

Planning Application Reference:	AW/269/11/
Document Type:	Section 106 agreement
Date of Agreement:	25th November 2011

NB: Above text in bold to be included in free text field.

Check thoroughly for **telephone numbers/email addresses & signatures** and block.
Check **maps** for signatures and block.

Please return original to s106 Monitoring Officer

CLUTTONS

Dated 25th November

2011

Unilateral Undertaking
Under Section 106 of the Town & Country Planning Act 1990

Relating to land to the rear of 259a Aldwick Road Bognor Regis

Given By

Herongate Homes Ltd

To

Arun District Council

To pay Affordable Housing contributions of £9,128

Prepared by

Cluttons LLP
14 West Pallant
Chichester
West Sussex
PO19 1TB



THIS PLANNING OBLIGATION by UNDERTAKING is given this *25th* day of *November* 2011 by HERONGATE HOMES LTD of Brook House Pound Road West Wittering Chichester PO20 8AJ ("the Owner") to ARUN DISTRICT COUNCIL of Arun Civic Centre Maltravers Road Littlehampton West Sussex BN17 6LF ("the Council")

IN THIS UNDERTAKING the expressions set out in Column 1 below shall have the meanings ascribed respectively to them in Column 2 below

Column 1	Column 2
"the Act"	means the Town & Country Planning Act 1990 as amended
"Application"	means the application for planning permission registered by the Council under reference number AW/269/11
"the Affordable Housing Contribution"	means the sum of £9,128 towards the provision of Affordable Housing within the Aldwick East Ward
"the Development"	means the removal of existing detached garage and proposed single residential dwelling in accordance with the plans and other particulars accompanying the Application
"the Land"	means the land to the rear of 259A Aldwick Road Bognor Regis shown edged red on the Plan
"the Plan"	means the plan annexed hereto
"the Planning Obligation"	means the planning obligations set out in the Schedule
"the Schedules"	means the schedules hereto

WHEREAS:-

1. The Owner is the legal owner of the Land having completed purchase of the Land on 5th January 2011 under a completed Transfer Deed from part of the land subject to Title Number WSX166602.

2. The Council is the local planning authority for the purposes of the Act for the area within which the Land is situated.
3. The Owner made the Application to the Council in respect of the Development.
4. On 4th November 2011 the Council wrote a letter indicating that planning permission for the Development would if granted be subject to the payment of the Affordable Housing Contribution.
5. The Owner hereby gives this Undertaking to secure the financial contribution hereinafter specified.

NOW THIS UNDERTAKING WITNESSETH as follows:-

1. **THIS** Undertaking is given in pursuance of Section 106 of the Act.
2. **THE** Planning Obligation is a planning obligation for the purposes of Section 106 of the Act and shall be binding on and enforceable against the Owners jointly and severally and any person deriving title to the Land through or under the Owners.
3. **THE** Planning Obligation may be enforced by the Council and not by any other party.

IT IS HEREBY AGREED AND DECLARED

1. No person shall be liable for any breach of the Planning Obligation after he shall have parted with all interest in the land to which such obligation relates or the part in respect of which such breach occurs but without prejudice to his liability for any subsisting breach of obligation prior to parting with such interest.
2. Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Land in accordance with any planning permission (other than a permission granted pursuant to the Application) granted (whether or not on appeal) after the date of this Undertaking.
3. The expressions "the Owner" and "the Council" shall include their respective successors in title and assigns.

4. Any headings in this Undertaking are for convenience only and shall not be taken into account in the construction and interpretation thereof.
5. If any individual clause or paragraph in this Undertaking is subsequently held to be unenforceable by a Court the offending clause or paragraph shall cease to be binding and will be severed from this Undertaking **PROVIDED HOWEVER THAT** the severing of such a clause or paragraph shall not affect the continuing enforceability of the remainder of this Undertaking.
6. **THIS** Undertaking is conditional upon the grant of planning permission granted pursuant to the Application.

6.1 **LEGAL AND MONITORING COSTS**

The owner and the Applicant undertakes with ADC to:-

- (a) pay in addition to the above Contributions
- (b) the sums set out in the table below
- (c) at the time or times set out in the table below and
- (d) for the purposes set out in the table below

Payee	Time for Payment	Amount	Purpose
ADC	Before completion of this deed	£200 (if applicant drafts)	ADC Legal Fees
ADC	On Commencement of the Development for the purposes of the Planning Permission	£100 minor application PLUS £50 per planning obligation in the deed Viz 1x 50 = TOTAL £ 150-00	ADC Monitoring of compliance with the Deed

Legal Costs of ADC

- 6.2 ADC acknowledges the receipt from the Owner/Applicant the sum of £200 to pay its reasonable legal fees.



Monitoring Costs of ADC

- 6.3 For the avoidance of doubt ADC shall be entitled to utilise a proportion of any monetary contributions specified in this deed for related project costs up to a maximum of 5% of the sum of £15,000 which ever shall be the larger.
- 6.4 For the avoidance of doubt the above charges 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.

7. ADDITIONAL CLAUSES

The Owner and the Applicant undertakes with ADC as follows:-

7.1 Start Date of this Deed and Obligations

- (a) this deed will take effect on the grant of the Planning Permission.
- (b) S56 of the Act will apply to determine commencement of the Development and in the event of any uncertainty or disagreement concerning this date the determination of ADC shall be final.
- (c) On commencement of the Development the Owner and the Applicant will send to ADC written Notice of that event in the Form of the Notice in Schedule 1.

7.2 Index Linking

The Owner and the Applicant undertake to ADC that any sums payable by the Owner or the Applicant under this Deed shall be increased by the application of the following formula:-

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

Where:

- A is the sum actually payable on the Specified Date/Payment Date
- B is the original sum mentioned in this Deed
- C is the Building Cost Information Service National All-in-Tender Price Index for the quarter preceding the Specified Date/Payment Date
- D is the Building cost information Service National All-In Tender Price Index for the quarter preceding the date of this Deed.

C is equal to or greater than 1

D

The adjustment in Clause 6.1 shall only be made where the Specified/Payment Date is more than 6 months after the date of this undertaking.

7.3 Interest Payments

The Owner and the Applicant undertakes with ADC to pay interest on sums due to ADC under this Deed but not paid on the Due Date from the Due Date until actual payment. The rate of interest shall be 4% above the HSBC Bank base rate from time to time.

7.4 Payment Notice

All payments due under this Deed will be sent to the payee with a duly completed Notice in the Form of Schedule 2.

8. GENERAL

- 8.1 This Deed is not a Planning Permission or any other form of consent under any other function of ADC.
- 8.2 This Deed does not restrict or fetter the statutory powers of ADC.
- 8.3 If more than one part to this Deed agrees or undertakes with another then that agreement or undertaking shall be enforceable against that person jointly or severally.
- 8.4 This Deed confers no benefit on any Third Party under Contracts (Third Party Rights) Act 1999.

- 8.5 This Deed shall apply to the Development as authorised by the Planning Permission or as varied or renewed from time to time.
- 8.6 This Deed is a Local Land Charge and shall be registered as such.
- 8.7 No covenants or obligations contained in this Deed shall be binding upon or any part of the Land that may in future be acquired by a statutory undertaking for the purposes of its undertaking or operational land as defined in the S262 of the Act.

9. VERIFICATION OF TITLE AND OBLIGATIONS

- 9.1 If the Applicant is not the freehold owner of the Land when this Deed is signed then the Applicant will:-
- (i) on becoming the freehold owner notify ADC in writing as soon as practicable.
 - (ii) when and if required by ADC enter into and execute a Deed to Verify the Applicant's Title as freeholder and to reconfirm the Planning Obligations set out herein including re-executing this Deed.

THIS DEED is signed and sealed by the parties as a Deed on the date first appearing.

10. If planning permission granted pursuant to the Application is quashed revoked or otherwise withdrawn or (without the consent of the Owners) is modified in any material respect by any statutory procedure or expires before the Commencement of the Development then this Undertaking shall cease to have effect
11. **IN THIS UNDERTAKING** for the avoidance of doubt:-
- (i) the singular shall include the plural the masculine shall include the feminine and vice versa unless the context otherwise requires.
 - (ii) any reference to the doing or taking of any action shall include causing or permission such action.



12. **PAYMENT** due under this Deed will be sent to the Council with a duly completed Notice in the Form of Schedule 2.
13. **THIS** undertaking shall take effect as a deed

IN WITNESS whereof the Owner has executed this Undertaking as a deed the day and year first above written.

SCHEDULE 1

1. On or before the commencement of development the Owner shall pay to the Council the Affordable Housing Contribution and shall not commence Development unless and until the Affordable Housing Contribution is paid.
2. The payment of such an Affordable Housing Contribution is conditional on it being used solely towards the provision of affordable housing within the whole of the Arun District.

Commencement Notice

Pursuant to Clause 4.2 in Planning Obligation Described Below

Failure to use this form may prejudice your ability to prove compliance with the planning obligation.

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

Dated this day of 2011 .

Signed.....

On Behalf of:.....



To:	Head of Planning Services, Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF
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

Failure to use this form may mean problems with acknowledgement of payment and may prejudice your ability to prove compliance with the planning obligation

If ADC is Payee:

Head of Planning Services
Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

Please answer all the questions:

Payment to be made by/on behalf of.....

Land to rear of.....

Agreement Date.....

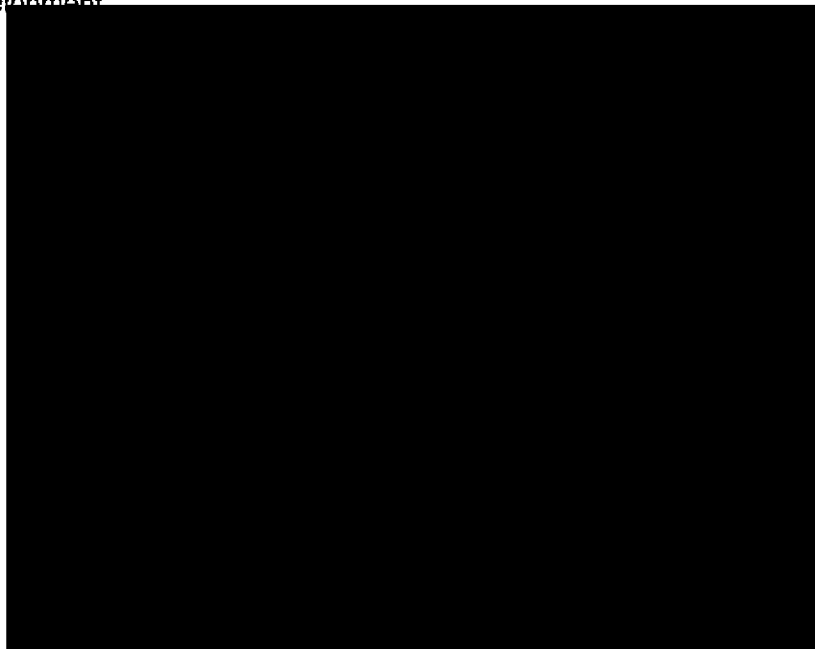
Planning Application Reference No (*where applicable*).....

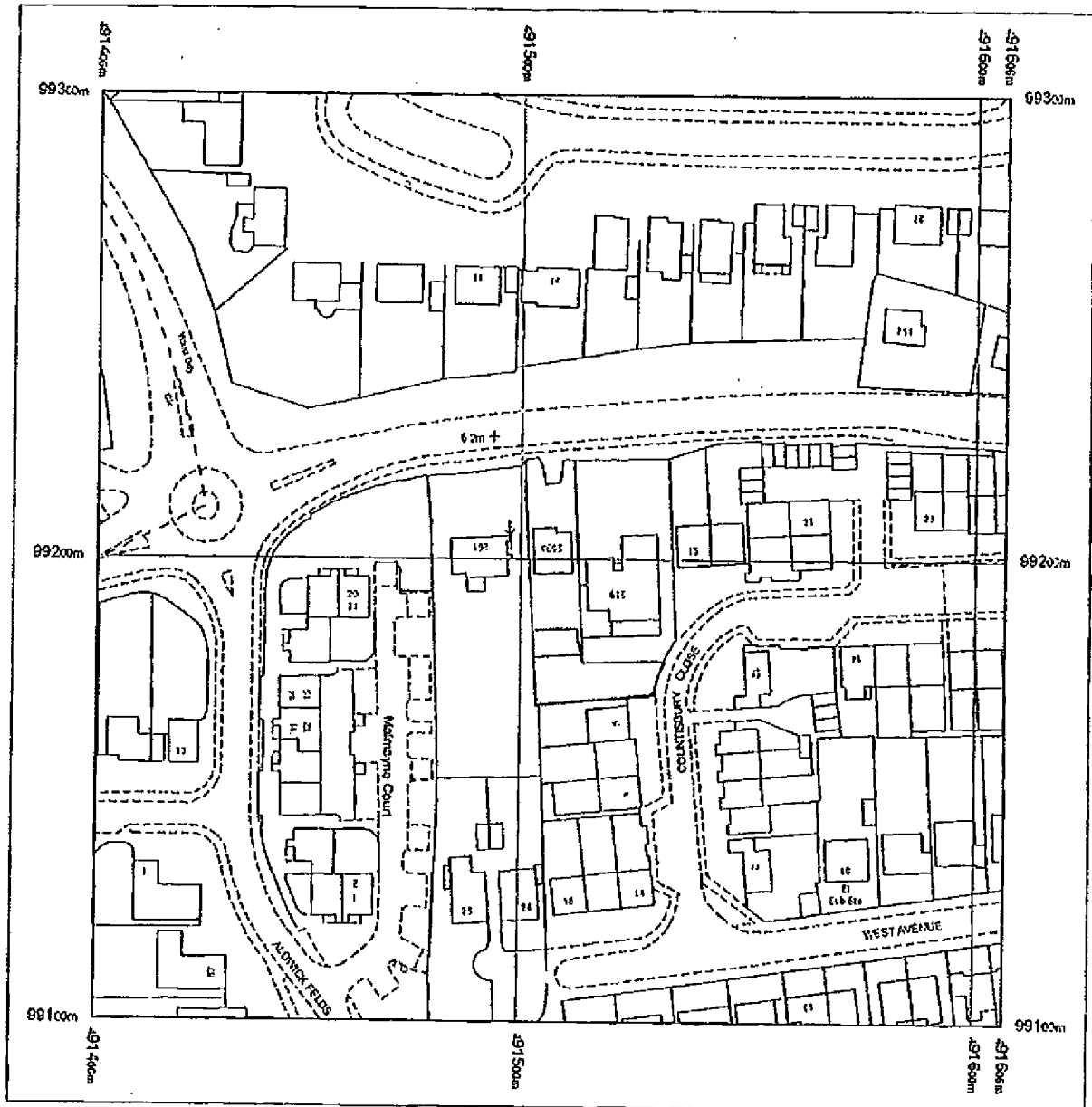
Obligation in Agreement

(a)	Clause No	
(b)	Clause No	
(c)	Contribution towards affordable housing	
(d)	Amount of Contribution	
(e)	Date upon which contribution is due	
(f)	Amount of contribution enclosed	
(g)	Amount of monitoring sum	

Concerning full payment of Affordable Housing Contribution for the sum of £9,128 prior to the commencement of development

EXECUTED as a **DEED** by
THOMAS ELLIOTT
in the presence of:-





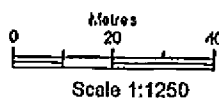
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Supplied by: www.ukmapcentre.com
Serial number: 02432000
Centre coordinates: 491500.6 99200.25

Further information can be found on the OS Sitemap Information leaflet or the Ordnance Survey web site: www.ordnancesurvey.co.uk

