ADC/0480/08 *

**DATED** 24th December **2008**

**(1) WEST SUSSEX COUNTY COUNCIL**

**(2) CREST NICHOLSON (SOUTH EAST) LIMITED**

**(3) THE HOMES AND COMMUNITIES AGENCY**

**(4) ADUR DISTRICT COUNCIL**

**(5) WEST SUSSEX COUNTY COUNCIL**

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# PLANNING AGREEMENT
**under section 106 of the Town and Country Planning Act 1990**

relating to
Elmcroft Croft Avenue Southwick BN42 4AA

Re Planning Application ADC/0480/08

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Superseded by 0289/09



(120)

THIS PLANNING AGREEMENT is made by DEED on 24th December 2008

BETWEEN

1. **WEST SUSSEX COUNTY COUNCIL** of County Hall West Street Chichester West Sussex PO19 1RQ (the "**Owner**");

2. **CREST NICHOLSON (SOUTH EAST) LIMITED** of Crest House Pyrcroft Road Chertsey Surrey KT16 9GN (the "**First Developer**")

3. **THE HOMES AND COMMUNITIES AGENCY** of 110 Buckingham Palace Road London SW1W 9SA (the "**Second Developer**")

4. **ADUR DISTRICT COUNCIL** of Civic Centre Ham Road Shoreham-by-Sea West Sussex BN43 6PR (the "**Council**");

5. **WEST SUSSEX COUNTY COUNCIL** of County Hall West Street Chichester West Sussex PO19 1RQ ("the **County Council**");

RECITALS

A The Owner is the registered freehold owner of the Land (as hereinafter defined) shown edged red on the Plan

B The Council is the Local Planning Authority for the purposes of the Act and for the administrative area in which the Land is situated

C The County Council is the strategic planning authority and the authority responsible for provision of education and fire services and is the highway authority for the area within which the Land is situated

D An application has been submitted to the Council for planning permission in respect of the Land under Planning Reference Number ADC/0480/08

E The Owner the First Developer and the Second Developer consider that the Land should be bound by the Planning Obligations in the manner hereinafter contained

DEFINITIONS

In this Deed the following words and expressions shall where the context so admits have the following meanings:

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| 1.1 | "the Act" | means the Town and Country Planning Act 1990 as amended; |
| 1.2 | "Application" | means the planning application allocated Planning Reference Number as above by |

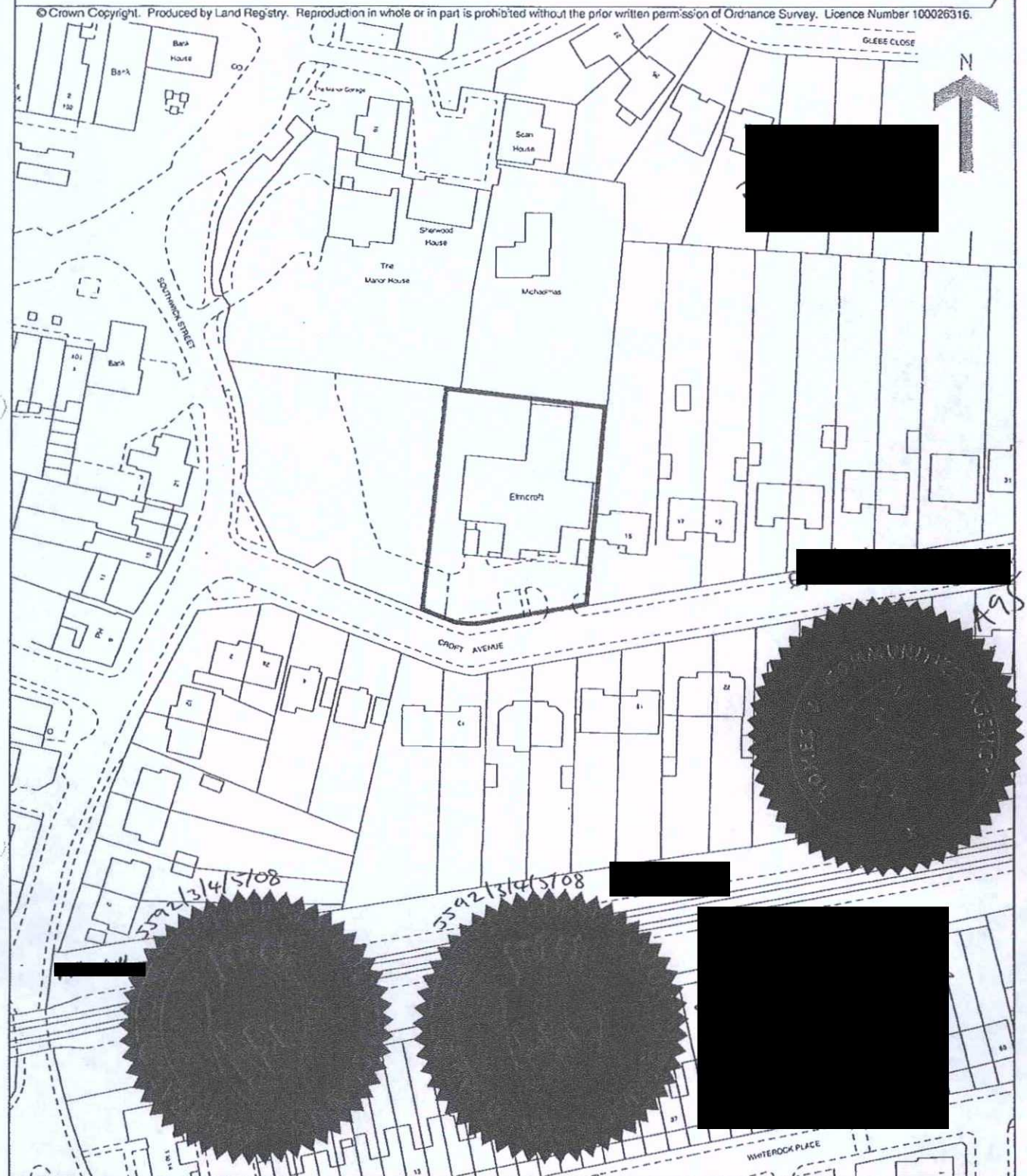
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| | | the Council; |
| 1.3 | "Commencement of Development" | shall refer to the Development and shall have the same meaning as ascribed to a "material operation" by Section 56 (4) of the 1990 Act excluding demolition works archaeological investigation site clearance works site reclamation works site remediation works and the erection of fencing by way of enclosure and "Commence Development" shall be construed accordingly; |
| 1.4 | "Development" | means the proposed demolition of care home and redevelopment to provide 14 flats (2 one bedroom and 12 two bedroom) car parking and associated landscaping utilising the existing access from Croft Avenue; |
| 1.5 | "Education Contribution" | means the sum of Nine Thousand Three Hundred and Thirty Five pounds (£9,335) being a financial contribution towards the cost of providing the additional schools infrastructure required to accommodate the extra demands for education services that would be generated by the Development of which Seven Thousand Five Hundred and Sixty Three Pounds (£7,563) shall be spent on secondary school infrastructure and One Thousand Seven Hundred and Seventy Two Pounds (£1,772) shall be spent on Sixth Form school infrastructure subject to the provisions of paragraph 1 of the First Schedule to this Deed; |
| 1.6 | "First Occupation" | means to enter into occupation of the Development or any part thereof for the permitted use save for the purposes of construction fitting out commissioning advertising marketing or security and "Occupied" shall be construed accordingly |
| 1.7 | "Fire and Rescue Service Contribution" | means the sum of Two Hundred and Thirty Four pounds (£234) being a financial contribution towards the provision of fire |

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| | | service infrastructure (excluding fire hydrants) in the vicinity of the Land to serve the additional needs of the community generated by the Development subject to the provisions of paragraph 2 of the First Schedule to this Deed; |
| 1.8 | "Interest Rate" | means the rate of 4% above the base rate from time to time of Bank of England applicable at the date the relevant contribution under this Deed is paid; |
| 1.9 | "the Land" | means all that land known as Elmcroft Croft Avenue Southwick West Sussex BN42 4AA registered at the Land Registry under title number WSX289096 and shown edged red on the Plan; |
| 1.10 | "the Plan" | means the plan annexed hereto; |
| 1.11 | "Planning Authorities" | means the Council and the County Council; |
| 1.12 | "Planning Obligations" | means the planning obligations set out in the First Schedule to this Deed; |
| 1.13 | "Planning Permission" | means the planning permission granted under Application Number ADC/0480/08; |
| 1.14 | "the Scheme" | means a scheme or schemes identified in the document titled "Schemes to be Progressed if Developer Funding is Secured" approved by the County Council or any other scheme which will improve access between the Land and local amenities (to include housing, jobs, shops, schools, leisure and other services) |
| 1.15 | "Statutory Undertaker" | means a statutory undertaker within the meaning of Section 329 of the 1980 Act and shall include persons authorised under any enactment to carry out an undertaking for the supply of electricity gas water and any sewerage undertaking and shall also include the Environment Agency the holder of a licence to operate telecommunication systems the Civil Aviation Authority and the holder of a licence to supply cable |

# Land Registry
## Official copy of title plan

Title number **WSX289096**
Ordnance Survey map reference **TQ2405SW**
Scale **1:1250**
Administrative area **West Sussex: Adur**

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[redacted]

**This official copy issued on 23 July 2008 shows the state of this title plan on 23 July 2008 at 12:24:47.** It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.
**This title is dealt with by Land Registry, Portsmouth Office.**

[redacted]

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| | | television; |
| 1.16 | "Total Access Demand Contribution" | means the sum of Ten Thousand Four Hundred pounds (£10,400) being calculated in accordance with the Total Access Demand Methodology subject to the provisions of paragraph 3 of the First Schedule to this Deed; |
| 1.17 | "Total Access Demand Methodology" | means the methodology developed by the County Council and adopted by the Council which requires contribution towards the cost of infrastructure and other measures that are necessary to mitigate the impact of development; |
| 1.18 | "Unit/Units of Accommodation" | means any or all of the flats approved by the Planning Permission; |

1.19 Unless the context requires otherwise references in this Deed to a clause schedule or paragraph are references respectively to a clause schedule or paragraph of this Deed

1.20 Where any party to this Deed comprises two or more persons any obligations on the part of that party contained or implied in this Deed shall be deemed to be joint and several obligations on the part of those persons and references to that party shall include reference to each or any of those persons

1.21 A reference to any statute or statutory section shall be taken to include a reference to any statutory amendment modification or re-enactment of it for the time being in force

1.22 The headings in this Deed do not and will not by any implication form any part of this Deed and shall have no legal force whatsoever

1.23 The expressions "the Council" and "the County Council" shall include successors in title and any statutory successor authorities and the expression "the Owner" shall include all persons deriving title to the Land under it and shall include (if appropriate) two or more owners of the legal estate

1.24 Words denoting the singular shall include the plural and vice versa words denoting any gender shall include all genders and words denoting persons shall include bodies corporate and vice versa

MAIN OPERATIVE CLAUSES

2.1 THIS Deed is made pursuant to section 106 of the Act and section 111 of the Local Government Act 1972 and all other powers and enactments thereby enabling and which may be relevant for the purposes of the enforcement of the covenants and or obligations contained herein to the intent that it shall bind the Owner and its successors in title and assigns of each and every part of the Land

2.2 THE Owner hereby covenants with the Council that it will comply in all respects with the Planning Obligations to the effect that the Land and every part thereof shall be permanently subject thereto

2.3 THE County Council hereby covenants to comply in all respects with the obligations set out in the Second Schedule hereto

2.4 THE Council hereby covenants that in respect of the Education Contribution Fire and Rescue Service Contribution and the Total Access Demand Contribution as paid to the Council under paragraphs 1 2 and 3 respectively of the First Schedule to this Deed that it shall transfer the relevant contribution to the relevant department of the County Council immediately on receipt of the said contribution

2.5 THIS Deed shall come into effect upon the grant of the Planning Permission but the Planning Obligations shall become effective only on Commencement of Development

2.6 A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed

2.7 THIS Deed is a Local Land Charge and is registrable as such by the Council

2.8 THIS Deed shall be governed by and construed in accordance with the Laws of England and each of the parties hereby submits to the exclusive jurisdiction of the English Courts

2.9 ANY Notice consent or approval required to be given under this Deed shall be in writing and shall be delivered personally or sent by prepaid first class recorded delivery post telex or facsimile transmission the address for service of any such notice consent or approval as aforesaid shall in the case of the parties be the address given in the above hereto or such address for service as shall have previously been notified by the party and in the case of the Council shall be Adur District Council Civic Centre Ham Road Shoreham-by-Sea West Sussex BN43 6PR and in the case of the County Council shall be West Sussex County Council County Hall West Street Chichester West Sussex PO19 1RQ

2.10 THE First Developer agrees to pay the Council's and the County Council's reasonable legal costs in preparing and negotiating this Deed

2.11 NO person shall be liable for breach of the Planning Obligations after he shall have parted with all interest in the Land or the part in respect of which such breach

occurs but without prejudice to the liability for any subsisting breach of the Planning Obligations prior to parting with such interest

2.12 IF the Planning Permission shall expire before Commencement of Development or shall at any time be revoked or withdrawn this Deed shall forthwith determine and cease to have effect

2.13 WHERE the agreement approval consent or expression of satisfaction is required by the Owner from the Council or the County Council under the terms of this Deed such agreement approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed

2.14 THE Planning Obligations will not be enforceable against:

2.14.1 An owner or occupier of any individual Unit of Accommodation

2.14.2 A Statutory Undertaker after the transfer of any statutory apparatus and any land upon or in which the statutory apparatus is situated by the Owner to that Statutory Undertaker

2.15 THE First Developer covenants with the Second Developer:

i) To comply in all respects with the Planning Obligations and

ii) to indemnify and keep indemnified the Second Developer against all liabilities under this Deed

WAIVER

3 No waiver (whether express or implied) by the Planning Authorities in respect of any breach or default by the Owner in the performance or observation of the Planning Obligations in whole or in part shall constitute a continuing waiver or prevent the Planning Authorities or either of them from enforcing any of the obligations or conditions contained in the Planning Obligations or acting upon any subsequent breach or default of the Planning Obligations by the Owner

FUTURE PERMISSIONS

4 Save as expressly provided (if at all) nothing in this Deed shall be implied to prohibit or restrict the future development of the Land (or any part of it) in accordance with any planning permission granted after the date of the Planning Permission

ARBITRATION

5 Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing arising out of or connected with this Deed shall be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be nominated by

the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force

SEVERANCE

6 If any provision in this Deed shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law such provision shall to the extent required be severed from this Deed and rendered ineffective as far as possible without modifying the remaining provisions of this Deed and shall not in any way affect any other circumstances or the validity or enforcement of this Deed and in the event of any such deletion the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted

GENERAL

7.1 Nothing in this Deed constitutes or constitutes an obligation to grant planning permission

7.2 Nothing in this Deed grants planning permission or any other approval consent or permission required from the Council or the County Council in the exercise of any other statutory function

7.3 Nothing in this Deed fetters or restricts the exercise by the Council and the County Council of any of their powers

7.4 The obligations contained in this Deed are planning obligations for the purpose of Section 106 of the Act

7.5 In respect of the Planning Obligations:

7.5.1 Until such time as the Owner has disposed of its interest in the Land the Council is the local planning authority responsible for enforcing the Planning Obligations;

7.5.2 Upon disposal by the Owner of its interest in the Land the County Council shall become the local planning authority responsible for enforcing the Planning Obligations

7.6 This Deed shall apply to the Development as authorised by the Planning Permission or to the Development after variation or renewal of the Planning Permission from time to time

IN WITNESS of which this Planning Agreement has been duly executed as a deed and delivered on the date stated at the beginning of this Planning Agreement

## THE FIRST SCHEDULE

### Contributions

### 1. EDUCATION CONTRIBUTION

1.1 To pay to the Council the Education Contribution on or before First Occupation of the Development

1.2 The Education Contribution shall be the sum of Nine Thousand Three Hundred and Thirty Five pounds (£9,335) unless First Occupation of the Development takes place after 31 March 2009 in which case the sum shall be re-calculated in accordance with the following formula:

1.3 Number of secondary pupil places (0.39) + Number of Sixth Form Places (0.0842) x Cost Multiplier

And the Cost Multiplier shall be the DfCSF average build cost multiplier for secondary schools and sixth form schools where this has been newly published in the financial year in which the Education Contribution is paid but where this has not been newly published in the financial year in which the Education Contribution is paid the Education Contribution shall be increased by an amount equal to the proportionate increase in the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors between the quarter preceding the date of this Deed and the quarter preceding the date of payment of the Education Contribution

1.4 To pay in addition interest on the Education Contribution due under this Deed but not paid on the due date for payment from the due date for payment until the actual date of payment at the Interest Rate and any such interest shall be treated as part of the Education Contribution

### 2. FIRE AND RESCUE SERVICE CONTRIBUTION

2.1 To pay to the Council the Fire and Rescue Service Contribution on or before First Occupation of the Development

2.2 The Fire and Rescue Service Contribution shall be the sum of Two Hundred and Thirty Four pounds (£234) increased by an amount equal to the proportionate increase in the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors between the quarter preceding the date of this Deed and the quarter preceding the date of payment of the Fire and Rescue Service Contribution

2.3 To pay in addition interest on the Fire and Rescue Service Contribution due under this Deed but not paid on the due date for payment from the due date for payment until the actual date of payment at the Interest Rate and any such interest shall be treated as part of the Fire and Rescue Contribution

## 3. TOTAL ACCESS DEMAND CONTRIBUTION

3.1 To pay to the Council on or before First Occupation of the Development the Total Access Demand Contribution

3.2 The Total Access Demand Contribution shall be the sum of Ten Thousand Four Hundred (£10,400) increased by an amount equal to the proportionate increase in the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors between the quarter preceding the date of this Deed and the quarter preceding the date of payment of the Total Access Demand Contribution

3.3 To pay in addition interest on the Total Access Demand Contribution due under this Deed but not paid on the due date for payment from the due date for payment until the actual date of payment at the Interest Rate and any such interest shall be treated as part of the said contribution

## 4. NOTICE

4.1 To give notice to the Council and the County Council of the date of First Occupation of the Development not less than 14 days before such date (the "Occupation Notice")

4.2 If the Development is Occupied but an Occupation Notice has not been served as required under paragraph 4.1 above then the Council and/or the County Council shall be entitled in their absolute discretion to determine the date of First Occupation of the Development and shall give notice to the Owner of this determination

## THE SECOND SCHEDULE

### The County Council's Obligations

### 1. EDUCATION CONTRIBUTION

1.1 The County Council covenants that upon receipt of the Education Contribution as paid to the Council and transferred to the County Council pursuant to clause 2.4 it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it for the provision of secondary and sixth form education facilities in the area of the Land

1.2 The County Council covenants upon written request on or after ten years of the date of receipt of the Education Contribution to issue to the party that paid the said contribution an account certified by the County Treasurer for the time being of the County Council detailing how the Education Contribution has been expended by the County Council

1.3 If or to the extent that the Education Contribution shall not have been spent by the County Council by the end of the period referred to in paragraph 1.2 above the County Council shall on such date refund to the party that paid the Education Contribution any unexpended part of the Education Contribution together with compound interest on the unexpended part from the date of receipt of the Education Contribution by the County Council to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis

1.4 If at the end of the period referred to in paragraph 1.2 of this Schedule the County Council shall have entered into a contract or other legally binding obligation to expend the Education Contribution or part for the purposes specified in paragraph 1.1 then the County Council shall not be required to refund any part of the Education Contribution required for that purpose but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Education Contribution in the manner set out in paragraph 1.2 of this Schedule and refund any unexpended part of the Education Contribution in the manner set out in paragraph 1.3 of this Schedule

### 2. FIRE AND RESCUE SERVICE CONTRIBUTION

2.1 The County Council covenants that upon receipt of the Fire and Rescue Service Contribution as paid to the Council and transferred to the County Council pursuant to clause 2.4 it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same towards the cost of fire and rescue infrastructure in the vicinity of the Land

2.2 The County Council covenants that upon written request on or after ten years of the date of receipt of the Fire and Rescue Service Contribution it will issue to the

party that paid the said contribution an account certified by the County Treasurer for the time being of the County Council detailing the Scheme on which the Fire and Rescue Service Contribution has been expended by the County Council

2.3 If or to the extent the Fire and Rescue Service Contribution shall not have been spent by the County Council at the end of the period referred to in paragraph 2.2 above the County Council shall on such date refund to the party that paid the Fire and Rescue Service Contribution any unexpended sum together with compound interest on such unexpended sum from the date of receipt of the Fire and Rescue Service Contribution by the County Council to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis

2.4 If at the end of the period referred to in paragraph 2.2 above the County Council shall have entered into a contract or other legally binding obligation to expend the Fire and Rescue Service Contribution or part thereof for the purposes specified in paragraph 2.1 above then the County Council shall not be required to refund any part of the Fire and Rescue Service Contribution required for that purpose but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Fire and Rescue Service Contribution in the manner set out in paragraph 2.2 above and refund any unexpended part of the Fire and Rescue Service Contribution in the manner set out in paragraph 2.3 above

**3. TOTAL ACCESS DEMAND CONTRIBUTION**

3.1 The County Council covenants that upon receipt of the Total Access Demand Contribution as paid to the Council and transferred to the County Council pursuant to clause 2.4 it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same towards a Scheme in the vicinity of the Land

3.2 The County Council covenants upon written request on or after ten years of the date of receipt of the Total Access Demand Contribution to issue to the party that paid the said contribution an account certified by the County Treasurer for the time being of the County Council detailing the Scheme on which the Total Access Demand Contribution has been expended by the County Council

3.3 If or to the extent the Total Access Demand Contribution shall not have been spent by the County Council at the end of the period referred to in paragraph 3.2 above the County Council shall on such date refund to the party that paid the Total Access Demand Contribution any unexpended sum together with compound interest on such unexpended sum from the date of receipt of the Total Access Demand Contribution by the County Council to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis

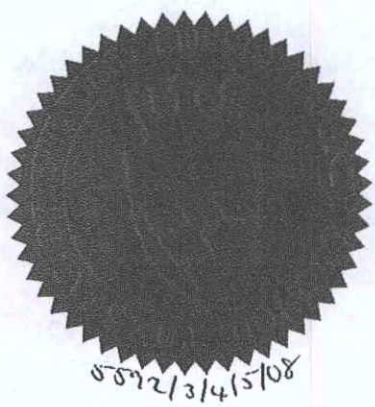
3.4 If at the end of the period referred to in paragraph 3.2 above the County Council shall have entered into a contract or other legally binding obligation to expend the Total Access Demand Contribution or part of it for the purposes specified in paragraph 3.1 above then the County Council shall not be required to refund any part of the Total Access Demand Contribution required for that purpose but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Total Access Demand Contribution in the manner set out in paragraph 3.2 above and refund any unexpended part of the Total Access Demand 'Contribution in the manner set out in paragraph 3.3 above

Executed as a deed by affixing the seal of )

**WEST SUSSEX COUNTY COUNCIL** )

in its capacity as Landowner )

in the presence of: )



[redacted]

.....

Authorised Signatory

Executed as a deed by

**CREST NICHOLSON (SOUTH EAST) LIMITED** )
)
)
)

[redacted]
.....

Signature of Director

[redacted]
.....

Signature of Director/Secretary

THE COMMON SEAL of **HOMES AND COMMUNITIES AGENCY** was hereunto affixed in the presence of: )
)
)



[redacted]
.....

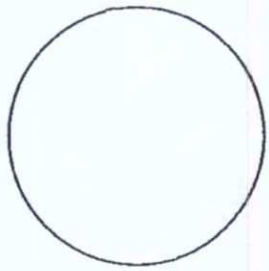
Authorised Signatory

Executed as a deed by affixing the seal of )

**ADUR DISTRICT COUNCIL** )

in the presence of: )

)



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[redacted]

Authorised Signatory

Executed as a deed by affixing the seal of )

**WEST SUSSEX COUNTY COUNCIL** )

in its capacity as County Planning Auhtority )

in the presence of: )



5592/3/14/5108

[redacted]

Authorised Signatory