 5.1.2 shall not apply in respect of the Offsite Units; and

5.3.2.3 the Owner shall not use or permit to be used the Temporary Replacement Units other than as affordable housing available for rent on assured tenancies through a Registered Social Landlord until the Offsite Units have been constructed and transferred to a Registered Social Landlord (following which construction and transfer the Owner shall be free to deal with the Temporary Replacement Units as they see fit).

6. FIRE AND RESCUE CONTRIBUTION

6.1 The Owner agrees with the County Council upon Implementation to pay to the County Council the Fire and Rescue Contribution Index Linked.

6.2 The County Council shall apply the Fire and Rescue Contribution towards capital projects identified in the Southern division.

7. TRANSPORT CONTRIBUTION

7.1 The Owner agrees with the County Council upon Implementation to pay to the County Council the Transport Contribution Index Linked.

7.2 The Owner agrees with the County Council not to Implement the Development until it has paid to the County Council the Transport Contribution Index Linked.

7.3 The County Council shall apply the Transport Contribution only towards the provision of sustainable transport improvements relating to the Site in accordance with the West Sussex County Council TAD Formula save that if the Owner and the County Council agree, the Transport Contribution may be used towards the Highways Improvements Works.

8. HIGHWAYS IMPROVEMENT CONTRIBUTION

8.1 The Owner agrees with the County Council upon or before Implementation to pay to the County Council the Highways Improvement Contribution Index Linked.

8.2 The Owner agrees with the County Council not to Implement the Development until the Highways Improvement Contribution Index Linked has been fully paid to the County Council.

8.3 The County Council shall apply the Highways Improvement Contribution only towards the Highways Improvement Works.

8.4 The Owner shall not use the Eastern Access to access the Development using vehicles until the Highways Improvement Works have been completed.

8.5 The County Council shall use its best endeavours to carry out and complete the Highways Improvement Works within two years of the date of this Agreement.

8.6 If the Owner and the County Council agree, the Owner may carry out and complete the Highway Improvement Works pursuant to a section 278 agreement in which case:

8.6.1 the County Council shall return to the Owner the Highways Improvement Contribution Index Linked paid to the County Council pursuant to clause 8.2 less any monies already expended by the County Council in complying with their obligation pursuant to clause 8.5; and

8.6.2 the Owner shall be liable for any further costs incurred in completing the Highway Improvement Works to the satisfaction of the County Council.

8.7 The Owner agrees to assist with the delivery of the Highways Improvement Works to the extent set out in clause 10.

9. LIBRARY CONTRIBUTION

9.1 The Owner agrees with the County Council upon Implementation to pay to the County Council the Library Contribution Index Linked.

9.2 The County Council shall apply the Library Contribution only towards the cost of providing additional library capacity to serve the Shoreham area.

10. HIGHWAY LAND

10.1 If the County Council acting reasonably (any dispute as to whether the County Council is acting reasonably to be determined by an independent expert in accordance with clause 27) requires the land to the north-east of the Site shown coloured brown on the Site Plan (**"Highway Transfer Land"**) to be transferred to it to ensure the satisfactory delivery of the Highways Improvement Works, it may within 10 years of the date of this agreement serve written notice on the Owner requiring the Owner to transfer the Highway Transfer Land to it.

10.2 As soon as is reasonably practicable following receipt of a written notice in accordance with clause 10.1, the Owner shall execute and release to the County Council for completion a transfer of the Highway Transfer Land with full title guarantee and free from encumbrances save for existing encumbrances.

10.3 The County Council shall accept and complete the transfer of the Highway Transfer Land as soon as reasonably practical following receipt of the transfer referred to in clause 10.2.

11. FIRE HYDRANTS

The Owner covenants with the County Council that prior to the date of Implementation of the Development it will submit to the County Council for the County Council's approval (such approval not to be unreasonably withheld or delayed) a proposal for the location and installation of two fire hydrants in accordance with the West Sussex Fire Brigade Guidance Notes attached at Appendix 1 hereto and prior to the occupation of any dwelling forming part of the Development that it will at its own expense install the fire hydrants in the approved location and arrange for its connection to a water supply which is appropriate in terms of both pressure and volume for the purposes of fire fighting

12. TREE PITS

The Owner agrees for the benefit for the Council to replace the existing trees on the front of the Site as shown on the Plan with eight semi-mature sycamore trees of five to six metres in height, and to replace any trees in the tree pits that die within five years of the completion of the Development with similar trees.

13. PUBLIC RIGHT OF ACCESS

13.1 The Owner agrees with the Council:

13.1.1 not to Occupy more than 50 per cent of the Open Market Dwellings until the Public Access Land is cleared and surfaced in accordance with details approved pursuant to conditions of the Permission and available for use by the public; and

13.1.2 subject to clause 13.2 at all times during the life of the Development to keep and maintain in a state of good repair and condition the Public Access Land and allow the general public to use the Public Access Land on foot only.

13.2 The Owner shall have to right to close the Public Access Land:

13.2.1 between sunset and sunrise in circumstances where public nuisance is occurring between sunset and sunrise (subject to the Owner first obtaining the Council's approval in writing);

13.2.2 as required by the Owner acting reasonably in order to carry out any works of repair or maintenance or development to the Public Access Land or to neighbouring land (subject to the Owner first obtaining the Council's approval in writing);

13.2.3 in cases of emergency; and

13.2.4 one day a year in order to prevent public rights of way accruing.

13.3 The Owner may erect signs along the Public Access Land informing the public that the area is not a public right of way.

14. AIR QUALITY MONITORING

14.1 The Owner agrees with the Council not to Occupy more than 50 per cent of the Open Market Dwellings until the Air Quality Monitoring Contribution Index Linked has been paid to the Council.

14.2 The Council shall apply the Air Quality Monitoring Contribution only towards the monitoring of air quality in the vicinity of the Development.

15. PUBLIC ART

The Owner agrees with the Council:

15.1 to submit to the Council within three months of Implementation a proposed scheme for the Council's comments for the provision of public art to be incorporated into the Development, to the sum of not less than £15,000 (fifteen thousand pounds);

15.2 to take into account any written representations made by the Council within two months of receipt of the scheme referred to in clause 15.1 above; and

15.3 to complete the placing and unveiling of the proposed scheme prior to Occupation of more than 50 per cent of the Open Market Dwellings.

16. PEDESTRIAN FOOTBRIDGE

16.1 The Owner agrees with the County Council not to Implement the Development until a Pedestrian Bridge Scheme has been submitted to and approved by the County Council. The Owner shall meet all reasonable costs expended by the County Council in reviewing and approving the design. When considering the design of the Pedestrian Bridge, the County Council will give regard to the relationship of the Pedestrian Bridge with the Highway Improvement Works.

16.2 Once the Pedestrian Bridge Scheme has been approved by the County Council, the Owner agrees to obtain All Requisite Consents associated with the construction arid maintenance of the Pedestrian Bridge.

16.3 The Owner agrees not to commence construction of the Pedestrian Bridge without the approval in writing of the County Council, such approval not to be unreasonably withheld.

17. REASONABLENESS

Save as otherwise provided in this Agreement any approval in writing, certificate, consent or expression of satisfaction to be given by the Council or County Council under this agreement shall not be unreasonably withheld or delayed.

18. CERTIFICATE AND PAYMENT NOTICE

The Owner agrees with the Council and the County Council:

18.1 to give to the Council at least 28 days' notice of the date of Implementation and the anticipated date of Occupation of the first Open Market Dwelling;

18.2 to make any and all payments due under this Agreement to the Council and to attach a fully completed Payment Notice with each payment.

19. INDEX LINKING

19.1 Where any sum referred to in this Agreement is stated to be "Index Linked" the stated sum shall be increased or decreased in the same proportion as the final figure for the appropriate index published in the month preceding the date of payment of the stated sum or relevant part thereof bears to the final figure for the appropriate index published in the month preceding the date of this Agreement.

19.2 The appropriate index for the purposes of clause 19.1 shall be the All-in Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors.

20. INTEREST

The Owner agrees with the Council and the County Council to pay interest on sums due to the Council and the County Council respectively under this Agreement but not paid on the due date from the due date until actual payment calculated at the rate of interest two per cent above the National Westminster Bank plc's base rate applicable at the actual date of payment.

21. COSTS

The Owner agrees with the Council and the County Council upon completion of this Agreement to pay their reasonable legal costs respectively incurred in preparing and entering into this Agreement.

22. NOTICES

22.1 Any notice required by this Agreement (**"Notice"**) shall be in writing and in the case of the Council addressed to the Head of Legal and Democratic Services at the address herein and in the case of the County Council addressed to the Head of Legal Services at the address herein.

22.2 The Notice may be sent by one of the following means and shall be deemed to be served as described unless the actual time of receipt is proved:

22.2.1 by first class post deemed served two working days after posting;

22.2.2 by second class post deemed served three working days after posting;

22.2.3 through document exchange deemed served on the first working day after the day on which it would normally be available for collection by the addressee;

22.2.4 by facsimile at the time of successful transmission.

23. GENERAL

The parties agree that:

23.1 the Council shall grant the Permission within two working days of the date of this Agreement;

23.2 nothing in this Agreement grants any other approval consent or permission required from the Council in the exercise of any other statutory function;

23.3 nothing in this Agreement fetters or restricts the exercise by the Council or the County Council of any of their powers;

23.4 the obligations contained in clauses 5 to 16 inclusive are planning obligations for the purpose of section 106 of the Act;

23.5 this Agreement constitutes a Deed;

23.6 the obligations on the Owner contained in clauses 5, 11, 13, 14 and 15 shall be enforceable against the Owner by the Council only; and

23.7 the obligations on the Owner contained in clauses 6, 7, 8, 9, 10 and 16 shall be enforceable against the Owner by the County Council only.

24. NOTICE OF COMMENCEMENT

The Owner shall give to the County Council at least 28 days' advance written notice of the date on which it intends to Implement the Development.

25. LOCAL LAND CHARGE

The Council shall register this Agreement in the Register of Local Land Charges.

26. CERTIFICATION OF SATISFACTION OF PROVISIONS

If the opinion of the Owner the provisions of this Agreement have been completed and/or satisfied either in whole or in part the Owner may make an application in writing to the Council or the County Council (as the case may be) for a certificate to the effect that the relevant provisions of the Agreement have been completed and/or satisfied and upon the Council or County Council (as the case may be) being satisfied that the said provisions have been completed and/or satisfied then the Council or the County Council (as the case may be) shall within 10 working days issue the relevant certificate.

27. INDEPENDENT EXPERT

27.1 Without prejudice to the rights of any party to this Agreement to take alternative action save for matters of construction (which shall be matters for the courts) any dispute or disagreement arising under this Agreement including questions of value or any question of reasonableness

may be referred at the instance of any party for determination by a single expert whose decision shall be final and binding on the parties.

27.2 The following provisions and terms of appointment shall apply to such disputes or disagreements and questions:

27.2.1 The expert shall have at least 10 years' post qualification experience in the subject matter of the dispute.

27.2.2 The expert shall be agreed between the parties or appointed by the President of the Royal Institute of Chartered Surveyors at the request of any part to the dispute.

27.2.3 The persons calling for the determination shall make written submissions to the expert and the other parties within 10 working days of his appointment.

27.2.4 The other parties shall have 21 working days from the receipt of such written submission or such extended period as the expert shall allow to respond.

27.2.5 The expert shall disregard any representations made out of time and shall make his decision within 21 working days of receipt of the representations under clause 27.2.4 or if none the expiry of the period referred to in clause 27.2.4.

27.2.6 The expert's decision shall be in writing and give reasons for his decision.

27.2.7 The expert's fees shall be met by the person calling for the determination unless the other party is found to have acted unreasonably in which case the other party shall meet such costs arid reimburse any expert's fees already paid by the other party.

IN WITNESS the parties have executed this Agreement as a Deed.

SCHEDULE 1: PAYMENT NOTICE

Payment of monies due under a section 106 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:

5.1 clause number: ◆

5.2 contribution towards: ◆

5.3 amount of contribution due: ◆

5.4 date upon which contribution is due: ◆

5.5 amount of contribution enclosed: ◆

SCHEDULE 2: THE PERMISSION

SCHEDULE

Reasons for Granting Permission

01. The proposed development is within the built-up area and would help meet the need for additional housing and for a hotel without detracting from the existing local urban environment, including the adjoining Conservation Area and listed buildings. It can take place without resulting in unacceptable detriment to the amenities of neighbouring properties, without detraction from highway safety and, subject to the provision of the footbridge, without unacceptable risk from flooding. It would consequently not conflict with the relevant policies of the Adur District Local Plan (AG1, AH2, AH5, AB3-4, AB11, AB23, AB25-27) and the South East Plan (SP3-4, CC1-2, CC4, CC6, RE3, H1-5, T4, NRM4-5, NRM9-11, BE1, BE6, SCT1-7).

Conditions

01. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: *To comply with Section 91 of the Town and Country Planning Act 1990.*

02. The development hereby permitted shall be carried out in accordance with the following approved plans:-

0522/A/0910/02, 0522/A/0911/01, 0945/05, 0946/06, 0947/04, 0948/04, 0949/03, 0950/07, 0951/02, 0952/04, 0956/02, 0959/02, 0960/02, 0961/02, 0981/01, 0982/01, 0983/01 and 0984/01.

Reason: *For the avoidance of doubt and in the interests of proper planning.*

03. No development shall take place (excluding hoardings and associated site security) until details of boundary walls (including retaining walls), railings, fences and gates have been submitted to and approved in writing by the Local Planning Authority and the building shall not be occupied until these have been completed in accordance with the approved details. The flint facing for the front wall adjoining the A259 shall accord with a sample panel to be constructed on site and approved by the Local Planning Authority.

Reason: *In the interests of amenity and to comply with policies AG1 and AH2 of the Adur District Local Plan.*

04. The buildings shall not be occupied until the car and cycle parking spaces and access facilities shown on the submitted plans have been provided in accordance with construction details to be submitted to and approved in writing by the Local Planning Authority. The areas so provided shall not thereafter be used for any purpose other than access and parking of vehicles and cycles incidental to the use of the proposed development.

Reason: *In the interests of amenity and highway safety and having regard to PPG13/PPS3.*

05. The buildings hereby permitted shall not be occupied until space has been laid out within the site as shown on the submitted plans for the turning of vehicles clear of the public highway and such spaces shall not thereafter be used other than as turning areas.

Reason: *In the interests of highway safety.*

06. The access from the site to the A259 shall be designed, laid out and constructed with kerb radii, visibility splays and sight lines in all respects in all respects in accordance with plans and details to be submitted to and approved in writing by the Local Planning Authority before any other operation or use authorised by this permission is commenced. Thereafter such visibility splays and sight lines shall be kept clear of any obstruction.

Reason: *In the interests of highway safety.*

07. The buildings hereby permitted shall not be occupied until the existing vehicular access to the site has been stopped up permanently and obliterated (including kerbing and footway re-instatement works) in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

Reason: *In the interests of highway safety.*

08. The existing public rights of way to Surry Hard and Tarmount Hard shall remain undisturbed unless and until legally stopped up or diverted prior to the commencement of any of the development hereby permitted. The alignment of the public rights of way shall be protected by being clearly demarcated, signed and fenced, as may be approved by the Local Planning Authority, throughout the course of the development.

Reason: *To safeguard the rights of the public.*

09. No construction work shall be carried out on site unless there is available within the site in accordance with details approved by the Local Planning Authority provision for temporary parking and loading/unloading of all Contractors' vehicles, and for Contractors' buildings, plant, and stacks of materials and such provision shall be retained for these purposes throughout the period of work on the site.

Reason: *In the interests of highway safety and amenity.*

10. No work shall be carried out on the site unless and until an effective vehicle wheel-cleaning facility has been installed in accordance with details approved by the Local Planning Authority and such facility shall be retained in working order and operated at all times during the period of construction work to ensure that vehicles do not leave the site carrying earth, mud or other material on their wheels in a quantity which causes a nuisance or hazard on the road system in the locality.

Reason: *In the interest of highway safety.*

11. No development (except enabling works) shall take place unless and until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping. This shall include the planting of 8 sycamore trees along the A259 frontage, such trees being 5m-6m high and 18cm-20cm trunk girth at the time of planting. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. For the purposes of this condition, "Enabling Works" shall mean operations comprising site assessment and remediation, archaeological investigation, demolition, site clearance and preparation, diversion and laying of services, the erection of fences and hoardings and the construction of temporary accesses or service roads.

Reason: *In the interests of visual amenity and the environment and to comply with saved policies AB25-27 of the Adur District Local Plan.*

12. The existing sycamore trees subject to TPO on the site shall not be removed unless and until a contract for the carrying out of the redevelopment scheme hereby permitted has been made.

Reason: *In the interests of visual amenity and the environment and to comply with policies AB25-27 of the Adur District Local Plan.*

13. No development of any part of the scheme shall be carried out unless and until a schedule of materials and finishes to be used for the external walls (including windows, doors, balconies) and roofs of that part of the development has been submitted to and approved in writing by the Local Planning Authority.

Reason: *In the interests of visual amenity and to comply with policy AG1 of the Adur District Local Plan.*

14. No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority.

Reason: *The site is within an area of archaeological significance and it is important that it is recorded by excavation and to comply with policy AB1 of the Adur District Local Plan.*

15. No external lighting or floodlighting shall be installed except in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

Reason: *In the interests of amenity and to comply with policy AP9 Adur District Local Plan.*

16. No development shall be carried out until the existing warehouse building on the application site at the date of this permission has been demolished, the debris removed from the site and the site cleared.

Reason: *In the interests of amenity and to comply with policy AG1 of the Adur District Local Plan.*

17. Unless the Local Planning Authority otherwise gives its prior written approval, if either of the commercial units is used as a restaurant, it shall not be open for trade or business other than between the hours of 8 AM and 11 PM and there shall be no external illumination on the premises outside these specified hours. All activity shall cease at the restaurant premises by 11.30 PM daily unless the Local Planning Authority otherwise gives its written approval.

Reason: *In the interests of amenity and to comply with policy AG1 of the Adur District Local Plan.*

18. The hotel and restaurant hereby permitted shall not be occupied until satisfactory means of extract ventilation (including the filtration and disposal of cooking odours from the kitchens) including necessary sound attenuation measures have been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The system as approved and installed shall thereafter be retained in effective working order and operated at all times when cooking is taking place.

Reason: *In the interests of amenity and to comply with policy AG1 of the Adur District Local Plan.*

19. The 627 sqm of commercial floorspace (denoted as units 1 and 3 on the approved plan) shall only be used for non-food retail sales (but including sale of sandwiches, confectionery and ice creams), as a restaurant and/or as a gymnasium, whether such use is incidental to the hotel or not, and for no other purposes including other uses within Classes A1, A3, C1 and D2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any equivalent provisions in any Statutory Instrument revoking and re-enacting that Order with or without modification) unless the Local Planning Authority otherwise gives its written approval.

Reason: *In the interests of amenity and to comply with policies AH2 and AG1 of the Adur District Local Plan.*

20. The development hereby permitted shall not be commenced until a scheme for protecting the proposed flats and hotel bedrooms from road traffic noise has been submitted to and approved in writing by the Local Planning Authority. All works which form part of the scheme shall be completed before the buildings are occupied.

Reason: *In the interests of amenity and to comply with policy AG1 of the Adur District Local Plan and PPG24.*

21. Prior to the commencement of development, details of the replacement river wall, the floor level of the proposed buildings and alterations to the ground levels of the site shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in strict accordance with such details as approved and no occupation of the buildings shall take place until the approved works have been completed.

Reason: *In the interests of amenity, the environment and flood risk avoidance, having regard to policy AG1 of the Adur District Local Plan and PPS25.*

22. Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 as amended (or any order revoking and re-enacting that Order with or without modification), no gate, fence, wall or other means of enclosure (other than site hoardings and associated security) shall be erected except as approved under condition 03 of this permission unless permission is granted by the Local Planning Authority on an application in that behalf.

Reason: *In the interests of amenity and the environment and to comply with policy AG1 of the Adur District Local Plan.*

23. No external radio or TV aerial shall be erected or affixed on any individual flat and provision shall be made for combined aerial facilities to serve the development hereby permitted.

Reason: *In the interests of visual amenity and to comply with policy AH2 of the Adur District Local Plan.*

24. No buildings on the site shall be occupied until the associated facilities for storing refuse and waste, including for waste that can be recycled, have been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

Reason: *In the interests of amenity.*

25. The development hereby permitted shall not be commenced until details of the proposed drainage and means of disposal (including for controlling drainage during the construction period) have been submitted to and approved by the Local Planning Authority and the buildings shall not be occupied until all drainage works have been carried out in accordance with such details as approved by the Local Planning Authority. There shall be no discharge of contaminated drainage into either ground water or any surface waters whether direct or via soakaways.

Reason: *To ensure adequate drainage and to comply with policy AP4 of the Adur District Local Plan.*

26. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from the proposed car parks or other hardstandings shall be passed through trapped gullies designed and constructed to have a capacity and details compatible with the site being drained. Roof water from buildings shall not pass through any such trapped gully.

Reason: *To safeguard against pollution.*

27. No development approved by this planning permission shall be commenced until:-
a) A desktop study has been carried out by a competent person in accordance with B.S.10175:2001 which shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and other relevant information. Using this information a diagrammatical representation (Conceptual Model) for the site of all potential contaminant sources, pathways and receptors shall be produced.

b) A site investigation has been designed for the site in accordance with B.S.10175:2001 using the information obtained from desktop study and any diagrammatical representation (Conceptual Model). This should be submitted to, and approved in writing by the Local Planning Authority prior to that investigation being carried out on the site. The investigation must be comprehensive enough to enable:-
-a risk assessment to be undertaken of the risks to human health, ground and surface waters on and off the site, and the wider environment;
-refinement of the Conceptual Model; and
-the development of a Method Statement detailing the remediation requirements and how they are to be undertaken.

c) The site investigation has been undertaken in accordance with details approved by the Local Planning Authority and a risk assessment has been undertaken.

d) A Method Statement detailing the remediation requirements (including measures to minimise the impact on ground and surface waters, using the information obtained from the Site Investigation) has been submitted to the Local Planning Authority. This shall be approved in writing by the Local Planning Authority prior to that remediation being carried out on the site.

The development of the site shall be carried out in accordance with the approved Method Statement.

Upon completion of the remediation detailed in the Method Statement, a report shall be submitted to the Local Planning Authority that provides verification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post-remediation sampling and monitoring results shall be included in the report to demonstrate that the required remediation has been fully met and future monitoring proposals and reporting shall also be detailed in the report.

If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the Method Statement detailing how this unsuspected contamination shall be dealt with.

Reason: *To safeguard against pollution of controlled waters and risk to public health and safety having regard to PPS23.*

28. No development shall commence until method statements have been submitted to and approved in writing by the Local Planning Authority relating to:-

-Details of land reclamation, including the nature of the material to be imported and the methods used;
-Construction and working methods, including site access, in the area immediately adjacent to the river;
-Timings and methods for any piling works; Pressure or impact piling shall only be used at low water, when the piling area is clear of water. If pressure/impact piling is to be used, its use shall be restricted to December - June (to miss the incoming sea trout run through the harbour) and only occur when piles will not be driven through the water column.

Reason: *A method statement is necessary to ensure that any impacts upon the environment, including the estuary and other habitats, are minimised, having regard to PPS9.*

29. An ecological enhancement scheme shall be carried out within a period not exceeding 3 months of commencement of occupation of the buildings in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

Reason: *To maintain, enhance, restore and add to biodiversity as set out in PPS9.*

30. Details of the proposed on-site renewable energy generation methods and measures for the efficient environmental performance of the buildings shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development and shall be completed prior to occupation of the buildings and thereafter maintained.

Reason: *In the interests of amenity and sustainability having regard to policy NRM11 of the South East Plan.*

31. Prior to the commencement of development, details of the construction of the proposed footbridge including associated groundworks shall be submitted to and approved in writing by the Local Planning Authority and the proposed footbridge shall be completed prior to occupation of any of the proposed flats hereby permitted.

Reason: *In the interests of amenity, highway safety and to provide safe, dry access in the event of the public highway being flooded, as required by PPS25 and taking account of policies AG1 and AB4 of the Adur District Local Plan.*

SCHEDULE 3: AFFORDABLE HOUSING UNITS

The Affordable Housing Units shall be provided on the following basis (unless the Council consent otherwise in writing or clause 5.3.2 applies):

16 Rental Units	comprising 16 no. two bedroom flats to be located on the Site or on a separate site or sites in Adur District to be identified by the Owner and approved in writing by the Council as being acceptable for the purpose (or a combination or provision on the Site and on a separate site or sites).
8 Shared Ownership Units	comprising 6 no. one bedroom flats and 2 no. two bedroom flats on the Site as identified on plan number 0522/A/0951 Revision 2 or such other location within the Site to be agreed with the Council and the Owner acting reasonably.

APPENDIX 1

West Sussex Fire Brigade Guidance Notes

WEST SUSSEX FIRE & RESCUE 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 if 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

EXECUTED as a deed by)
W. N. DEVELOPMENTS)
LIMITED acting by)
a director, in the presence of:-

.....
Director

Michelle Nolan Witness

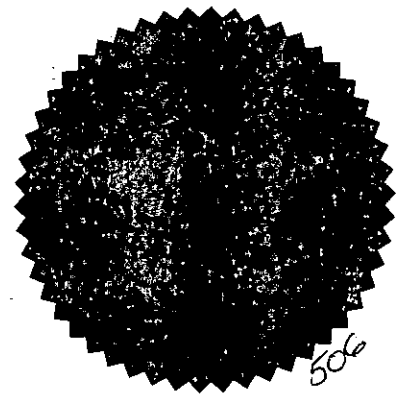
6 CROMWELLS FORT HGTS,

WEXFORD ..... Address

OFFICE ADMINISTRATOR Occupation

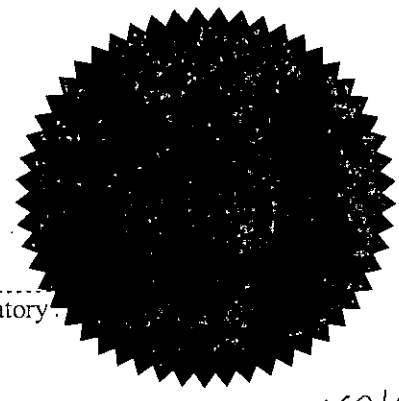
SEALED with the common seal of)
ADUR DISTRICT COUNCIL in the)
presence of:)

.....
Authorised signatory



SEALED with the common seal of)
WEST SUSSEX COUNTY)
COUNCIL in the presence of:)

.....
Authorised signatory



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