

DATED 24 DAY OF May 2019

ARUN DISTRICT COUNCIL

and

FRONTIER ESTATES (MERING) LIMITED

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

Relating to

Land at Broadlees, Dappers Lane
Angmering, West Sussex BN16 4EN
A/114/18/PL

Arun District Council
Arun Civic Centre
Maltravers Road
LITTLEHAMPTON
West Sussex
BN17 5LF
CMS7214

DEED OF AGREEMENT

DATED THIS 24 DAY OF May 2019

BETWEEN:

- (1) **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("the District Council")
- (2) **FRONTIER ESTATES (MERING) LIMITED** (Registered at Companies House under Registration No. 09839069) of 25 Oldbury Place, London, W1U 5PR ("the Owner")

RECITALS

- A The District Council is a local planning authority for the purposes of section 106 of the Act and acts as agent for the National Health Service in respect of financial contributions under this Agreement for the area in which the Land is situated
- B The Owner is the freehold Owner of the Land
- C The Owner on 25th July 2018 submitted the Application to the District Council.
- D The parties to this Agreement have given due consideration to the requirements of Regulation 122 of the CIL Regulations 2010 and agree that the planning obligations contained in this Agreement are:
 - 1.1 necessary to make the Development acceptable in planning terms;
 - 1.2 directly and fairly related to the Development; and
 - 1.3 fairly and reasonably related in scale and kind to the Development.
- E This Agreement is entered into as a Deed

OPERATIVE PROVISIONS

1. Operative Powers

This Agreement is entered into pursuant to section 106 of the Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.

2. Interpretation

- 2.1 In this Agreement the following expressions shall unless the context otherwise

requires have the following meanings:

- | | | |
|-------|--------------------------|---|
| 2.1.1 | the Act | means the Town and Country Planning Act 1990. |
| 2.1.2 | Application | means the Planning Application submitted by the Owner to the District Council for planning permission for the Development and bearing the reference number A/114/18/PL and being described in full as Demolition & erection of 70 bed care home within Use Class C2 (replacing building 4 approved by A/27/16/PL), access, parking, landscaping and other associated works. |
| 2.1.3 | CCG | means the NHS Coastal West Sussex Clinical Commissioning Group of 1 The Causeway, Goring-by-Sea, Worthing, West Sussex, BN12 6BT. |
| 2.1.4 | CIL Regulations | means the Community Infrastructure Levy Regulations 2010 (SI 2010/948) as amended. |
| 2.1.5 | Commencement | means the carrying out on the Land of a material operation as defined in section 56(4) of the 1990 Act pursuant to the Permission but not otherwise save that for the purpose of this definition the carrying out of any works of site clearance ground investigation and site survey works construction of boundary fencing or hoardings construction of temporary accesses and/or highway works archaeological investigation site decontamination or remediation works shall not be deemed to be the carrying out of a material operation and "Commence and "Commenced" shall be construed accordingly. |
| 2.1.6 | Health Care Contribution | means the sum of £33,026.00 (thirty-three thousand and twenty-six pounds) payable in accordance with paragraph 1 of the First Schedule to this Agreement towards either
a) the expansion of existing facilities at the Coppice GP Surgery; or |

- b) if existing site constraints and/or building conditions restrict further development at the Coppice GP Surgery, towards the development of a new integrated community hub facility to cover the area of Angmering.
- 2.1.7 Interest means interest at 4% above the base lending rate of the District Council's main bank at the time when the sums become due.
- 2.1.8 Land means all that land against which this Agreement may be enforced at Broadlees, Dappers Lane, Angmering, West Sussex BN16 4EN and registered at the Land Registry under title number WSX134117 and shown for identification purposes only edged red on the Plan.
- 2.1.9 Occupation means beneficial occupation of any part of the Development other than occupation for the purposes of construction fitting out security marketing or repair and 'Occupied' shall be construed accordingly.
- 2.1.10 Permission means planning permission for the Development pursuant to the Application and shall include any amendment to the Development whether granted pursuant to section 73 of the 1990 Act or otherwise.
- 2.1.11 Plan means the Location Plan attached to this Agreement as Appendix 1.
- 2.1.12 Specified Date means the date upon which an obligation arising under this Agreement is due to be performed.
- 2.1.13 Working Day means any day excluding Saturday or Sunday or any bank or public holiday or any day between Christmas Eve and New Year's Day which would otherwise be a Working Day.
- 2.2 Where in this Agreement reference is made to a clause sub-clause paragraph schedule plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule plan or recital of or (in the case of a plan) attached to this Agreement.

- 2.3 Words denoting any one gender only shall include both genders and may be used interchangeably and words denoting natural persons include firms companies and corporations and vice versa.
- 2.4 Words importing the singular number only shall include the plural number and vice versa and where there is more than one covenantor the obligation of such covenantors shall be joint and several.
- 2.5 Any reference to a statute or statutory instrument (whether or not specifically named) includes any statute or statutory instrument amending consolidating or replacing them respectively and for the time being in force and references to a statute include all statutory instruments orders plans regulations byelaws permissions and directions for the time being made issued or given or deriving validity pursuant to them.
- 2.6 Where the agreement approval consent or an expression of satisfaction is required by the Owner under the terms of this Agreement from the District Council that agreement approval consent or satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.
- 2.7 Save where the context otherwise requires references to any party shall include the successors in title of that party.
- 2.8 References in this Agreement to the District Council shall include references to their respective successors in statutory function

3 Legal Effect

- 3.1 This Agreement is executed by the parties as a deed and will constitute a planning obligation for the purposes of section 106 of the 1990 Act to the extent that it shall bind the Owner and their successors in title to each and every part of the Land.
- 3.2 This Agreement shall be enforceable by the District Council as the Local Planning Authority.
- 3.3 The Owner shall upon parting with the fee simple in any part of the Land be released from all obligations rights and duties under the terms of this Agreement insofar as they relate to such part of the Land (save in respect of liability for any antecedent breach of this Agreement) and shall upon parting with the entirety or any part of their interest in the Land be released from all liability whatsoever under the terms of this Agreement in respect of the Land disposed of save insofar as it relates to an antecedent breach of this Agreement.
- 3.4 This Agreement other than clause 4.2 (legal costs), 9.1 (notice), (jurisdiction) shall not take effect until the following conditions precedent have been satisfied:

- 3.4.1 the Permission being granted; and
- 3.4.2 the Commencement of the Development
- 3.5 Nothing in this Agreement shall be construed as prohibiting limiting or affecting any right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted by the District Council or the Secretary of State on appeal or by reference to him after the date of this Agreement and for the avoidance of doubt any operations works or development in accordance with such a planning permission shall not constitute Commencement under the terms of this Agreement.
- 3.6 Each clause sub-clause paragraph schedule or plan shall be separate distinct and severable from each other to the extent only that if any clause sub-clause paragraph schedule or plan becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause sub-clause paragraph schedule or plan shall be held by the courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause sub-clause paragraph schedule or plan be valid shall apply without prejudice to any other clause sub-clause paragraph schedule or plan contained therein.
- 3.7 Except insofar as legally or equitably permitted nothing contained within this Agreement shall fetter the District Council in its future exercise of rights and powers under the 1990 Act Local Government Act 1972 or any other statutory power.
- 3.8 For the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 nothing in this Agreement is intended to confer any benefit upon or create rights in favour of any party other than the parties executing this Agreement and their respective successors in title.
- 3.9 Nothing in this Agreement shall be construed as imposing any obligation on any Statutory Undertaker who acquires an interest in the Land for the purpose of undertaking their statutory functions.
- 3.10 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner and the Developer) it is modified by any statutory procedure or expires before the Development is Commenced
- 3.11 No obligations, undertakings or liabilities under this Agreement shall be enforceable against:
- (i) individual purchasers, lessees or residents of any unit within the care home comprised in the Development unless that individual purchaser or lessee Occupies in breach of paragraph 1.2 of the First Schedule save as otherwise provided in this Agreement; or

- (ii) any chargee or mortgagee acquiring an interest in the Land after the date of this Agreement unless said chargee or mortgagee becomes a chargee or mortgagee in possession of the Land

3.12 All the obligations in this Agreement are conditional upon the District Council granting the Permission

4. The Owner's Covenants

4.1 The Owner covenants with the District Council to comply with the requirements set out in the First Schedule to this Agreement.

4.2 The Owner covenants with the District Council to pay on completion of this Agreement the District Council's reasonable legal costs incurred in connection with the preparation and completion of this Agreement in the sum of £1500.00

4.3 The Owner confirms and agrees that the Land shall be bound by the terms of this Agreement .

5 The District Council Covenants

5.1 The District Council covenants with the Owner to comply with all its obligations contained within this Agreement

6 Land Charge

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

6.2 The District Council (at the written request of the Owner at any time after the Owner has complied with or is discharged from his obligations in this Agreement) is to issue written confirmation of compliance or discharge and immediately cancel all entries made in the register of local land charges in respect of this Agreement.

7 Interest and Indexation

7.1 Interest

If any payment due to the District Council under this Agreement is paid late, Interest will be payable from the date payment is due to the date of payment

7.2 District Council Indexation

The Owner undertakes to the District Council that any sums payable by them under this Agreement shall be increased by the application of the following formula:

$$A = B \times \underline{C}$$

- D
- where:
- A is the sum actually payable on the Specified 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 months after the date of this Agreement

8 Notices and Service Provisions

- 8.1 Prior to Commencement the Owner shall give written notice to the District Council's Section 106 Monitoring Officer of an intention to Commence the Development
- 8.2 Any notice or other written communication to be served upon or given by one party to any other under the terms of this Agreement shall be deemed to have been validly served or given if transmitted by facsimile (and confirmed by transmission confirmation slip) delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing
- 8.3 The address for any notice or other written communication shall only be within the United Kingdom and is:
- 8.3.1 for the Owner as specified above and marked for the attention of the Owner
 - 8.3.2 for the District Council as specified above marked for the attention of the Group Head of Planning or any other officer notified to the parties by the Council in writing

9 Dispute Resolution

- 9.1 Without prejudice to the rights of any Party to this Agreement to take immediate alternative action, where any matter the subject to this Agreement shall be in dispute the Parties may use their reasonable endeavours to resolve the same within 28 days of the dispute arising.
- 9.2 Failing the resolution of any such dispute disagreement or difference within 28 days of the same arising with the prior written consent of the Parties to this Agreement it may be referred for determination by an Expert who shall be agreed upon by the Parties but in default of such agreement within 28 days of such dispute arising such appointment shall be referred to the President for the time being of the RICS.

- 9.3 The determination of the Expert (including any determination as to the responsibility for payment of his own costs and those of the Parties) shall be final and binding upon the Parties (except in the case of manifest error or fraud).
- 9.4 The terms of reference of the Expert shall include the following:
- (a) the Expert shall call for representations from the Parties within 21 days of a reference to him under this Agreement and require the Parties to exchange representations within this period;
 - (b) the Expert shall allow the Parties 14 days from the expiry of the period referred to under clause 9.4(a) above to make counter representations;
 - (c) any representations or counter representations received out of time may be disregarded by the Expert;
 - (d) the Expert shall provide the Parties with a written decision within 28 days of the last date for receipt of counter representations and he shall be entitled to call for such independent expert advice as he shall think fit; and
 - (e) the Expert's costs and the costs of any independent expert advice called for by the Expert shall be included in his award.
- 9.5 The provisions of this clause shall not affect the ability of the 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 Agreement and consequential and interim orders and relief.

10 Jurisdiction

- 10.1 This Agreement shall be governed by the laws of England.
- 10.2 The courts of England shall have exclusive jurisdiction to determine all disputes in connection with this Agreement which are not resolved to the satisfaction of the Parties by the Expert under clause 9.

11 Declarations

- 11.1 The District Council will upon the written request of the Owner or the Developer confirm in writing whether or not the obligations set out herein have been performed or otherwise discharged
- 11.2 If the District Council agrees following an application under section 73 of the 1990 Act to vary or release any condition contained in the Permission or if a condition is varied or released following an appeal under section 78 of the 1990 Act the covenants or provisions of this Agreement shall be deemed to bind the varied permission and apply in equal terms to the new planning

permission (subject to the Health Care Contribution only having to be paid once) UNLESS the District Council in determining the application for the new planning permission (or the Secretary of State determining the section 78 appeal in relation to that application) indicates that consequential amendments are required to this Agreement to reflect the impact of the section 73 application in which circumstances a separate agreement under section 106 or s.106A of the 1990 Act (as the case may be) will be required to secure relevant planning obligations or other planning benefits relating to the new planning permission BUT nothing in this Agreement shall in any way fetter the District Council's discretion in relation to the section 73 application or the determination thereof

- 11.3 If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions of this Agreement shall not in any way be deemed thereby to be affected or impaired.

FIRST SCHEDULE

OWNERS COVENANT TO THE DISTRICT COUNCIL

- 1 Health Care Contribution
 - 1.1 Prior to First Occupation to pay to the District Council the Health Care Contribution.
 - 1.2 Not to allow cause or permit the First Occupation until the Health Care Contribution has been paid to the District Council

SECOND SCHEDULE

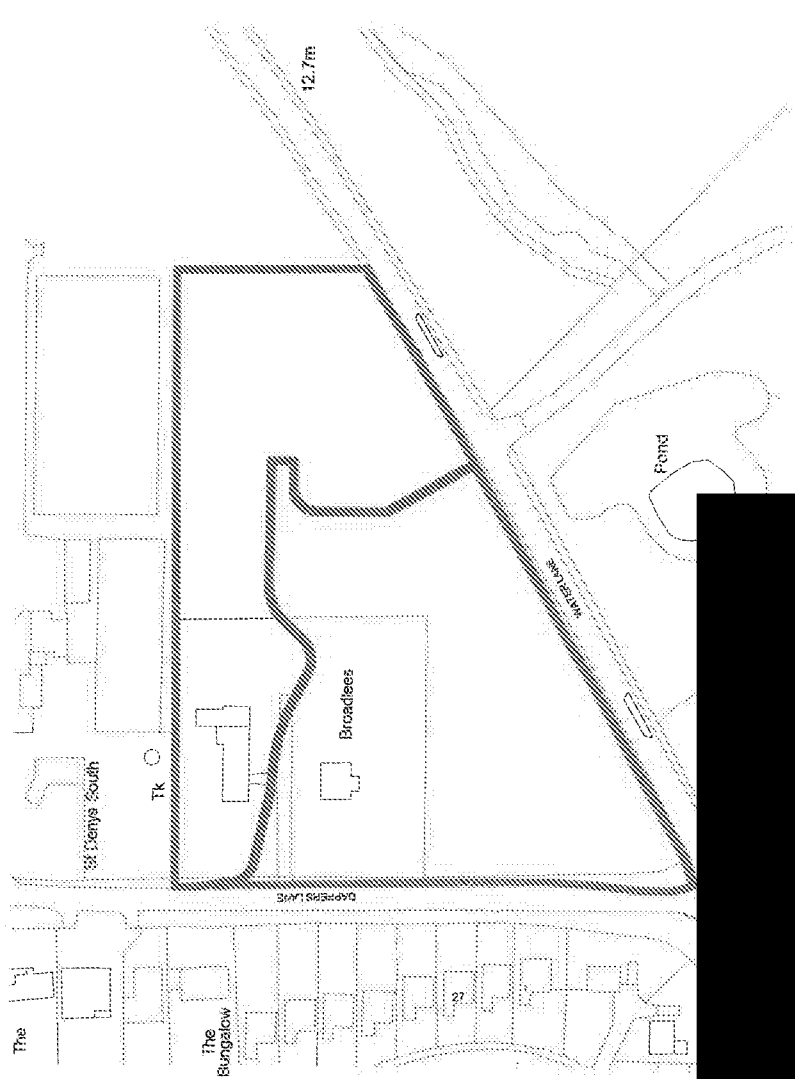
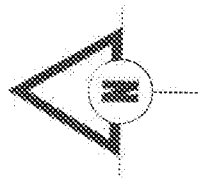
DISTRICT COUNCIL COVENANTS

- 1 Health Care Contribution
- 1.1 Upon receipt of the Health Care Contribution under paragraph 1 of First Schedule it shall transfer the same to the CCG on the basis that it shall be used only for the purposes set out in this Agreement

APPENDIX 1
PLAN

NOTES

Do not scale the drawing.
All dimensions are in millimetres unless stated otherwise.
This drawing is to be used in conjunction with all other relevant drawings and specifications.
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186/2019

Revised by		Revised by	
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harriswin

100 Stables Lane, Richmond, North Yorkshire, DL10 2JG
T: 01454 828283
E: info@harriswin.co.uk
W: www.harriswin.co.uk

Project:

Proposed Care Home
Berbers Lane
Airedale

Client:

Frontier Estates

Drawing Title:
Location Plan

PLANNING

Project Number:
1817

Project Name:
1817 - HA - 04 - XX - ER - A - 01001

Project Date:
18/11/15



SCALE 1:1250 @ A3

EXECUTED and delivered as a deed on the date of this Agreement

EXECUTED as a deed by affixing the
common seal of **ARUN DISTRICT**
COUNCIL in the presence of:

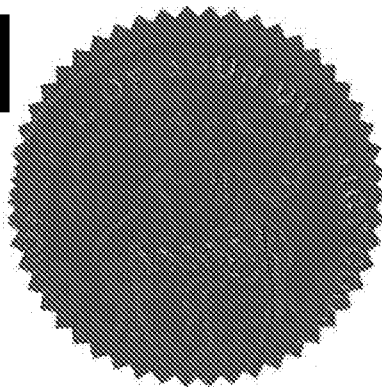
Authorised signatory

Name *LOUISE GREENE*

Job title *Solicitor, Legal Services
manager*

Seal Book Number

186/2019



Authorised signatory

EXECUTED as a deed by
FRONTIER ESTATES (MERING)
LIMITED acting by:

Director

Director/Secretary

