

Dated: _____ 2014

Between:

- [1] Waterford Properties Limited and Peter John Ireland
[The Owners]
- [2] Waterford Properties Limited [The Applicant]
- [3] Arun District Council [ADC]

SUBJECT TO FINAL DETERMINATION

DEED OF VARIATION AND PLANNING OBLIGATION

under Section 106 of the Town & Country Planning Act 1990
and other powers relating to Land at the entrance to Waterford Gardens, Climping in the
County of West Sussex

Deed of variation and to pay affordable housing contribution of £7,203

SUBJECT TO FINAL DETERMINATION

Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex BN17 5LF
DX57406 LITTLEHAMPTON
Reference:

1. **THIS DEED** is by undertaking and is dated _____ 2014 and is a Planning Obligation for the purposes of Section 106 Town and Country Planning Act 1990 ("The Act") and is made in favour of Arun District Council

2. PARTIES

Owners	Waterford Properties Limited (Co reg No 3121570) whose registered office is at The Telecottage, Waterford Gardens, Horsemere Green Lane, Climping, West Sussex BN17 5QX of part of the Property under HMLR Title No. WSX 257188 and Peter John Ireland of 19 The Hamlet, Waterford Gardens, Climping, West Sussex of part of the property under HMLR Title No WSX 271369 copies of which Titles are annexed
Applicant	Waterford Properties Limited
ADC	Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF

3. CAPACITIES TO ENTER INTO DEED AND BASIC DEFINITIONS

Party	Capacity
Owners	Freehold owners under HMLR registered Title no WSX 257188 and Title no 271369 of land at the entrance to Waterford Gardens, Climping, West Sussex ("The Land") shown for identification only edged black on the attached plan and the applicant for planning permission described below
Applicant	The Applicant has applied for Planning Permission under Application Ref: for the erection of 1 no. 4 bedroom dwelling (renewal of planning permission ref : CM/18/11) and "Planning Application" and "Development" shall be construed accordingly
ADC	Local Planning Authority under Town and Country Planning Act 1990 and (as relevant) as payee in relation to the statutory functions and purposes identified herein in clause 5 namely affordable housing provider /facilitator and under its powers contained in S111 and S135 Local Government Act 1972 and all other powers enabling.
The Planning Permission	Means the Planning Permission for the Development subject to a resolution to grant made 2014 under reference

- 3.1 The expression "ADC" shall include any statutory successor authority of it and the expressions "the Owner" and "the Applicant" shall include all persons deriving title to the Property under them and shall include (if appropriate) two or more owners.

4. BACKGROUND

- 4.1 The Applicant has made the Planning Application which the ADC is minded to grant subject to the making of the payments specified within this Deed which are required under the Act and Planning Policy Guidance to mitigate any ill effects of the Development and in particular the shortage of affordable housing as identified in the Affordable Housing Policy.
- 4.2 If the permission granted pursuant to the Application shall expire or shall have been revoked before the commencement of the Development this Agreement shall forthwith determine and cease to have effect.
- 4.3 No person shall be liable for breach of a covenant contained in this Agreement after it shall have parted with all interest in the Property or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 4.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the property in accordance with a planning permission (other than the permission for the

Proposed Development) granted (whether or not on appeal) after the date of this Agreement.

- 4.5 Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by prepaid registered or recorded delivery post to the party to be delivered at its address herein specified or such other address as may from time to time be notified for the purpose in writing.

5. CONTRIBUTIONS PAYABLE

- 5.1 The Owner and the Applicant undertakes with the ADC to:-

- (i) make the payments specified below
- (ii) to the payee specified below
- (iii) for the purposes specified below
- (iv) and at the time specified below

Payee	Time for Payment ("the Due Date")	Amount	Statutory Function and Purpose
ADC	On or before Commencement of the Development for any purposes of the Planning Permission	£7,203	Affordable Housing within the whole of the Arun District.

- 5.2 The Owner and the Applicant undertakes with ADC not to start the Development until the payment is made.
- 5.3 ADC undertakes to repay to the Owner and Applicant such amount of the affordable housing contribution which has not been allocated within 10 years of the date of receipt by ADC of the financial contribution together with simple interest on the sum calculated on a daily basis at 2% below the base rate of the National Westminster Bank PLC base rate in force from time to time for the period from the date of payment of the affordable housing contribution to ADC to the date of refund PROVIDED THAT no interest shall be payable with respect to any period during which the said interest rate is lower than or equal to 2%

6 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	ADC Legal Fees
ADC	On Commencement of the Development for the purposes of the Planning Permission	£100 PLUS £50 TOTAL £150	ADC Monitoring of compliance with the Deed

Legal Costs of ADC

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

Monitoring Costs of ADC

- 6.2 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 or £15,000 which ever shall be the larger.
- 6.3 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 purposing 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

- 7.1.1. This Deed will take effect on the grant of the Planning Permission.
- 7.1.2. 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.
- 7.1.3. 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

General

- 7.2 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
 $\frac{C}{D}$ is equal to or greater than 1

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 of 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 party 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 any part of the Land that may in future be acquired by a statutory undertaker for the purposes of its undertaking or operational Land as defined in the S262 of the Act

9. VERIFICATION OF TITLE AND OBLIGATIONS

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 Applicants 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.

DRAFT

SCHEDULE 1

Commencement Notice

Pursuant to Clause 7.1.3 in the Planning Obligation

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 _____ 20

Signed _____

On Behalf Of: _____

TO:	[1] 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.

Failure to use this form may mean problems with acknowledgment 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 Litttlehampton West Sussex BN 17 5LF DX 57406 Littlehampton

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]	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	

SCHEDULE 3

SIGNED AS A DEED BY
THE OWNER IN THE
PRESENCE OF

SIGNED AS A DEED BY
THE APPLICANT IN THE
PRESENCE OF

DRAFT