DATED 2023

MARK STUART HUTCHINSON (1)

AND

CROUDACE HOMES LIMITED (2)

to

WEST SUSSEX COUNTY COUNCIL (3)

PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING

pursuant to Section 106 of the

Town and Country Planning Act 1990 (as amended)

relating to Land south of Henfield Road, Albourne, West Sussex

FROM

(1) MARK STUART HUTCHINSON of Inholmes Farmhouse, Henfield Road, Albourne, West Sussex BN6 9DE ("the Owner")

and

(2) CROUDACE HOMES LIMITED (Company Regn No 813521) of Croudace House, Tupwood Lane, Caterham, Surrey CR3 6XQ ("the Developer")

To:

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

BACKGROUND

- (A) The Owner is the freehold owner of the Land with title absolute.
- (B) The Land is subject to an agreement dated 13 April 2018 between the Owner and the Developer.
- (C) The District Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- (D) The County Council is the local authority responsible for education, library and highways infrastructure in the area in which the Land is situated.
- (E) The Developer submitted the Application and on 25th November 2022, the District Council refused the Application.
- (F) The Appeal has been submitted in respect of the District Council's refusal of the Application.
- (G) The Owner and the Developer have agreed to enter into this Deed to give the following obligations in the manner hereinafter appearing.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. INTERPRETATION AND DEFINITIONS

1.1. In this Deed the following expressions shall unless the context otherwise requires have the following meanings:

Act means the Town and Country Planning Act 1990 as amended;

Additional School Land

The land shown indicatively coloured purple on the Land Use Plan at Appendix 1 attached (to be exactly determined as part of the relevant Reserved Matters Application) being land to be offered to the County Council for educational purposes in connection with Albourne Church of England School

Application

means the application for outline planning permission for the Development which was validated by the District Council on 1st August 2022 and allocated reference DM/22/2416:

Commencement of Development

means the carrying out of a material operation pursuant to the Application as defined in section 56(4) of the Act other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological and/or ecological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and all references Commence, Commenced and to **Commencement** shall be construed accordingly;

Community Building

means a building of not less than 100m² to be constructed as part of the Development and used for community use to include a shop of not less than 75m² as shown indicatively on the Land Use Plan annexed to this Deed at APPENDIX 1 specific details of which including the location are to be submitted to the District Council as part of a reserved matters application

Development

means the development of the Land by the erection of up to 120 residential dwellings including 30% affordable housing, public open space and community facilities as set out in the Application and authorised by the Planning Permission;

Diocese The Chichester Diocesan Fund and Board of Finance

(Incorporated) (Company registration number 00133558) whose registered office is at Diocesan

Church House 211 Church Road Hove BN3 4ED

District Council means Mid Sussex District Council

Dwelling means any dwelling (including a house, flat or

maisonette) to be constructed pursuant to the Planning Permission and **Dwellings** shall be construed

accordingly;

Land means the land against which this Deed may be

enforced known as Land south of Henfield Road, Albourne, West Sussex which is registered at HM Land Registry under title numbers WSX246275 and WSX281632 and is shown for identification purposes

only edged red on Plan 1;

Plan 1 means the plan annexed to this Deed at APPENDIX

and labelled "Plan 1"

Planning Permission means the planning permission granted by the

Secretary of State pursuant to the Appeal and the

Application;

Reserved Matters means an application(s) under the Act for approval of

reserved matters reserved under the Planning

Permission for subsequent approval;

Reserved Matters Approval

Application (s)

(s)

means the approval(s) of reserved matters reserved

under the Planning Permission and pursuant to which

Development is Commenced;

School Car Park Means the car parking area shown indicatively coloured

grey on the Land Use Plan attached at Appendix 1 (to be exactly determined as part of the relevant Reserved Matters Application) for the use of Albourne Church of

England Primary School and the Community Building

Secretary of State

means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function and any successor department;

Trust

Means Hurst Education Trust Limited (Company registration number 13807225) whose registered office is at Hurstpierpoint College College Lane Hurstpierpoint BN6 9JS

Woodland School Land

Means an area of land forming part of the Development to the south of footpath 15_1AL to be included in the relevant Reserved Matters Application for use as a woodland area in connection with Albourne Church of England Primary School

Working Day

means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

- 1.2. Clause and schedule headings shall not affect the interpretation of this Deed.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a company shall include any company, corporation or other body corporate, whether and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8. References to clauses and Schedules are the clauses and Schedules of this Deed.
- 1.9. Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 1.10. References to the District Council, the County Council, the Developer and the Owner shall include the successors in title and assigns of each party including any local authority successor.
- 1.11. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. LEGAL BASIS

- 2.1. This Deed is made pursuant to section 106 of the Act, section 1 of the Localism Act 2011, section 111 of the Local Government Act 1972 and all other enabling powers.
- 2.2. The obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owner with the intention that they bind the interests held by those persons in the Land and their respective successors and assigns.
- 2.3. The obligations contained in this Deed are enforceable by the County Council in accordance with section 106 of the Act.

3. CONDITIONALITY

- 3.1 This Deed shall come into effect immediately upon completion of this Deed save for the provisions of clause 4 *Covenants to the County Council* which is conditional upon the grant of Planning Permission and the Commencement of Development.
- 3.2 in the event that the Secretary of State or his appointed inspector makes a finding and expressly states within the Appeal decision notice that any of the individual planning obligations in this Deed (or part of said planning obligations) are not in accordance with the statutory requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) then such obligation(s) (or part of such obligation) herein as is so identified by the Secretary of State or his appointed inspector shall not be enforceable and shall cease to have effect notwithstanding the remaining provisions of this Deed which (for the avoidance of doubt) shall take effect and remain in effect and enforceable;

4. COVENANTS TO THE COUNTY COUNCIL

The Owner covenants with the County Council to observe and perform the covenants, restrictions and obligations contained in this Deed including the Schedule hereto.

5. DEVELOPER'S CONSENT

The Developer consents to the completion of this Deed and declares that its interest in the Land shall be bound by the terms of this Deed (provided that for the avoidance of doubt the Developer shall not be liable for the obligations of the Owner as set out in this Deed unless and until it acquires the Land from the Owner).

6. RELEASE

- 6.1 No person shall be liable for any breach of any of this Deed after parting with all of its interest in the Land, except in respect of any breach subsisting prior to parting with such interest.
- 6.2 No person or company shall be liable for a breach of this Deed if their interest in the Land is restricted to being an individual owner and/or occupier including their successors in title or their mortgagee of any individual Dwelling comprised in the Development

6.3 The obligations contained in this Deed shall not be binding on any service provider or statutory undertaker which has acquired part of the Land (or an interest in part of the Land) for purposes connected to their statutory functions and/or the provision of services provided always that such statutory undertaker shall not themselves carry out any part of the Development.

7. LOCAL LAND CHARGE

This Deed is a local land charge and shall be registered as such by the District Council

8. THE COUNTY COUNCIL'S COSTS

The Developer shall pay to the County Council on or before the date of this Deed the County Council's reasonable legal costs together with all disbursements incurred in connection with the preparation, negotiation and completion of this Deed and within ten working days of the Planning Permission being granted pursuant to the Appeal.

9. OWNERSHIP

- 9.1 The Owner warrants that no person other than the Owner and the Developer has any legal or equitable interest in the Land.
- 9.2 The Owner agrees to give the County Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged (other than disposals (i) to utility companies and statutory undertakers or (ii) of individual Dwellings), 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 Land or unit of occupation purchased by reference to a plan.

10. NO FETTER OF DISCRETION

Nothing (contained or implied) in this Deed shall fetter or restrict the County Council's statutory rights, powers, discretions and responsibilities.

11. WAIVER

No failure or delay by the County Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12. AGREEMENTS AND DECLARATIONS

The parties to this Deed agree that:

12.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission;

- 12.2 insofar as any clause or clauses of this Deed are held (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;
- this Deed shall cease to have effect (insofar only as it has not already been complied with) if:
 12.3.1. the Appeal is dismissed by the Secretary of State or his appointed inspector;
 12.3.2 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 the Development;
- 12.4 nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed;
- 12.5 Subject to the proviso to this clause, in the event that any new planning permission(s) are granted by the District Council after the date of this Deed in relation to an application to remove and/or vary condition(s) attached to the Planning Permission pursuant to Section 73 of the Act ("Section 73 Consent"):
- 12.5.1 the obligations in this Deed (including the Schedule(s) hereto) shall relate to and bind any subsequent Section 73 Consent and the Land without the automatic need to enter into any subsequent deed of variation/supplemental deed to this Deed or new obligation pursuant to Section 106 of the Act; and
- 12.5.2 the definitions of Application, Planning Permission and Development (other than for the purposes of the Background) in this Deed shall be construed to include reference to (respectively) any application(s) under Section 73 of the Act, any Section 73 Consent granted thereunder and any development permitted by such subsequent Section 73 Consent; and
- 12.5.3 any Section 73 Consent shall include a condition/informative substantially in the following form:

"The obligations under the planning obligation by way of Agreement dated [] pursuant to the previous application DM/22/2416 will be equally applied to and satisfy the requirements necessitated under this application []".

12.5.4 it is hereby agreed and declared by the parties hereto that nothing in this clause shall fetter the discretion of the District Council in determining any applications under Section 73 of the Act and the appropriate planning obligations required in connection with the determination of the same and the District Council reserves the right to insist upon the completion of any subsequent deed of variation / supplemental deed to this Deed or new obligation pursuant to Section 106 of the Act in connection with any Section 73 applications if the District Council considers it appropriate in planning terms to do so.

13. NOTICES

- 13.1 Any notice required by this Deed shall be in writing and addressed to the Planning Services Monitoring and Records Team of the County Council at the address of the County Council given herein.
- 13.2 Any notice may be given by one of the following means and shall be deemed to be served as described unless the actual time of receipt is proved:
 - (a) by first class post deemed served two Working Days after posting;
 - (b) by hand deemed served on signature of a delivery receipt provided that if delivery occurs before 9.00am on a Working Day, the notice will be deemed to have been received at 9.00am on that day, and if delivery occurs after 5.00pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00am on the next Working Day;

14. THIRD PARTY RIGHTS

It is agreed that nothing in this Deed shall be construed as expressly providing a right for any third party within the meaning of the Contract (Rights of Third Parties) Act 1999 and nothing in this Deed is intended to confer on any third party (whether referred to herein by name class description or otherwise) any benefit or any right to enforce any provision of this Deed.

15. DISPUTES

- 15.1 If in connection with this Deed there shall arise a claim or dispute or difference (including unreasonable delay in providing approval, authority, consent or direction or some other decision or payment required by this Deed) the relevant parties shall first attempt to negotiate a solution.
- 15.2 If matters remain unsolved (as evidenced by the service of a written notice by one party on the other(s)) the parties shall refer the matter as follows:
 - 15.2.1 where the difference or dispute relates to the construction or interpretation of this Deed, be referred to the determination (as an expert and not as an arbitrator) of an independent leading conveyancing/planning counsel agreed upon by the parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales on the application of any of the parties in dispute;
 - 15.2.2 where the difference or dispute relates to the carrying out of works or construction be referred to the determination (as expert and not as an arbitrator) of an independent Chartered Surveyor or Civil Engineer as appropriate being a partner or director practising in a leading firm of surveyors or civil engineers based in the South East of England or London and experienced in the matter in dispute agreed upon by the parties in dispute but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers as appropriate on the application of any of the parties in dispute PROVIDED that where

a contract for the relevant works has been let and provides that the dispute or difference under it shall be referred to arbitration or the court any such dispute or difference which may arise between the parties in connection with those works shall be determined likewise.

- 15.3 If the parties in dispute shall fail to agree on the nature of the difference or dispute between them then any of them may apply to the President of the Law Society to appoint an independent solicitor being a partner in a leading firm of solicitors practising in the South East of England or London to decide (as expert and not as arbitrator) in relation to any such matter which of Clauses 15.2.1 or 15.2.2 hereto is applicable.
- 15.4 Except as aforesaid any expert appointed pursuant to Clauses 15.2.1 or 15.2.2 or any other person shall:
 - (a) on their appointment serve written notice thereof on the parties in dispute;
 - (b) consider any written representations by or on behalf of those parties which are received by them within twenty working days of such service and immediately forward a copy of the written representation of one party to the other party;
 - (c) allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within twenty working days of receipt by the other party thereof;
 - (d) have an unfettered discretion to determine the reference to them;
 - (e) serve notice of their determination as soon as they have made it;
 - (f) give full and clear reasons for their decision;
 - (g) be paid their proper fee and expenses in connection with such reference by the parties in dispute in equal shares or in such shares as they may determine and their determination shall be final and binding on the parties in dispute (save in the case of manifest error) PROVIDED THAT if any such expert shall die become insolvent or of unsound mind or if either of the parties in dispute shall serve on them written notice in their opinion they have unreasonably delayed making their determination they shall be ipso facto discharged and be entitled only to their reasonable expenses prior to such discharge and another person shall be appointed in their place as such expert.
- 15.5 The provisions of this clause shall not affect the ability of the County Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

16. 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.

17. GOVERNING LAW

This Deed shall be governed by and interpreted in accordance with the law of England and Wales.

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

FIRST SCHEDULE

COVENANTS BY THE OWNER TO THE COUNTY COUNCIL

Additional School Land Woodland School Land and School Car Park

- The Owner shall include the Additional School Land the Woodland School Land and the School Car Park (including fencing and/or boundary treatments thereof) in the appropriate Reserved Matters Application(s) and following the grant of the related Reserved Matters Approval shall provide to the County Council
 - 1.1 appropriate evidence that the Additional School Land and the Woodland School Land has been surveyed and not subject to contamination that would make it unsuitable for the proposed use
 - 1.2 appropriate evidence that the Additional School Land and the Woodland School Land is not situated in a flood risk area
 - 1.3 Land Registry compliant plans showing the exact location and extent of the Additional School Land the Woodland School Land and the School Car Park
- 2 The Owner will (at its own expense)
 - 2.1 lay out and fence the Additional School Land and the Woodland School Land for use as playing field and in connection with Albourne Church of England Primary School
 - 2.2 construct the School Car Park
 in accordance with the relevant Reserved Matters Approval
- 3. Following completion of the works referred to in paragraph 2 above in respect of each of the Additional School Land the Woodland School Land and the School Car Park
 - 3.1 the Owner shall serve a written notice (or notices if the works are completed at different times) on the County Council offering to transfer the Additional School Land and/or the Woodland School Land and/or the School Car Park to
 - 3.1.1 the County Council or
 - 3.1.2 to a separate body nominated by the County Council and associated with Albourne Church of England Primary School
 - for ONE POUND (£1.00)
 - 3.2 In the event that the County Council does not respond to an offer made pursuant to paragraph 3.1 within 20 Working Days then it shall be deemed to have refused that offer
 - 3.3 In the event that the County Council refuses (or is deemed to have refused by virtue of paragraph 3.2) an offer made pursuant to paragraph 3.1 then within 20 Working Days of the said refusal or deemed refusal the Owner shall serve a written notice on the Diocese offering to transfer the land the subject of the said refusal or deemed refusal to 3.3.1 the Diocese or

3.3.2 a separate body nominated by the Diocese and associated with AlbourneChurch of England Primary School)

for ONE POUND (£1.00)

- 3.4 In the event that the Diocese does not respond to an offer made pursuant to paragraph 3.3 within 20 Working Days then it shall be deemed to have refused that offer
- 3.5 In the event that the Diocese refuses (or is deemed to have refused by virtue of paragraph 3.4) an offer made pursuant to paragraph 3.3 then within 20 Working Days of the said refusal or deemed refusal the Owner shall serve a written notice on the Trust offering to transfer the land the subject of the said refusal or deemed refusal to
 - 3.5.1 the Trust or
 - 3.5.2 a separate body nominated by the Trust and associated with Albourne Church of England Primary School

for ONE POUND (£1.00)

- 3.6 In the event that the Trust does not respond to an offer made pursuant to paragraph 3.5 within 20 Working Days then it shall be deemed to have refused that offer
- 3.7 In the event that
 - 3.7.1 the Trust refuses (or is deemed to have refused by virtue of paragraph 3.6) the offer made pursuant to paragraph 3.5 or
 - 3.7.2 the County Council the Diocese or the Trust (or separate body nominated by any of them and associated with Albourne Church of England Primary School) does not complete the transfer of the Additional School Land and/or the Woodland School Land and/or the School Car Park within two months of the date of acceptance of the offer made in respect of the relevant area(s) in accordance with this paragraph 3 where the Owner is ready willing and able to complete then (unless a reasonable extension of time has been agreed in writing by the Owner) the body who has accepted the offer shall be deemed to be in default

and the Owner shall not be required to complete the transfer of the Additional School Land and/or the Woodland School Land and/or the School Car Park to the relevant body

Any transfer of the Additional School Land and/or the Woodland School Land and/or the School Car Park pursuant to this Schedule shall be for a consideration of £1.00 (ONE POUND) and according to the Law Society's Standard Conditions of Sale (Fifth Edition) (unless otherwise agreed in writing) so far as they are applicable to a sale by private Deed and are not varied by or inconsistent with the express terms of this Deed and unless otherwise agreed each area shall be transferred subject to:

- any matters contained or referred to in the register entries for the Land Registry title numbers to the Land (or the relevant part thereof) as at the date of the offer made in accordance with paragraph 2 above;
- 3.2 all matters registrable or capable of registration as local land charges or otherwise (whether or not actually registered) and all notices, orders, demands, proposals, requirements or agreements served or made by any competent authority (whether before or after the date hereof);
- 3.3 without limiting the previous sub-clause all charges, agreements, conditions, proposals, directions, notices, orders, restrictions or other matters affecting the Additional School Land and the Woodland School Land under town and planning, highways, or other legislation made, imposed or served before or after completion of this Deed:
- all outgoings, rights, easements, quasi-easements and wayleaves affecting the land to be transferred;
- 3.5 all unregistered interests with overriding status setting out in Schedules 1, 3 or 12 to the Land Registration Act 2002, and
- 3.6 (to the extent not dealt with in the previous sub-clauses) the matters mentioned in Standard Condition 3.1.2
- 3.7 any dispositions entered into or to be entered into in order to facilitate the Development
- 3.8 all such rights of access as are required to facilitate the use of the Additional School Land and the Woodland School Land for the purposes for which it is being transferred
- 3.9 in the case of the School Car Park the right for the Community Building to utilise parking spaces on the School Car Park
- 3.10 in the case of the Additional School Land and the Woodland School Land a covenant not to use the Additional School Land and the Woodland School Land for any purpose other than uses in connection with and for the benefit of the adjacent school
- 3.11 in the case of the School Car Park a covenant not to use the School Car Park for any purpose other than parking for the benefit of the adjacent school and the Community Building

and the Owner shall meet the reasonable legal fees of the transferee in connection with such transfer

APPENDIX 1 THE PLANS

Signed as a Deed by

MARK STUART HUTCHINSON

in the presence of:-	
Signature of witness Name (in BLOCK CAPITALS) Address	
Occupation	
Executed as a Deed by affixing the Common Seal of CROUDACE HOMES LIMITED in the presence of:-	
Director	
Director/Authorised Signatory	



