Browne Jacobson

Dated 6th SEPTEMBER 2023

(1) ADUR DISTRICT COUNCIL

(2) WEST SUSSEX COUNTY COUNCIL

(3) WEST SUSSEX COUNTY COUNCIL

(4) KINSTED DEVELOPMENTS LLP

PLANNING OBLIGATION BY DEED OF AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990

relating to the site known as land at 68 and South of 68 to 86 Manor Hall Road Southwick West Sussex

Planning reference: AWDM/0585/22

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THIS AGREEMENT is dated 6th SEPTEMBER 2023

PARTIES

(1) **ADUR DISTRICT COUNCIL** whose main office is at Adur Town Hall, Chapel Road, Worthing, West Sussex BN11 6PR (**"District Council"**); and

(2) **WEST SUSSEX COUNTY COUNCIL** whose main office is at County Hall, West Street, Chichester, West Sussex PO19 1RQ ("**County Council"**); and

(3) **WEST SUSSEX COUNTY COUNCIL** whose main office is at County Hall, West Street, Chichester, West Sussex PO19 1RQ ("**the Owner"**); and

(4) **KINSTED DEVELOPMENTS LLP** (company number: OC437407) of Kent House, 14 - 17 Market Place, London, United Kingdom, W1W 8AJ ("**Kinsted**");

INTRODUCTION

(A) The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.

(B) The County Council is the highway authority and the traffic authority for certain highways in the area which includes the Site for the purposes of the Highways Act 1980 the Road Traffic Regulation Act 1984 and Traffic Management Act 2004 and is also the county planning authority for the area which includes the Site for the purposes of the Act and is also entering into this Deed as a freehold owner of the Site and as such will covenant as the Owner in this Deed with the District Council in order to bind its freehold interest in the Site.

(C) The Owner is the owner of the Site and is registered at the Land Registry with freehold title absolute in respect of the Site and other land under title number WSX340975 and has entered into an option agreement with Kinsted on 16 July 2021 for the sale of the Site to Kinsted.

(D) Kinsted submitted the Application to the District Council and on 04 April 2022 it was validated and registered under reference AWDM/0585/22.

(E) On 5 September 2022 the District Council resolved to delegate authority to the Council's Head of Planning and Development to grant planning permission for the Application and also subject to conditions and subject to a section 106 agreement being entered into.

(F) The Parties are satisfied that the planning obligations contained in this Deed are necessary to make the Development acceptable in planning terms directly related to the Development and fairly and reasonably related in scale and kind to such Development and thus satisfy the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.

NOW THIS DEED WITNESSES as follows:

OPERATIVE PART

1 DEFINITIONS

1.1 For the purposes of this Deed the following expressions shall have the following meanings in addition to the definitions set out in the Schedules hereto:

Act	the Town and Country Planning Act 1990 (as amended);
All-In Tender Price Index	means the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institution of Chartered Surveyors or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the District Council may specify;
Application	the application for full planning permission submitted by Kinsted to the District Council and validated on 04 April 2022 for the Development and allocated reference number **AWDM/0585/22**;
Commencement of the Development	occurs on and means the carrying out of any material operation (as defined in Section 56(4) of the Act) forming part of the Development other than (for the purposes of this Deed and for no other purpose) operations consisting of: (a) site clearance; (b) demolition work; (c) archaeological investigations; (d) investigations for the purpose of assessing ground conditions; (e) remedial work in respect of any contamination or other adverse ground conditions; (f) erection of any temporary means of enclosure; (g) the temporary display of site notices or advertisements (h) and **"Commence" "Commenced"** and **"Commencing"** or any other derivation of this term shall be construed accordingly;
Councils	together the District Council and the County Council;

County Council Monitoring Fee	means the total sum of Seven Hundred and Twenty Pounds (£720) 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 in the event that the County Council no longer has a land interest in the Site;
Deed	means this section 106 agreement.
Developer	means Kinsted or any other successor in title to the Owner;
Development	the development of the Site meaning the erection of 22 residential units, with associated landscaping and access arrangements as may be permitted by the Planning Permission;
Dwelling	means any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission;
Ecology Areas	means those areas within the Site identified as ecology areas in the Ecological Protection and Enhancement Plan to be submitted to and approved by the Council pursuant to condition 7 of the Planning Permission;
Financial Trigger	means a trigger contained within this Deed applicable to the Education, Libraries, Fire and Rescue Service and Transport Contributions (as defined in Schedule 2);
Index Linked	means index linked in accordance with the provisions of clause 13 and "**Indexed**" shall be construed accordingly
Interest	Interest at the rate of 4% (four percent) above the base lending rate of the Bank of England from time to time;
Maintenance Specification	means a specification to be approved by the District Council itemising the type and frequency of maintenance to be carried out to the On-Site Open Space and the Ecology Areas;
Management and Maintenance Proposals	means detailed proposals for the retention, management and maintenance of the On-Site Open Space and the Ecology Areas in perpetuity which shall include the Maintenance Specification, the particulars of the Management Body to be involved in the management and maintenance of the On-Site Open Space and the Ecology Areas (which shall include a copy of the memorandum and articles of association of the Management Body) and the financial arrangements

	proposed to be put in place in order to fund the future management and maintenance thereof which may include one or more arrangements for the payment of a service charge, a cash deposit, lump sum endowment or other security mechanisms such as bonds for a limited period;
Management Body	means a limited company registered at Companies House of which each owner of the Dwellings shall be invited to be a member and that is incorporated for the purpose of collecting an income and/or maintenance fees or similar from the owners of the Dwellings AND which shall be responsible for the management and maintenance of the On-Site Open Space and the Ecology Areas which are to be transferred to the Management Body pursuant to paragraph 4 of Schedule 4;
Non-Financial Trigger	means a trigger contained within this Deed applicable to Schedule 3;
NPPF	the National Planning Policy Framework (as amended from time to time) or any Planning Policy Statement, Guidance Notes or Circulars which may amend, supplement or supersede it;
Occupy	means 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 "**Occupied**" and **"Occupation"** shall be construed accordingly;
On Site Open Space	means the areas of landscaping to be undertaken on the Site in accordance with the Landscape Management Plan referred to in condition 4 of the Planning Permission and shown on plan '1444.HED.DR.08.003 Rev P02 Soft Landscape Plan';
Plan	the plan attached to this Deed at the Appendix 1 showing the Site edged red;
Planning Permission	means the planning permission subject to conditions which has been granted by the District Council pursuant to the Application;
Practical Completion	means depending on the context of the Deed the substantial completion of any part or the whole of the Development as appropriate 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 the Owner's architect or other suitably qualified professional and **"Practically Complete"** and **"Practically Completed"** shall be construed accordingly;
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;
Site	the land against which this Deed may be enforced known as land at 68 and South of 68 to 86 Manor Hall Road Southwick West Sussex and shown edged red on the Plan;
Specified Date	means the date on which any payment under this Deed becomes due;
Schedules	means Schedules 1 to 6 contained in this Deed;
the Parties	means the parties to this Deed and **"Parties"** and **"Party"** shall be construed accordingly;
Working Day	means any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday, or a statutory Bank Holiday and **"Working Day"** shall be construed accordingly.

2 INTERPRETATION

2.1 Where in this Deed reference is made to any clause, paragraph or Schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or Schedule or recital in this Deed.

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

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 severally unless there is an express provision otherwise. Where in this Deed reference is made to any clause, paragraph or Schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or Schedule or recital in this Deed.

2.5 Any reference to an act of Parliament shall include any modification, extension or re-enactment of that act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that act or deriving validity from it.

2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the District Council and County Council the successors to their respective statutory functions.

2.7 The headings and contents list are for reference only and shall not affect construction.

2.8 The words including and include shall be deemed to be followed by the words without limitation.

3 LEGAL BASIS

3.1 The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by:

3.1.1 The District Council as local planning authority against the Owner and its successors in title and which bind each and every part of the Site; and

3.1.2 in relation to the covenants, restrictions and requirements in Schedules 2 and 3 the County Council as local planning authority in the event of the Owner transferring its entire interest in the Site, and they shall then be enforceable against the Developer and shall bind each and every part of the Site

3.2 This Deed is made pursuant to section 106 of the Act and to the extent that they fall within the terms of section 106 of the Act, the obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act and are enforceable by the District Council and the County Council (in the event that the County Council no longer has a land interest in the Site) in respect of the Site.

3.3 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 1 Localism Act 2011 and all other enabling powers.

3.4 The Owner enters into the obligations (for themselves and their successors in title and persons deriving title from the Owner) with the District Council and the County Council with the intent that the obligations contained in this Deed shall be enforceable not only against the Owner but also against its respective successors in title and any person claiming through or under the respective Owner an interest or estate in the Site or any part thereof.

4 CONDITIONALITY

This Deed shall come into immediate effect save for the obligations in the Schedules which are conditional upon the Commencement of the Development.

5 THE COVENANTS BY OWNER

The Owner and Kinsted covenant with the District Council and the County Council as set out herein in Schedules 1 to 5.

6 THE DISTRICT COUNCIL'S COVENANTS

The District Council covenants with the Owner as set out in 0.

7 DISTRICT COUNCIL'S AND COUNTY COUNCIL'S COVENANTS

The District Council covenants with the Owner as set out in Schedule 6 EXCEPT THAT in the event of the Owner transferring its entire interest in the Site, the covenants made in Schedule 6 by the District Council in respect of the County Council Contributions shall be obligations of the County Council

8 MISCELLANEOUS

8.1 The Owner shall pay or secure the payment:

8.1.1 to the District Council

(a) on the execution and completion of this Deed the reasonable and proper legal costs of the District Council incurred in the negotiation of the Deed and the preparation and execution of this Deed; and

(b) on or prior to Commencement of Development the sum of £1,200 as a contribution towards the cost of monitoring and administering compliance with the obligations in this Deed;

8.1.2 to the County Council on the execution and completion of this Deed of:

(a) the reasonable and proper legal costs of the County Council incurred in the negotiation of the Deed and the preparation and execution of this Deed; and

8.1.3 to the County Council when the Owner's interest in the Site has been disposed of and transferred to the Developer or any subsequent successor:

(a) the County Council Monitoring Fee

8.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 nor does it confer or purport to confer any right to

enforce any of the terms and provisions of this Deed to any person who is not a party or successor in title or statutory successor to a party hereto.

8.3 This Deed shall be registrable as a local land charge by the District Council.

8.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council or County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

8.5 Following the performance and satisfaction of all the obligations contained in this Deed the District Council shall at the Owner's request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

8.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

8.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

8.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site (or where they have parted with only part thereof, any breaches in respect of that part in which they no longer have an interest) but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

8.9 Save for paragraph 4 of Schedule 1 in respect of the owner-occupiers of any of the Affordable Housing Units, and save for paragraph 4.3 of Schedule 4 in respect of the Management Body obligations, this Deed shall not be enforceable against owner-occupiers (and their respective mortgagees) or tenants of Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.

8.10 This Deed shall not be enforceable against any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services and any management company.

8.11 This Deed shall not be enforceable against the Management Body other than in respect of any obligations in this Deed expressly stated to be the responsibility of the Management Body (as successor in title to certain land which may be transferred to the Management Body pursuant to this Deed).

8.12 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

8.13 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the District Council and County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

9 FUTURE MORTGAGEES

It is acknowledged and declared by the Parties that this Deed has been entered into by the Owner and that the Site shall be bound by the obligations contained in this Deed and that the security of any mortgage or charge over the Site (or any part thereof) shall take effect subject to this Deed provided that any mortgagee or chargee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

10 WAIVER

No waiver (whether expressed or implied) by the District Council or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council or the County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

11 NO FETTER

Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the District Council or the County Council in the exercise of their respective functions in any capacity.

12 OWNERSHIP

12.1 The Owner and Developer warrant that at the date of this Deed there is no one other than the Parties who has an interest in the Site which ought to be bound by this Deed.

12.2 The Owner agrees with the District Council to give the District Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan **provided that** the Owner shall not be required to give notice to the District Council of any change of ownership affecting a completed Dwelling.

13 INDEX LINKED

The Owner agrees with the District Council that any sum payable by the Owner pursuant to this Deed shall be increased by the application of the following formulae:

A = (B x C) divided by D

Where

A is the sum actually payable;

B is the original sum mentioned in this Deed;

C is the All-In Tender Price Index at the date payment falls due;

D is the All-In Tender Price Index at the date of consultation;

C/D is equal to or greater than 1.

14 INTEREST

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

14.2 Interest shall be calculated and accrue daily and shall be compounded monthly if any payment is made more than three months after the Due Date.

15 VAT

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

16 DISPUTE PROVISIONS

Any dispute or difference arising between the parties hereto shall be dealt with as follows:

16.1 in the case of any difference or dispute arising out of the provisions of 0 (Affordable Housing) the same shall be referred to an independent Chartered Surveyor of at least ten years standing who shall be nominated in default of agreement between the Owner and the District Council by the President for the time being of the Royal Institution of Chartered Surveyors or his deputy;

16.2 in the case of any legal requirement or interpretation or other matter regarding this Deed the same shall be referred to Counsel of at least ten years' experience in such matters who shall be appointed in default of agreement between the Owner and the District Council or the County Council (as the case may be) by the President of the Bar or his deputy; and

16.3 any matter referred to an independent Chartered Surveyor or Counsel shall be decided by such person as an expert (and not as an arbitrator) who shall permit one representation and one counter-representation (each in writing) by each party to the dispute and his determination shall be in writing and final and binding on the parties and the costs of such determination shall be paid as the expert shall direct but if he does not direct shall be borne equally between the Owner and the District Council or the County Council (as the case may be) provided that in all cases the expert shall direct his costs be borne by the Owner

where the expert considers the District Council or the County Council's case (as the case may be) is reasonable and vice versa.

17 JURISDICTION

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

18 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

19 PLANNING CONSENTS GRANTED PURSUANT TO S73 OF THE ACT

In the event that any new planning permission(s) are granted by the District Council pursuant to Section 73 of the Act (as amended) and unless otherwise agreed between the Parties, with effect from the date that the any new planning permission is granted pursuant to Section 73 of the Act (as amended):

19.1 the obligations in this Deed shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind all subsequent planning permission(s) in respect of the Site granted pursuant to Section 73 of the Act and the Site itself without the automatic need to enter into any subsequent deed of variation or new agreement pursuant to Section 106 of the Act;

19.2 the definitions of Application, Development and Planning Permission in this Deed shall be construed to include references to any applications under Section 73 of the Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s); and

19.3 this Deed shall be endorsed with the following words in respect of any future Section 73 application:

"The obligations in this Deed relate to and bind the Site in respect of which a new planning permission referenced [ ] has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"

provided that nothing in this clause shall fetter the discretion of the District Council in determining any application(s) under Section 73 of the Act or the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under Section 73 of the Act whether by way of a new deed or supplemental deed pursuant to S106 of the Act.

IN WITNESS whereof the Parties hereto have executed this Deed on the day and year first before written.

1830

EXECUTED as a Deed by
ADUR DISTRICT COUNCIL
by the affixing of its Common Seal
in the presence of:

Authorised Signatory DAVID JONES

THE COMMON SEAL of **WEST SUSSEX**

COUNTY COUNCIL acting as County Council is affixed in the presence of:

Authorised Signatory

31635 16/7/8/2023

THE COMMON SEAL of **WEST SUSSEX**

COUNTY COUNCIL acting as Owner is affixed in the presence of:

Authorised Signatory

31639 40/12/2023

EXECUTED and **DELIVERED** as a deed by)
KINSTED DEVELOPMENTS LLP)
)

acting by its designated members:

.....

Duly authorised for and on behalf of
EDES ESTATES LIMITED, member

.....

Mick Lovell as attorney for **LOVELL PARTNERSHIPS LIMITED**, member, under a power of attorney dated 25th July 2023

Schedule 1: Affordable Housing

1 Definitions

1.1 In this Part of this Schedule the following additional definitions shall apply (for the avoidance of doubt any definition which does not appear below shall be giving the meaning allocated to it in the main body of this Deed):

Adur District	means the administrative area of the District Council;
Affordable Housing	means Affordable Rented Housing and Shared Ownership Housing provided to Eligible Households whose needs are not met on the open market, and should include provisions to remain at an affordable price for future Eligible Households or for the subsidy to be recycled for alternative Affordable Housing provision;
Affordable Housing Plan	means the plan appended to this Deed at Appendix 2 showing the location, sizes and tenure of the Affordable Housing Units;
Affordable Housing Units	means seven (7) Dwellings to be provided as Affordable Housing to be constructed pursuant to the Planning Permission in accordance with the Affordable Housing Plan;
Affordable Rent	means a rent level which is not subject to the national rent regime but is subject to other rent controls that require a rent of no more than 80% of the local market rent (including service charges where applicable) increased by CPI + 1 % per annum SAVE that initial lets shall be at a rent of no more than 80% of the local market rent or the Local Housing Allowance (LHA) level, whichever is the lower (including service charges where applicable) increased by CPI + 1% per annum;
Affordable Rented Housing	means affordable rented housing let by a Registered Provider to households who are eligible for social rented housing with a Local Connection (or where none are existing such other persons as may be approved by the District Council) whose needs are not adequately served by the commercial housing market at an Affordable Rent and "**Affordable Rented Units**" shall be construed accordingly;
Agreed Mix	means the mix of Affordable Housing Units set out at Paragraph 2.3 of this Schedule 1, or such other size tenure and mix of Affordable Housing Units

approved by the District Council in writing and which shall be determined having regard to the identified housing needs within the District Council's administrative area;

Eligible Households means persons who are assessed by the Council and/or the Registered Provider as being unable to resolve their housing needs in the private sector because of the relationship between housing costs and income;

Intermediate Housing means Shared Ownership Housing or such other tenure that may be agreed in writing by the District Council and the Owner provided that such other tenure is in accordance with the definition of 'Affordable housing' in Annex 2 of the NPPF and "**Intermediate Housing Units"** shall be construed accordingly;

Local Connection Means the following categories of people, further detail of which may be found in the Council's Choice Based Lettings Policy dated 6 February 2014:

a) People who are currently residing in Adur and have resided in Adur for at least the last two years on a continuous basis;
b) People who do not reside in Adur but are employed in Adur and this employment has been ongoing on a continuous basis for at least the last two years and is likely to continue on an ongoing basis;
c) Serving members of the British armed forces (or those who have served in the previous five years), and bereaved spouses or civil partners of those serving in the armed forces, who are residing in Military of Defence accommodation, and serving or former members of the British armed forces who have a serious injury, illness or disability as a result of their service;
d) People who do not live in Adur but live in accommodation that is not suitable for their housing needs, and have a local connection to Adur District Council and who have an overriding proven need to move to the Adur area, and there is accommodation likely to become available in Adur that is suitable to meet their housing needs;
e) Current tenants of Adur District Council or current tenants of Registered Providers in Adur District Council or Worthing Borough Council who have an identified housing need;

	f) People who are currently living outside of Adur on a temporary basis (who had previously lived in Adur and have a local connection to Adur, or people living in accommodation provided by or arranged by Adur District Council, or other such exceptional circumstances, as approved by the Housing Services Manager at the Council;
Market Housing Units	means a Dwelling that is not an Affordable Housing Unit;
Market Rent	means the estimated amount for which the relevant Dwelling should lease (let) on the date of valuation between a willing lessor and willing lessee on appropriate lease terms in an arms length transaction after proper marketing wherein the parties had acted knowledgeably, prudently and without compulsion;
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;
Registered Provider	means a registered provider of social housing as defined in the Housing and Regeneration Act 2008 who is registered with the Regulator pursuant to that Act;
Regulator	means Homes England as the Regulator of Social Housing established pursuant to Part 2 of the Housing and Regeneration Act 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;
Retained Equity	means the proportion of the Market Value in a Shared Ownership Unit represented by such share of unsold equity;
Shared Ownership Housing	means 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 Dwelling from 10% 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 standard form of lease for shared ownership housing or such other form of lease as maybe agreed in writing by the District Council and **Shared Ownership Unit(s)** and **Shared Ownership Lease** shall be interpreted accordingly;
Staircasing	means the purchase by the owner of an individual Dwelling of additional equity in a Shared Ownership Unit;
Transfer	means the transfer of the freehold or grant of a lease for a term of at least 125 years unless otherwise agreed in writing with the District Council and "**Transferred**" shall be construed accordingly.

The Owner covenants with the District Council as follows:

2 Affordable Housing provisions

2.1 To provide the Affordable Housing Units within the Development in accordance with this Schedule 1.

2.2 To submit an Affordable Housing Plan to the District Council prior to Commencement of Development.

2.3 Unless otherwise agreed in writing by the District Council, the Affordable Housing Units shall comprise:

five (5) Affordable Rented Units (4 x 2 bed and 1 x 3 bed), and two (2) Shared Ownership Units (1 x 2 bed and 1 x 3 bed).

2.4 Not to Commence Development until the Affordable Housing Plan has been approved in writing by the District Council (the "**Approved Affordable Housing Plan**").

2.5 To construct and provide the Affordable Housing Units in accordance with the Approved Affordable Housing Plan (unless otherwise agreed in writing by the District Council).

3 Transfer

3.1 Unless the Owner is a Registered Provider the Owner shall make an offer to a Registered Provider for the Registered Provider to purchase the Affordable Housing Units ("the first offer") and such offer shall remain open for acceptance for no less than 1 month ("the first offer period") from the date of the offer being made.

3.2 In the event that the first offer is not accepted within the first offer period then the Owner shall make a second offer to the District Council or its nominee for the District Council or its nominee to purchase the Affordable Housing Units

("the second offer") not later than one month after the expiry of the first offer period and such offer shall consist of the same terms and conditions as the first offer subject to revisions necessitated by lapse of time and shall remain open for acceptance for no less than 1 month ("the second offer period") from the date of the offer being made.

3.3 In the event that the offer(s) made pursuant to paragraphs 3.1 or 3.2 are accepted by a Registered Provider (or the Council or its nominee as the case may be) the Owner shall use reasonable endeavours for a period of not less than 3 months from the date of acceptance of such offer to enter into a binding contract with the Registered Provider (or the Council or its nominee as the case may be) for the disposal of the Affordable Housing Units.

3.4 In the event of:

3.4.1 the second offer not being accepted within the second offer period; or

3.4.2 the offer(s) made pursuant to paragraph 3.1 or 3.2 being accepted but the Owner being unable to conclude a binding contract with the Registered Provider (or the Council or its nominee as the case may be) for the disposal of the Affordable Housing Units (that shall not be used other than for Affordable Rent and Intermediate Housing as set out in the definition of Affordable Housing Units) within 3 months of the date of acceptance of such offer

then

(i) the Owner will propose to the Council an alternative tenure mix (to be approved in writing by the Council) that will allow the delivery of Affordable Housing within the Development and the provisions of paragraphs 3.1-3.3 of this Schedule shall re-apply to the alternative tenure mix approved by the Council; or

(ii) the Owner shall pay an offsite affordable housing contribution to the Council subject always to the Council approving in writing:

a. the payment of an offsite affordable housing contribution in lieu of the on-site provision of Affordable Housing; and

b. the offsite affordable housing contribution amount to be calculated in accordance with the following:

Dwelling Type	**30%**
Studio Flat	£8,928
1 bed flat	£23,868
2 bed flat	£24,255
3 bed flat	£31,532
2 bed house	£25,318

3 bed house	£35,740
4 bed house	£42,238

3.5 Unless otherwise agreed in writing with the District Council not to cause or allow the Occupation of more than 50% of the Market Housing Units of the Development unless and until the Affordable Housing Units have been provided and are ready for Occupation in accordance with this Schedule 1 and the Affordable Housing Plan and those Affordable Housing Units have been transferred to a Registered Provider (unless the Owner is a Registered Provider) or the affordable housing contribution has been paid to the Council in accordance with paragraph 3.4 of this Schedule 1.

4 Occupation

Subject to paragraph 5 of this Schedule 1 not to Occupy or permit Occupation of the Affordable Housing Units other than as Affordable Housing.

5 Exclusions

The affordable housing provisions in this Schedule 1 of this Deed shall not be binding on a mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee 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 "**Receiver**")) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver **provided that**:

5.1 such mortgagee or chargee or Receiver shall first give written notice to the District Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Registered Provider or to the District Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

5.2 if such disposal has not completed within the three-month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Deed which provisions shall determine absolutely.

5.3 The provisions of this Schedule 1 shall:

5.3.1 cease to apply to any part or parts of the Site which are disposed of in accordance with paragraph 5.2.

5.3.2 cease to apply to any completed Affordable Housing Units where the Registered Provider shall be required to dispose of the same pursuant to a right to buy under Part V Housing Act 1985 as amended by the

Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under section 180 Housing and Regeneration Act 2008 or any similar or substitute right applicable;

5.3.3 cease to apply to any completed Affordable Housing Units where a Registered Provider sells to a tenant through Social Homebuy funded pursuant to section 19(3) Housing and Regeneration Act 2008 or any amendment or replacement thereof;

5.3.4 cease to apply to any Shared Ownership Unit where the tenant has Staircased up to 100% in accordance with the terms of such Shared Ownership Housing lease.

5.4 For the avoidance of doubt, the provisions of this Schedule 1 shall not apply to any successors in title purchasing an interest in part of the Site where provisions of this Schedule 1 have ceased to apply pursuant to paragraph 5.3.

Schedule 2: Covenants in relation to Education, Libraries, Fire and Rescue Service and Transport Contributions

In the event that the County Council no longer has a land interest in the Site for the purposes of Section 106 of the Act references in this Schedule 2 to the District Council shall instead be read as references to the County Council.

1 Definitions

1.1 In this Part of this Schedule the following additional definitions shall apply (for the avoidance of doubt any definition which does not appear below shall be giving the meaning allocated to it in the main body of this Deed):

County Council Contributions	means the Education (Primary) Contribution, the Education (Secondary) Contribution, the Education (Sixth Form) Contribution, the Libraries Contribution, the Residential Fire and Rescue Service Contribution and the TAD Contribution.
Education (Primary) Contribution	means the sum of £77,910.00 (seventy seven thousand nine hundred and ten pounds) which is calculated using current occupancy rates from census statistics published by the Office for National Statistics and payable in accordance with this Deed such contribution being a financial contribution to be used by the County Council towards additional facilities at Eastbrook Primary Academy.
Education (Secondary) Contribution	means the sum of £83,850.00 (eighty three thousand eight hundred and fifty pounds) which is calculated using current occupancy rates from census statistics published by the Office for National Statistics such contribution being a financial contribution to be used by the County Council towards additional facilities at Shoreham Academy.
Education (Sixth Form) Contribution	means the sum of £19,642.00 (nineteen thousand six hundred and forty two pounds) which is calculated using current occupancy rates from census statistics published by the Office for National Statistics and payable in accordance with this Deed such contribution being a financial contribution to be used by the County Council towards additional facilities at Shoreham Academy Sixth Form.
Libraries Contribution	means the sum of £8,154.00 (eight thousand one hundred and fifty four pounds) which is calculated using current occupancy rates from census

statistics published by the Office for National Statistics and payable in accordance with this Deed such contribution being a financial contribution to be used by the County Council towards providing additional facilities at Southwick Library.

Residential Fire and Rescue Service Contribution means the sum of £590.00 (five hundred and ninety pounds) which is calculated using current occupancy rates from census statistics published by the Office for National Statistics and payable in accordance with this Deed and such contribution being a financial contribution to be used by the County Council towards supply and installation of additional fire safety equipment/smoke alarms to vulnerable persons homes in West Sussex Fire Rescue Services Southern Area serving Shoreham/Southwick.

TAD Contribution means the sum of £66,898.00 (sixty six thousand, eight hundred and ninety eight pounds) which makes up a combined Sustainable Transport Contribution and Infrastructure Contribution and shall be used by the County Council towards cycle and public transport infrastructure improvements on the A259 linking Southwick to Shoreham and Hove.

2 Education, Libraries and Fire and Rescue and TAD Contributions

2.1 The Owner covenants:

2.1.1 To pay the County Council Contributions Index Linked to the District Council prior to Commencement of Development.

2.1.2 Not to cause or permit the Commencement of Development until the contributions referred to in paragraph 2.1.1 have been paid.

Schedule 3: Private Highways Maintenance

In the event that the County Council no longer has a land interest in the Site for the purposes of Section 106 of the Act references in this Schedule 3 to the District Council shall instead be read as references to the County Council.

1 In this Part of this Schedule the following additional definitions shall apply (for the avoidance of doubt any definition which does not appear below shall be giving the meaning allocated to it in the main body of this Deed):

Chartered Engineer	means an engineer registered with the UK's regulatory body for the engineering profession, the Engineering Council.
Management Company	means the company responsible for maintaining the Private Estate Roads.
Private Estate Roads	means the estate roads within the Site that will not be adopted as public highway.

2 The Owner covenants with the District Council as follows:

2.1 Prior to the Commencement of Development to submit to the District Council for approval a plan showing the intended status of the estate roads and associated footways, footpaths and cycleways (for the avoidance of doubt those roads, footways, footpaths and cycleways that will be offered for adoption under Section 38 of the Highways Act 1980 and those to remain private). Any plan should also include details of surfacing, materials and construction of the Private Estate Roads.

2.2 Prior to the first Occupation of any Dwelling to submit to the District Council;

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

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

2.3 It is agreed with the District Council that all Private Estate Roads shall:

2.3.1 be constructed to a reasonable standard that is suitable for their intended use;

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

2.3.3 not be dedicated by the Owner or the Management Company as a public maintainable highway .

2.4 Upon completion of the construction of the Private Estate Roads the Owner will provide a report to be prepared and signed by a Chartered Engineer at their own expense to confirm that the Private Estate Roads have constructed to a reasonable standard suitable for their intended use.

2.4.1 The Owner covenants with the District Council: that the Private Estate Roads shall remain open and unobstructed at all times (unless in the event of an emergency or as a result of an event that is out of the control of the Owner or the Management Company) and available for use by both residents of the Development and members of the public on foot and by bicycle and vehicles as appropriate and in the latter case without charge; and

2.4.2 to erect and maintain signs in positions agreed with the District Council advising the public that they are permitted to use the Private Estate Roads on foot and by bicycle and vehicles but that the Private Estate Roads are not public highways so as to prevent the dedication of the Private Estate Roads and to prevent any presumption of dedication (whether arising under Section 31 of the Highways Act 1980 or otherwise).

Schedule 4 Covenants with the District Council

1 Definitions

1.1 In this Part of this Schedule the following additional definitions shall apply (for the avoidance of doubt any definition which does not appear below shall be giving the meaning allocated to it in the main body of this Deed):

Open Space Contribution	means the contribution of £27,838 (twenty seven thousand eight hundred and thirty eight pounds) payable for the provision and/or improvement of off-site formal play facilities and/or allotments to be paid to the District Council.
Public Art Contribution	means the contribution of £30,000 (thirty thousand pounds) for the provision of off-site public art within the ward of Eastbrook (or such other ward that may replace Eastbrook and which contains the Site) to be paid to the District Council.

2 Open Space Contribution

The Owner covenants with the District Council:

2.1 to pay the Open Space Contribution to the District Council prior to Commencement of the Development.

2.2 not to cause or permit the Commencement of the Development until the Open Space Contribution has been paid to the District Council.

3 Public Art

The Owner covenants with the District Council:

3.1 to pay the Public Art Contribution to the District Council prior to Occupation of the Development.

3.2 not to cause or permit the Occupation of the Development until the Public Art Contribution has been paid to the District Council.

4 Management Body

The Owner covenants with the District Council as follows:

4.1 To lay out the areas of On-Site Open Space and the Ecology Areas and retain and maintain as such until such time as those areas are transferred to the Management Body;

4.2 The transfer the areas of On-Site Open Space and the Ecology Areas to a Management Body and the Owner shall not Occupy the Development unless and until:

4.2.1 The details of the Management and Maintenance Proposals for the On-Site Open Space and the Ecology Areas have been approved in writing by the District Council; and

4.2.2 The Management Body has been incorporated in accordance with those approved details.

4.3 Not to transfer the freehold (or grant a leasehold interest in) a Dwelling unless and until:

4.3.1 there shall be included in the transfer deed of the freehold or leasehold interest relating to that Dwelling a requirement that the transferee or grantee (as the case may be) shall pay an annual service charge to the Management Body;

4.3.2 procure that the annual service charge shall be set (and thereafter maintained) at a level that allows the Management Body to carry out its duties but does not result in a disproportionate profit for the Management Body; and

4.3.3 apply to the Land Registry to enter a restriction on the title of each Dwelling transferred requiring that on any subsequent transfer of the Dwelling a deed of covenant is given to the Management Body by the new owner of the relevant Dwelling to pay the sums due under the service charge and requiring the restriction to be retained on the title of the Dwelling.

4.4 To manage and maintain the On-Site Open Space and the Ecology Areas in accordance with the approved Management and Maintenance Proposals until such time as those areas are transferred to the Management Body at which point the responsibility for managing and maintaining the On-Site Open Space and the Ecology Areas in perpetuity will transfer to the Management Body as successor in title to those areas.

4.5 If at any time there is a breach of duty of the Owner (and subsequently the Management Body as successor in title) to fulfil its obligations pursuant to this Deed then the District Council may without prejudice to its enforcement powers contained within the Act issue a notice to the Owner (or Management Body, as applicable) specifying such a breach and requiring such breach to be remedied in a reasonable period of time.

Schedule 5 Notices

1 The Owner's Notices

The Owner covenants with the District Council:

1.1 To serve notice of the following on the District Council:

1.1.1 Twenty (20) Working Days prior notice of the anticipated date of Commencement of the Development of the Site;

1.1.2 Notice of the actual date of Commencement of the Development of the Site within ten (10) Working Days of such occurring;

1.1.3 Twenty (20) Working Days prior notice of the anticipated date of first Occupation of each residential building to be constructed pursuant to the Planning Permission;

1.1.4 Notice of the actual date of Occupation of each residential building to be constructed pursuant to the Planning Permission within ten (10) Working Days of such occurring;

1.1.5 Twenty (20) Working Days prior notice of the anticipated date when 50% of the Dwellings will be Occupied;

1.1.6 Notice of the actual date on which 51% of the Dwellings were Occupied within ten (10) Working Days of such occurring;

1.1.7 Twenty (10) Working Days prior notice of the anticipated date when the last of the Dwellings will be Occupied; and

1.1.8 Notice of the actual date on which the last of the Dwellings were Occupied within ten (10) Working Days of such occurring.

1.2 When serving notices pursuant to paragraph 1.1.3 in this Schedule, to provide a report detailing the number of Dwellings in Occupation at that date and confirming which obligations have been triggered and whether or not they have been complied with.

Schedule 6 District Council and County Council Covenants

1 Discharge of Obligations

The District Council covenants that at the written request of the Owner the District Council shall provide within ten Working Days written confirmation of the discharge of obligations contained in this Deed when satisfied that the obligations have been performed.

2 Repayment of Contributions by the District Council

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

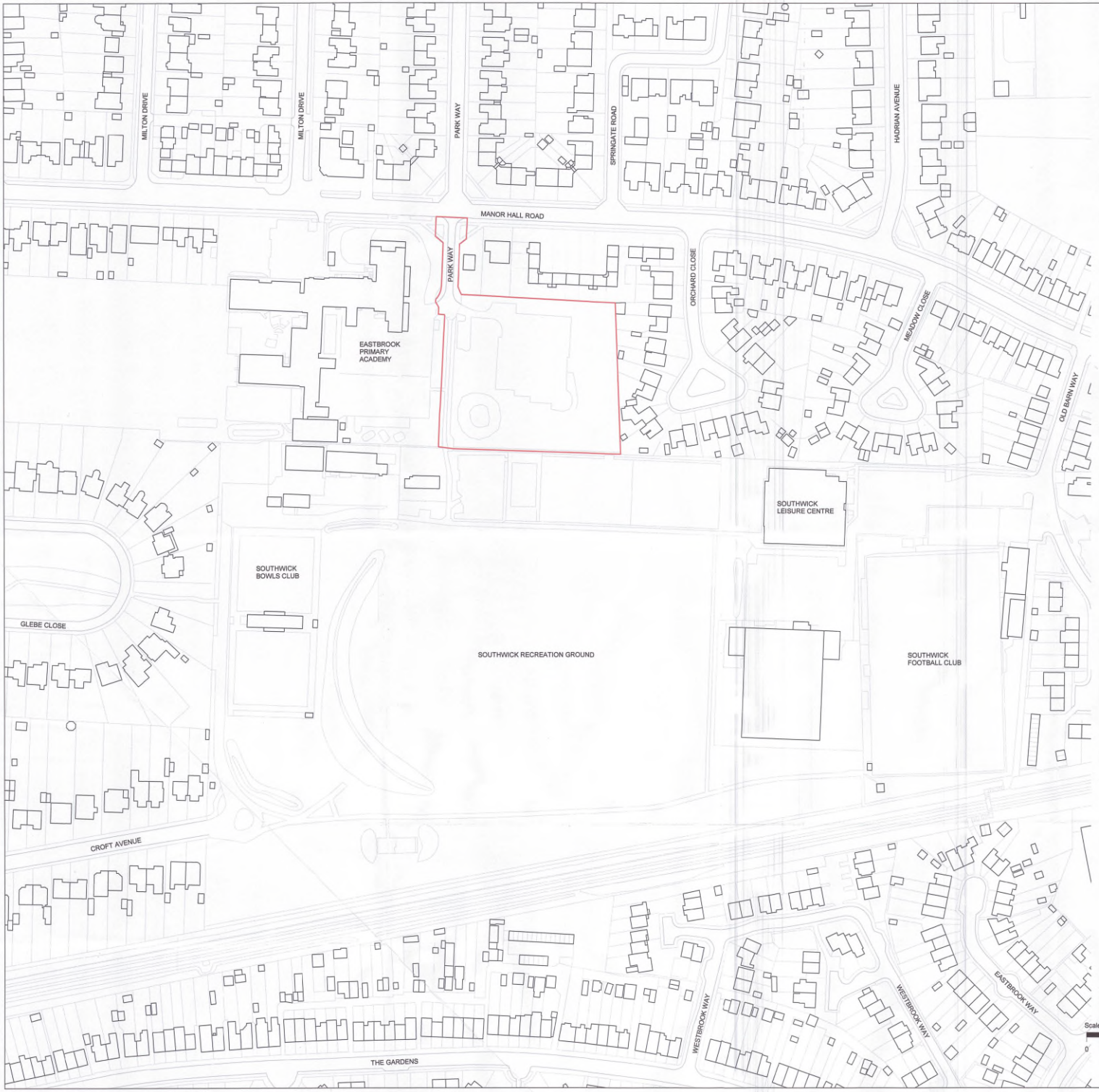
2.1 to use all sums received under this Deed for the purposes specified for which they are paid;

2.2 to transfer the County Council Contributions to the County Council as soon as they have been received from the Developer;

2.3 to provide the Owner with such evidence as it may reasonably require in order to confirm the expenditure of sums paid by the Owner under this Deed; and

2.4 to repay to the person who made the payment such amount paid to the District Council under this Deed which has not been expended or contractually committed in accordance with the provisions of this Deed within ten (10) years of the date of receipt together with interest for the period from the date of payment to the date of refund.

Appendix 1 Plan



notes

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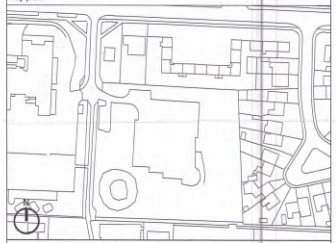
Application Boundary

Rev	Status	Date	Description
P03	-	23/03/22	SO_Planning Issue
P02	-	17/03/22	Pre-Submission Planning Update
P01	-	08/03/22	Planning Issue

key plan



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client
The West Sussex Property Development LLP

project name
Land at Former Eastbrook Primary School

drawing title
Existing Site Location Plan

drawn	checked	scale	wp	stage	status	revision
ML	LL	1 : 1000@A1	-	-	-	P03

project	originator	volume	level	type	role	drawing no.
21035	AHMM	SO	ZZ	DR	A	PL001

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Appendix 2 Affordable Housing Plan



notes

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Application Boundary

Private Ownership
Affordable Rent
Shared Ownership

P04 REVISION NOTE:
Three visitors parking bays replaced with low level landscape planting.
Please refer to landscape architect's information for further details.

Rev	Status	Date	Description
P04	-	25/08/22	SO_Planning Issue Update
P03	-	25/03/22	SO_Planning Issue
P02	-	17/03/22	Pre-Submission Planning Update
P01	-	08/03/22	Planning Issue

key plan



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client
The West Sussex Property Development LLP

project name
Land at Former Eastbrook Primary School

drawing title
Proposed Site Tenure Plan

drawn	checked	scale	wp	stage	status	revision
ML	LL	1 : 200@A1	-	-	-	P04

project	originator	volume	level	type	role	drawing no.
21035	AHMM	SO	ZZ	DR	A	PL102

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