

Deed of Modification
of Planning Obligation under
Sections 106 and 106A of the
Town and Country Planning
Act 1990 relating to
**Land at The Cottage,
Shripney Road, Bognor
Regis, PO22 9PA**

Dated

2018

(1) Maurice Philip Baillie

(2) Castle Property Developments Limited

(3) Arun ADC

(4) West Sussex County Council

DATED

2018

PARTIES

- (1) MAURICE PHILIP BAILLIE of the Cottage, Shripney, Bognor Regis, West Sussex, PO22 9PA ("**the Owner**");
- (2) CASTLE PROPERTY DEVELOPMENTS LIMITED (Company No. 19842142) whose registered office is at 1&2 The Barn, West Stoke Road, Lavant, Chichester, West Sussex, PO18 9AA ("**the Applicant**");
- (3) ARUN DISTRICT COUNCIL of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("**ADC**");
- (4) WEST SUSSEX COUNTY COUNCIL of County Hall, Chichester, West Sussex, PO19 1RQ ("**WSCC**")

BACKGROUND

- (A) This Deed is supplemental and collateral to the Principal Agreement.
- (B) ADC is the Local Planning Authority and the local housing authority for the area in which the Site is situated by whom the planning obligations imposed by the Principal Agreement are enforceable.
- (C) WSCC is the Strategic Planning Authority, the local highway authority and the local education authority for the area in which the Site is situated by whom the planning obligation imposed by the Principal Agreement are enforceable.
- (D) The Owner is the registered proprietor of the Site with Title Absolute under Title Number WSX224893 subject to the entries disclosed on the Charges Registers of the said Title but otherwise free from encumbrances.
- (E) The Applicant has submitted the Section 73 Application to vary the Permission.
- (F) The Parties to this Deed have agreed under sections 106A(1)(a) and 106A(2) of the Act to modify the Principal Agreement in the manner set out in the Schedule hereto.
- (G) ADC, the Owner and the Applicant have further agreed to discharge the Unilateral Undertaking and incorporate its terms (as varied by this Deed) into the Principal Agreement.

AGREED TERMS

1 Definitions

- 1.1 The following words and expressions shall have the following meanings in this Deed:

Deed: means this deed of discharge and modification under sections 106 and 106A of the Act

Principal Agreement: the agreement dated 10 November 2017 under section 106 of the Act between the Owner (1), the Applicant (2), ADC (3) and WSCC (4)

Section 73 Application: the application reference [] under section 73 of the Act to allow for the phased delivery of the Development

Section 73 Permission: the permission to be granted pursuant to the Section 73 Application

Unilateral Undertaking: the undertaking dated 13 December 2017 under section 106 of the Act given by the Owner to ADC

- 1.2 Unless expressly stated otherwise, all words and phrases defined in the Principal Agreement shall have the same meaning in this Deed.

2 Interpretation

- 2.1 Clause headings shall not affect the interpretation of this Deed.
- 2.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.5 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of ADC and WSCC the successors to its respective statutory functions.
- 2.6 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.
- 2.7 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 2.8 Unless the context otherwise requires, references to clauses, Schedules and paragraphs are to the clauses, Schedules paragraphs of this Deed.
- 2.9 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.10 The provisions in clauses 18.2.3, 18.2.4, 18.2.5, 18.2.6, 18.2.9, 18.2.10, 18.2.12, 19, 20 of the Principal Agreement are incorporated into this Deed and shall be construed to take effect *mutatis mutandis*

3 Statutory provision

This Deed is made pursuant to the provisions of sections 106 and 106A of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling power.

4 Conditionality

- 4.1 This Deed takes effect on the date hereof.

5 Discharge of the Undertaking

- 5.1 ADC hereby discharges the Unilateral Undertaking in consideration for its terms (as varied by this Deed) being incorporated into Principal Agreement.
- 5.2 From the date hereof the planning obligations under the Unilateral Undertaking shall cease to bind the Application Site and the Unilateral Undertaking shall cease and determine absolutely and be of no further effect.

6 Modifications to the Principal Agreement

- 6.1 The Principal Agreement shall be modified as set out in the Schedule hereto.
- 6.2 In all other respects the Principal Agreement continues in full force and effect as modified by this Deed.
- 6.3 All references in the Principal Agreement to "this/the Agreement" or "this/the Deed" or similar expressions shall take effect as references to the Principal Agreement as so modified.

7 Covenants to ADC and WSCC

- 7.1 The First Owner covenants with ADC and WSCC to observe and perform the covenants, restrictions and obligations contained in the Principal Agreement as modified by this Deed.
- 7.2 The Second Owner covenants with ADC and WSCC to observe and perform the covenants, restrictions and obligations contained in the Principal Agreement as modified by this Deed.

8 Local Land Charge

- 8.1 This Deed shall be registered as a local land charge.
- 8.2 The Unilateral Undertaking shall be removed from the register of local land charges.

9 Councils' Costs

- 9.1 The Second Owner shall pay to ADC on completion of this Deed ADC's reasonable and proper legal costs incurred in connection with this Deed.
- 9.2 The Second Owner shall pay to WSCC on completion of this Deed WSCC's reasonable and proper legal costs incurred in connection with this Deed.

10 Value Added Tax

- 10.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT.
- 10.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

11 Third Party Rights

No provisions of this Deed operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as party to this Deed but this exclusion shall not prevent any successors in title or successors to statutory functions from being able to benefit from or enforce this Deed.

12 Governing Law & Jurisdiction

- 12.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

12.2 The County Court in whose district the Site is situated shall have full jurisdiction to hear and determine any proceedings arising from or relating to this Deed or the enforcement of its terms.

13 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

This Deed is executed as a deed by the parties and is delivered and takes effect on the date at the beginning of this agreement.

Schedule

Modifications to the Principal Agreement

- 1 Clause 2 shall be modified by adding the following new definitions in alphabetical order:

" "NHS Contribution" means a financial contribution towards The Croft Practice required as a result of the Development and calculated and paid in accordance with Clause 9.2"

"Section 73 Application: the application reference [] under section 73 of the Act to allow for the phased delivery of the Development"

"Section 73 Permission: the permission to be granted pursuant to the Section 73 Application"
- 2 Clause 2.8 shall be modified by adding after the words "Application Site" the words "and/or the Section 73 Application allowing for the phased delivery of the Development"
- 3 Clause 2.14 shall be modified by adding after the words "the Planning Permission" the words "and/or the Section 73 Permission"
- 4 Clause 5.1.1 shall be modified by deleting the words "first Occupation of any Dwelling Unit" and replacing them with "Occupation of the second and subsequent Dwelling Unit in phase 2"
- 5 Clause 5.1.2 shall be modified by deleting the words "first Occupation of any Dwelling Unit" and replacing them with "Occupation of the second and subsequent Dwelling Unit in phase 2 "
- 6 Clause 6.1.1 shall be modified by deleting the words "first Occupation of any Dwelling Unit" and replacing them with "Occupation of the second and subsequent Dwelling Unit in phase 2 "
- 7 Clause 6.1.2 shall be modified by deleting the words "first Occupation of any Dwelling Unit" and replacing them with "Occupation of the second and subsequent Dwelling Unit in phase 2 "
- 8 Clause 7.1.1 shall be modified by deleting the words "first Occupation of any Dwelling Unit" and replacing them with "Occupation of the second and subsequent Dwelling Unit in phase 2 "
- 9 Clause 7.1.2 shall be modified by deleting the words "first Occupation of any Dwelling Unit" and replacing them with "Occupation of the second and subsequent Dwelling Unit in phase 2"
- 10 Clause 9.1 shall be modified by deleting the words "Subject to the Review Mechanism,"
- 11 Clause 9.1.1 shall be modified by deleting the words "first Occupation of any Dwelling Unit" and replacing them with "Occupation of the second and subsequent Dwelling Unit in phase 2 "
- 12 Clause 9.1.2 shall be modified by deleting the words "first Occupation of any Dwelling Unit" and replacing them with "Occupation of the second and subsequent Dwelling Unit in phase 2"
- 13 There shall be added into the Principal Agreement new clause 9.2 which provides:

"9.2 The Owner covenants with ADC:

9.2.1 Prior to Commencement of the second or subsequent Dwelling Unit in phase 2 to pay to ADC the NHS Contribution attributable to the Development calculated

by reference to the costs, requirements and assumptions and the NHS Contribution multiplier set out in Clause 9.3;

9.2.2 Not to Commence or cause or allow the Commencement of the second or subsequent Dwelling Unit in phase 2 until the NHS Contribution has been paid to ADC.

9.3 The NHS Contribution shall be calculated in accordance with the infrastructure costs, average patient square meter requirements and occupancy assumptions set out below:

- Infrastructure costs: £4,300 per square metre
- Average square metre per patient: 0.1142 square metres
- Average Occupancy assumptions:

House type	Persons in Occupation
1 bed	1.5
2 bed	1.9
3 bed	2.5
4 bed	3
5 bed	5

Giving rise to the following NHS Contribution multiplier:

House type	contribution per Dwelling Unit
1 bed	£737
2 bed	£933
3 bed	£1,228
4 bed	£1,473

- 14 Schedule 3, paragraph 1.1. shall be modified by adding after the words "Reserved Matters Application" the words "for more than one Dwelling Unit"

SEALED with the **COMMON SEAL**

of **ARUN ADC**

in the presence of :

Seal Book No:

Authorised Signatory

SEALED with the **COMMON SEAL**

of **WEST SUSSEX COUNTY COUNCIL**

in the presence of :

Seal Book No:

Authorised Signatory

EXECUTED as a **DEED** by)

CASTLE DEVELOPMENTS LIMITED)

acting by Director:)

in the presence of:

Witness signature:

Witness name:

Witness address:

Witness occupation:

EXECUTED as a **DEED** by)
MAURICE PHILIP BAILLIE)

in the presence of:

Witness signature:

Witness name:

Witness address:

Witness occupation: