

Dated: 03 January

2016/7

Between:

- | | | |
|-----|--------------------------|-----------------|
| [1] | J L Ambrose & N J Harman | [The Owner] |
| [2] | Accord Mortgages Limited | [The Mortgagee] |
| [3] | Whitgift Estates Limited | [The Applicant] |
| [4] | Arun District Council | [ADC] |
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AGREEMENT

under Section 106 of the Town & Country Planning Act 1990
and other powers relating to
Land adjacent Barnside, West of Hook Lane, Aldingbourne (AL/83/16/OUT).

Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex BN17 5LF
DX 57406 LITTLEHAMPTON
Reference:

This Agreement is dated 03 January 2016 and is made between:

- [1] Joanne Lindsey Ambrose and Nigel John Harman of Barnside, Hook Lane, Aldingbourne, PO20 3TE ["the Owner"]
- [2] Accord Mortgages Limited (Co No 2139881) whose registered office is at 1 Filey Street, Bradford, West Yorkshire, BD1 5AT ["the Mortgagee"]
- [3] Whitgift Estates Limited (Co No 06515893) whose registered office is at 18 Kendall Avenue, Sanderstead, South Croydon, UR2 0NH ["the Applicant"]
- [4] Arun District Council of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ["ADC"]

1. Background

- 1.1 The Owner is the registered proprietor under title number WSX233124 of the land at Barnside, Hook lane, Aldingbourne, Chichester, West Sussex, PO20 3TE shown for identification purposes only edged blue on the attached plan [and hereinafter called "the Land"].
- 1.2 The Land is subject to a registered charge dated 2 October 2012 in favour of the Mortgagee.
- 1.3 The Applicant has made the Application to ADC and is the beneficiary of an option agreement dated 12 June 2015
- 1.4 ADC is the local planning authority and the local housing authority and the local authority responsible for providing public open spaces.
- 1.5 Planning Permission has been sought from ADC under application number AL/8/16/OUT to develop the Land under outline planning permission with all matters reserved for a residential development of up to 8 dwellings & associated works including access, landscaping & open space. This application is a Departure from the Development Plan.

- 1.6 It is considered that the Development will generate additional demands for public open space which would not arise but for the Development and which cannot be accommodated by the existing infrastructure and financial contributions are necessary to address these impacts of the Development

2. Interpretation

In this Agreement:

- 2.1 Words importing the masculine include the feminine and vice versa.
- 2.2 Words importing the singular include the plural and vice versa.
- 2.3 Words importing persons include companies and corporations and vice versa.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.
- 2.5 Any reference to a clause or schedule or plan is to one in to our attached to this Agreement.
- 2.6 Any reference to a colour or letter is to be on the plans attached to this Agreement.
- 2.7 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it.
- 2.8 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the ADC the successors to their respective functions.
- 2.9 "the Act" means the Town & Country Planning Act 1990
- 2.10 "agreed" or "approved" means agreed or approved in writing and given for the purpose of this Agreement.
- 2.11 "the Application" means the planning application number AL/83/16/OUT made

- 2.12 “the Application Site” means the Land
- 2.13 “Commencement of Development” shall have the same meaning as in S56 of the Act
- 2.14 “the Development” means the development of the Land proposed by the Application or permitted by planning permission granted pursuant to the Application or carried out substantially in accordance with such planning permission.
- 2.15 “Public Open Space Contribution” means the public open space contribution of £8000 referred to in Clause 5 to make good a deficiency in public open space provision arising from the Development and for the specific purpose of provision of play equipment for the Open Space at Olivers Meadow Aldingbourne near the Development
- 2.16 “Specified Date” means the date upon which an obligation arising under this Agreement is due to be performed.

3. Enabling Provisions

This Agreement is made pursuant to Section 106 of the Act, Sections 111 and 135 of the Local Government Act 1972, S1 Localism Act 2011 and all other enabling powers.

4. Commencement

- 4.1 This Agreement shall come into effect upon the grant of the Application but the obligations in Clause 5 shall become effective only on the commencement of the Development in accordance with Section 56 of the Act.
- 4.2 On Commencement of the Development the Owner will give to ADC notice in writing of that commencement in the form of The Commencement Notice annexed to this Deed as Schedule 1 addressed to ADC's Head of Planning Services.

COVENANTS IN FAVOUR OF ADC

5. Public Open Space Contribution

The Owner agrees with ADC;-

- 5.1 on Commencement of Development to pay to ADC Public Open Space Contribution of £8000
- 5.2 not to occupy or cause or allow to be occupied any dwelling forming part of the Development before the Public Open Space Contribution shall have been made

COVENANTS IN FAVOUR OF ADC

6. Certificates

The Owner agrees with the ADC:-

- 6.1 where this Agreement imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Specified Date the Owner shall give to the ADC notice of the Specified Date not more than seven days after such Specified Date
- 6.2 if the Owner fails to give the notice required under Clause 4.2 the ADC shall be entitled in its absolute discretion to determine the Specified Date and shall give notice to the Owner and Applicant of its determination

7. Indexation for ADC

The Owner undertakes to ADC that any sums payable by the Owner to ADC under this agreement shall be increased by the application of the following formula:

$$A = B \times \frac{C}{D}$$

D

where:

- A is the sum actually payable on the Specified Date/ Payment Date
- B is the original sum mentioned in this agreement
- C is the Retail Price Index for the quarter preceding the Specified Date
- D is the Retail Price Index for the quarter preceding the date of this agreement
- $\frac{C}{D}$
- D is equal to or greater than 1

The adjustment in this clause shall only be made where the Specified Date is more than 6

8. Interest

The Owner covenants and agrees with the ADC to pay interest on sums due to ADC under this Agreement but not paid on the Specified Date from the Specified Date until actual payment. The rate of interest shall be 4% above the Bank of England base rate from time to time.

9. Miscellaneous

9.1 The Owner covenants and agrees with the ADC to pay on completion of this Agreement to the ADC its legal costs incurred in preparing and entering into this Agreement as shown below :-

Payee	Amount and Purpose of Payment
ADC	£450 legal costs

9.2 For the avoidance of doubt ADC shall be entitled to utilise a proportion of any monetary payment specified in this Deed as payable to it for related project costs up to a maximum of 5% of any payment or £400 which ever shall be the larger

9.3 For the avoidance of doubt the legal costs set out in 9.1 are standard charges and shall not preclude ADC from claiming and receiving any additional monitoring and legal or enforcement costs above and beyond these standard charges when circumstances require that they be incurred in pursuing full compliance with this Deed whether through the courts or otherwise

10. Mortgagee's Consent

The Mortgagee consents to the Owners entering into this Agreement and acknowledges that this Agreement binds the Land.

11. Payment Notice

The parties to this Agreement hereby agree that all payments due under this Agreement shall be forwarded to the ADC and shall have attached to them a copy of the Payment Notice contained in Schedule 2 to this Agreement duly completed.

12. **General**

The parties agree that:

- 12.1 nothing in this Agreement constitutes an obligation to grant planning permission
- 12.2 nothing in this Agreement grants planning permission or any other approval consent or permission required from ADC in the exercise of any other statutory function
- 12.3 nothing in this Agreement fetters or restricts the exercise by ADC of any of their powers
- 12.4 the obligations contained in Clause 5 are planning obligations for the purpose of Section 106 of the Act
- 12.5 this Agreement constitutes a deed
- 12.6 this Agreement is enforceable by ADC as to Clause 5
- 12.7 nothing in this Agreement confers or is intended to confer a benefit on a third party under the Contracts [Rights of Third Parties] Act 1999
- 12.8 This Agreement shall apply to the Development as authorised by the planning permission issued pursuant to the planning application or to the Development after variation or renewal of the planning permission from time to time
- 12.9 This Agreement is a Local Land Charge and shall be registered as such
- 12.10 No covenants or obligations contained in this Deed shall be binding upon any part of the Land that may in future be acquired by:-
 - [a] a statutory undertaker for the purposes of its undertaking or operational Land as defined in S.262 of the Act
 - [b] an individual dwelling owner
- 12.11 No person shall be liable for any breach of the covenants or obligations contained in this Agreement which occur after the relevant person has parted with his interest in the Land or the part in respect of which such breach occurs.

Arbitration:

13. 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 (acting as an expert and not as an 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

14. **Severability.**

The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

15. **Community Infrastructure Levy Compliance**

ADC is satisfied that the planning obligations set out herein accord with the three statutory tests set out in the Community Infrastructure Levy Regulations and shall be in full and final settlement of any infrastructure levy which may apply to the Site due to and following the grant of the planning permission.

SCHEDULE 1

Commencement Notice

Pursuant to Clause 4.2 in Planning Obligation Described Below

I advise you that the Development described below was commenced on the Start Date stated in this Notice.

Dated this ____ day of ____ 20

Signed _____

On Behalf Of: _____

To:	Head of Planning Services, Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF [DX: 57406] Littlehampton
FROM:	
DEVELOPMENT AT:	
NATURE OF DEVELOPMENT:	
PLANNING PERMISSION DATE & REFERENCE	
PLANNING OBLIGATION DATE & PARTIES	
START DATE:	

SCHEDULE 2

Payment Notice

Payment of Monies due under a Section 106 Planning Obligation/Agreement

Please answer all the questions.

1. Payment to be made by/on behalf of
2. Land at:
3. Agreement dated:
4. Planning application reference number [where applicable]
5. Obligation in Agreement

[a]	clause no.	
[b]	contribution towards	
[c]	amount of contribution due	
[d]	date upon which contribution is due	
[e]	amount of contribution enclosed	
[f]	amount of monitoring sum	

SIGNED and DELIVERED
by JOANNE LINDSEY
AMBROSE as her Deed in
the presence of:

Witness signature:

Name:

Address:

Andrew Lincoln

Arundel

Bosley Lane

Chichester PO18 8HP

SIGNED and DELIVERED
by NIGEL JOHN HARMAN
as his Deed in the presence of:

Witness signature:

Name:

Address:

Arundel

Bosley Lane

Chichester PO18 8HP

EXECUTED AS A DEED
WITH the COMMON SEAL
of ARUN DISTRICT COUNCIL
in the presence of:

Seal Book No:

Authorised Signatory

Authorised signatory name

Authorised signatory job title

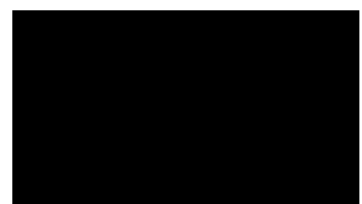
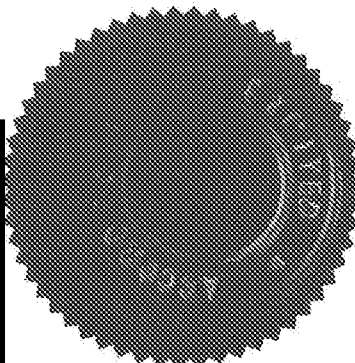
HELEN JANE ARMSTRONG
SOLICITOR



SEALED with the CORPORATE SEAL
of ACCORD MORTGAGES LIMITED
in the presence of:

Director

Secretary



by authority of the board of directors

s106 Agreement.Barnside.8units.21.09.16

Signed as a deed by WHITGIFT
ESTATES LIMITED acting by one
director in the

Witness signature

Name: *PETER HARROP*

Address: *12 STATION ROAD WEST
OXFORD SURREY
RH8 9ES*

*12 STATION ROAD WEST
OXFORD SURREY
RH8 9ES*