

DATED

29 April 2019

SECTION 106 AGREEMENT

TOWN & COUNTRY PLANNING ACT 1990

relating to land at The Royal Hotel The Esplanade Bognor Regis

PLANNING REF: BR/326/18/PL

PARTIES:

METAMORPH MANAGEMENT LTD

DANNY JUNIOR KEET

LLOYDS BANK PLC

ARUN DISTRICT COUNCIL

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THIS DEED is dated 29 April 2019

- (1) **METAMORPH MANAGEMENT LTD** incorporated and registered in England and Wales with company number 11271684 whose registered office is at 10 London Mews London United Kingdom W2 1HY "**the Applicant**"
- (2) **DANNY JUNIOR KEET** of 41 Elm Grove Barnham Bognor Regis PO22 0RD "**the Owner**"
- (3) **ARUN DISTRICT COUNCIL** of Arun Civic Centre Maltravers Road Littlehampton West Sussex BN17 5LF "**the Council**"
- (4) **LLOYDS BANK PLC** incorporated and registered in England and Wales with company number 2065 whose registered office is at 25 Gresham Street London EC2V 7HN "**the Mortgagee**"

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner is the freehold owner of the Property
- (C) The Applicant has made the Planning Application and is proposing to carry out the Development.
- (D) The Mortgagee is the registered proprietor of the charge dated 17 April 2012 referred to in entry number C3 of the charges register of Title number WSC270543 and has agreed to enter into this deed to give its consent to the terms of this deed.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Access Management Contribution: the sum of £14,807 towards the cost of delivering measures to avoid, or mitigate to an acceptable level, the harm caused to Pagham Harbour by the Development.

Affordable Housing Contribution: the sum of £36,800 towards affordable housing to be used by the Council towards providing and / or improving Affordable Housing within the District of Arun.

Base Rate: the higher of 5% and the base rate from time to time of Barclays Bank plc.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; diversion and laying of services; and erection of any fences and hoardings around the Property. **Commenced** and **Commences** shall be construed accordingly.

Default Interest Rate: 4% per annum above the Base Rate.

Development: the development of the Property by Refurbishment, external alterations, extensions & reconfiguration of previously permitted conversion to rebuild ground floor A3 restaurant & provide a total of 27 flats.

Dwelling Unit: means a residential unit to be constructed on the Property pursuant to this Planning Permission and "Dwelling Units" shall be construed accordingly.

First Occupation: means beneficial occupation for any use for which the Development was designed other than occupation for the purposes of construction, fitting out or marketing.

Pagham Harbour: A Special Protection Area, also known as a Natura 2000 site, based in Pagham, West Sussex in the District of Arun, identified as being of international importance for the breeding, feeding, wintering or migration of rare and vulnerable species of European Union birds.

Plan: the plan attached to this deed.

Planning Application: an application for planning permission registered by the Council under reference number BR/326/18/PL

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application.

Property: the freehold land at Royal Hotel the Esplanade Bognor Regis PO21 1SZ shown edged red on the Plan and registered at HM Land Registry with absolute title under title numbers WSX270543.

TCPA 1990: Town and Country Planning Act 1990.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

1.2 Clause 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 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to the Council shall include the successors to its respective statutory functions.
- 1.8 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.
- 1.9 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.
- 1.10 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11 A reference to **this deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses are to the clauses of this deed.
- 1.13 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.

- 1.14 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.

2. STATUTORY PROVISIONS

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, Localism Act 2011 and any other enabling powers.
- 2.2 The obligations contained in clause 4 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner and Applicant with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 The obligations contained in clause 4 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. CONDITIONALITY

- 3.1 This deed is conditional upon:
- (a) The grant of the Planning Permission; and
 - (b) The Commencement of Development
- 3.2 save for the provisions of Clauses 10, 11, 12 and 13 which shall come into effect immediately upon completion of this deed.

4. THE OWNER AND APPLICANT COVENANT WITH THE COUNCIL

- 4.1 The Owner and Applicant covenants with the Council to pay the Access Management Contribution and Affordable Housing Contribution to the Council on or before First Occupation of the 1st Dwelling Unit.
- 4.2 The Owner and Applicant covenants with the Council not to cause or allow the First Occupation of the 1st Dwelling Unit before the Access Management Contribution and Affordable Housing Contribution has been paid to the Council.

5. THE COUNCIL'S COVENANT WITH THE APPLICANT AND OWNER

- 5.1 Upon receipt of the Access Management Contribution and Affordable Housing Contribution under the terms of clause 3 the Council will hold it in a separately identified interest bearing section of the Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Property.
- 5.2 Upon written request on or after ten (10) years of the date of receipt of the Access Management Contribution and Affordable Housing Contribution to issue to the party that paid Access Management Contribution and Affordable Housing Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the Council detailing how the Access Management Contribution and Affordable Housing Contribution has been expended by the Council.
- 5.3 If or to the extent that any of Access Management Contribution and Affordable Housing shall not have been spent by the Council by the end of the period referred to in paragraph 5.2 above the Council shall on such date refund to the party that paid the Access Management Contribution and Affordable Housing any unexpended part of any of Access Management Contribution and Affordable Housing together with compound interest on the unexpended part(s) from the date of receipt by the Council of the contribution to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 5.4 If at the end of the period referred to in paragraph 5.2 of this clause the Council shall have entered into a contract or other legally binding obligation to expend the Access Management Contribution and Affordable Housing or part thereof for the purposes specified in paragraph 4.1 then the Council shall not be required to refund any part of the Access Management Contribution and Affordable Housing required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid Access Management Contribution and Affordable Housing in the manner set out in paragraph 4.2 of this Clause and refund any unexpended part of the Access Management Contribution and Affordable Housing in the manner set out in paragraph 4.3 of this Schedule.

6. RELEASE

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

7. EXCLUSIONS OF LIABILITY

7.1 This Deed shall not be enforceable against owner-occupiers (other than the Owner) or tenants of the Dwelling Units constructed pursuant to the Planning Permission nor against those deriving title from them

7.2 This Deed shall not be enforceable against any statutory undertaker or other person who acquires any part of the Property or interest therein for the purpose of the supply of electricity, gas, water, drainage, telecommunication services or public transport services

7.3 This Deed shall not be binding upon or enforceable against any mortgagee, chargee or any receiver appointed by such mortgagee or chargee (not being a mortgagee in possession).

8. DETERMINATION OF DEED

This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

9. LOCAL LAND CHARGE

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

10. INTEREST ON LATE PAYMENT

If the Access Management Contribution and Affordable Housing Contribution has not been paid to the Council on First Occupation of the 1st Dwelling Unit, the Owner shall pay the Council interest on the Access Management Contribution and Affordable Housing Contribution

the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the date of First Occupation of the 1st Dwelling Unit and including the date of payment.

11. COUNCIL'S COSTS

The Owner shall pay to the Council on the date of this deed the Council's reasonable and proper legal costs in the sum of £1,000 (one thousand pounds) incurred in connection with the preparation, completion and registration of this deed.

12. NOTICES

12.1 A notice or other communication to be given under or in connection with this deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

12.2 Any notice or other communication to be given under this deed must be sent to the relevant party as follows:

- (a) to the Council at: Arun Civic Centre Maltravers Road Littlehampton West Sussex BN17 5LF marked for the attention of the Planning Department and quoting the Planning Application number;
- (b) to the Applicant at: Field House, Newells Lane, West Ashling, Chichester, PO18 8DD
- (c) to the Owner at: 41 Elm Grove Barnham Bognor Regis PO22 0RD marked for the attention of Danny Junior Keet

12.3 Any notice or other communication given in accordance with clause 12.1 and clause 12.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the address] provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;

- (b) if sent by pre-paid first class post or other next working day delivery service at 9.00 am on the second Working Day after posting.

12.4 A notice or other communication given under this deed shall not be validly given if sent by e-mail.

12.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

14. GOVERNING LAW

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.

15. MORTGAGEE'S CONSENT

15.1 The Mortgagee consents to the completion of this deed and declares that its interest in the Property shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property.

15.2 The Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by
METAMORPH MANAGEMENT LTD
acting by a director In the presence
of:

Signature of
Director: _____

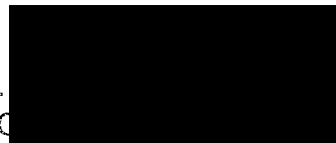
Signature of
witness: _____



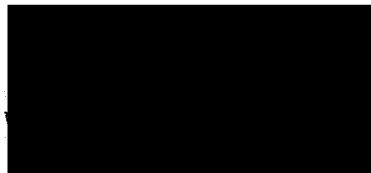
Name: WEXLEY PETERSON

Address: THE ANNEX, FIELD HOUSE
NEWELL LANE
PO18 8DD

Signed as a Deed by
DANNY JUNIOR KEET



In the presence of:-



Name: CARL STORM BATE

Address: THE FOUNDRY, ST GEORGES MEWS,
BRIGHTON BN1 4EU

Executed as a deed by
LLOYDS BANK PLC by affixing
the Corporate Seal in the
presence of:

SIGNED AS A DEED	
BY Anita Devi as authorised signatory for Lloyds Bank plc	Per Pro
	
..... [AUTHORISED SIGNATORY]	

Executed as a Deed by
affixing
THE COMMON SEAL of }
ARUN DISTRICT COUNCIL in
the presence of:- }

Authorised Signatory

Signature

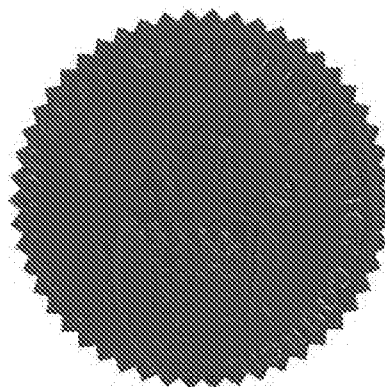


Name..... EDWARD O'BRIEN.....

Job

Title..... PROPERTY LAWYER.....

Seal Book No. 166/2019



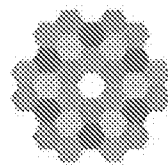
These are the notes referred to on the following official copy

The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from HM Land Registry.

This official copy is issued on 29 April 2019 shows the state of this title plan on 29 April 2019 at 14:49:51. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. This title is dealt with by the HM Land Registry, Durham Office .



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