

DATED

26 May

2015

HARGREAVES RESIDENTIAL DEVELOPMENTS LIMITED

- and -

ARUN DISTRICT COUNCIL

AGREEMENT CREATING A PLANNING OBLIGATION
PURSUANT TO SECTION 106 OF THE TOWN & COUNTRY
PLANNING ACT 1990 relating to Land at The
Poplars, Littlehampton, West Sussex
BN17 6GZ
Planning Application Reference: LU/106/15/PL

Wedlake Bell

52 Bedford Row
London
WC1R 4LR

Direct Dial [REDACTED]
Direct Fax [REDACTED]
Direct Email d [REDACTED]
DME/WB1-9885862-2

WB19885862\2

CONTENTS

Clause	Page No.
1. INTERPRETATION	1
2. STATUTORY PROVISIONS	3
3. COVENANTS WITH THE COUNCIL	4
4. RELEASE	4
5. DETERMINATION OF DEED	4
6. CONDITIONALITY	4
7. ACKNOWLEDGEMENT AND AGREEMENT BY THE COUNCIL	4
8. LOCAL LAND CHARGE	5
9. COUNCIL'S LEGAL AND MONITORING COSTS	5
10. INDEX LINKING	5
11. OWNERSHIP	6
12. COUNCIL'S OBLIGATIONS REGARDING 2014 AFFORDABLE HOUSING CONTRIBUTION	6
13. NOTICES	6
14. THIRD PARTY RIGHTS	7
15. MISCELLANEOUS	7
16. GOVERNING LAW	7

THIS DEED OF VARIATION is entered into on

26 May 2015

BETWEEN:

1. **HARGREAVES RESIDENTIAL DEVELOPMENTS LIMITED** incorporated and registered in England and Wales with company number 4221754 whose registered office is at Brookfield, Lyminster Road, Lyminster, West Sussex BN17 7QN ("**Owner**"); and
2. **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF ("**Council**").

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 owns the Property.
- (C) The Owner has made the Planning Application and is proposing to carry out the Development.
- (D) The Planning Application is an application made under section 73 of TCPA 1990 to vary a condition or conditions included in previous planning permissions relating to the Property granted by the Council under references LU/203/13 and LU/125/14/PL.
- (E) On 9 May 2014 the Owner entered into an unilateral undertaking in favour of the Council prior to the grant of the planning permission issued under reference LU/125/14/PL the terms of which (inter alia) (i) imposed an obligation on the Owner to pay to the Council the 2014 Affordable Housing Contribution (as hereinafter defined) and (ii) restricted the use of part of the Property as open space and the Owner and the Council wish to ensure that similar obligations (as varied by the terms of this deed) are entered into by the Owner in respect of the Development.
- (F) The Planning Permission issued under reference LU/125/14/PL has been implemented by the Owner and the 2014 Affordable Housing Contribution has been paid to the Council by the Owner.
- (G) The Council wishes to ensure that if Planning Permission is granted by the Council (or, as the case may be, the Secretary of State following an Appeal) and the Development is Commenced on the Property that the Owner undertakes various obligations pursuant to and in accordance with the terms of this deed.
- (H) This deed is a planning obligation for the purposes of Section 106 of TCPA 1990 and for all other purposes is an agreement under Section 111 of the 1972 Act Section 2 of the Local Government Act 2000, Section 1 of the Localism Act 2011 and all other enabling powers.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this deed:

Affordable Housing Contribution: the sum of eleven thousand nine hundred and twenty pounds (£11,920) towards the provision of affordable housing (within the meaning set out in Annex 2 of NPPF (March 2012 version)) within the whole of the Arun District.

Appeal: any appeal made by the Owner to the Secretary of State in the event that the Council refuses (or is deemed to refuse) to grant Planning Permission.

CIL Regulations: the Community Infrastructure Levy Regulations 2010.

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; and erection of any fences and hoardings around the Property.

Commence, Commenced and Commences shall be construed accordingly.

Commencement Date: the date of Commencement of Development.

Council: Arun District Council of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF.

Development: the development of the Property described in the Planning Application.

Dwelling: a dwelling to be constructed pursuant to the Planning Permission.

Plan: the plan attached to this deed.

Property: the freehold land situate at The Poplars, Littlehampton BN17 6GZ shown edged red on the Plan being part of the land registered at the Land Registry with absolute title under title number WSX258597.

Planning Application: an application for planning permission registered by the Council under reference number LU/106/15/PL.

Planning Permission: the planning permission to be granted by the Council (or, as the case may be, by the Secretary of State following an Appeal) pursuant to TCPA 1990 and pursuant to the Planning Application.

Secretary of State: the Secretary of State for Communities and Local Government (or such minister responsible for discharging planning powers) and any inspector appointed to hear the Appeal on his behalf.

the Unilateral Undertaking: a planning obligation by any of unilateral undertaking dated 9 May 2014 given by the Owner in favour of the Council in respect of the Planning Permission granted by the Council under reference LU/125/14/PL.

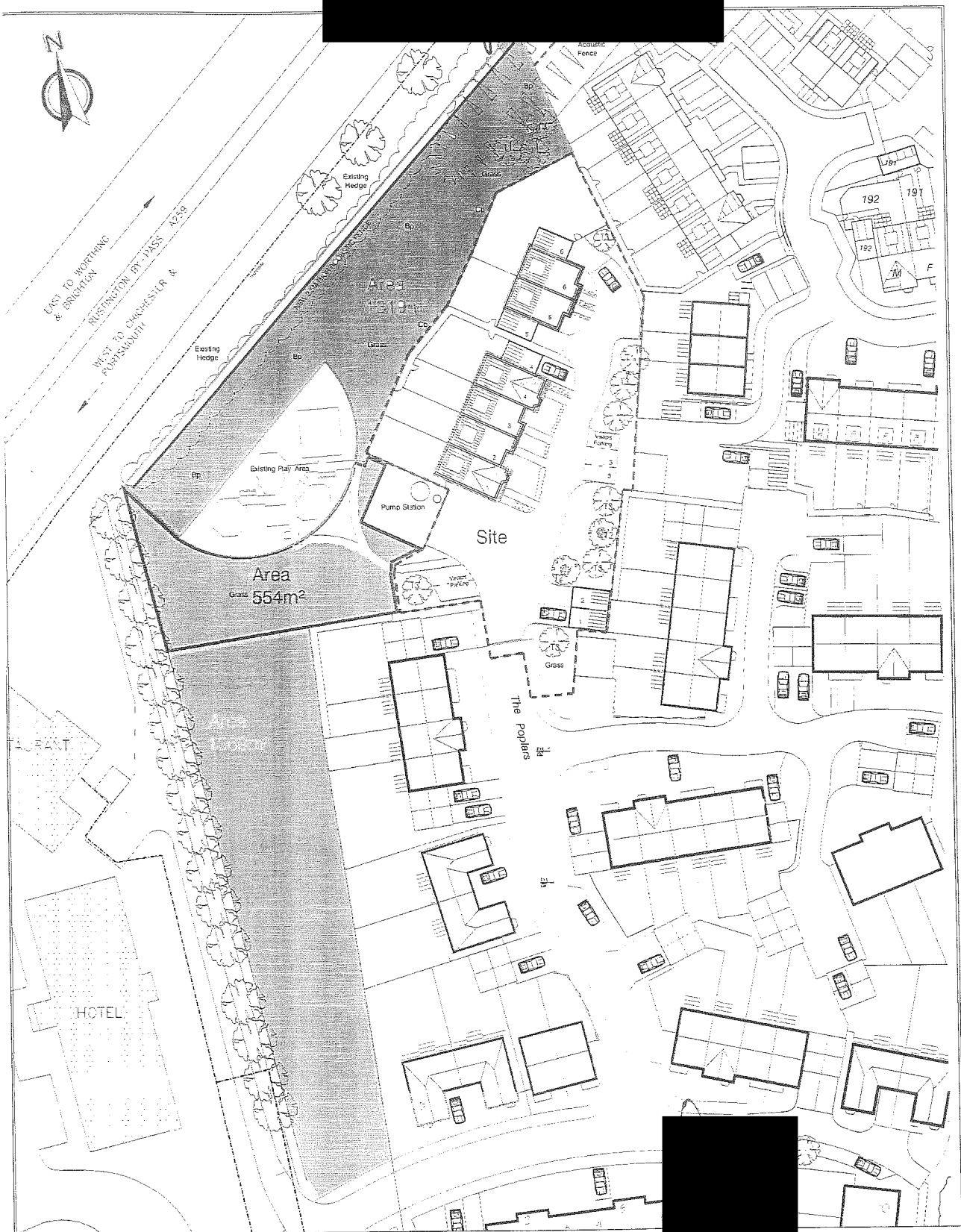
the 1972 Act: the Local Government Act 1972.

TCPA 1990: Town and Country Planning Act 1990.

the 2014 Affordable Housing Contribution: the sum of eleven thousand nine hundred and twenty pounds (£11,920) payable by the Owner pursuant to the Unilateral Undertaking and defined in the Unilateral Undertaking as "the Affordable Housing Contribution".

Working Day: a day (other than a Saturday, Sunday or public holiday in England when banks in London are open for business).

1.2 Clause headings shall not affect the interpretation of this deed.



B	Plots 5 and 6 repositioned. Garden and green space config altd.	13/03/15
A		
REV	DESCRIPTION	DATE
REVISION		

Hargreaves

Residential Development
The Poplars (Former HRI Site)
Worthing Road, Littlehampton
SITE AREA PLAN

023 001	101	B
1:500	1:500	1:500

RICHARD R ANDREW

PATRICK HAMILTON

- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time; provided that, as between the parties, no such amendment, extension or re-enactment shall apply to the deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.
- 1.9 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 does not include e-mail.
- 1.11 A reference to "this deed" or to any other agreement or document referred to in this deed is a reference to this deed or such other document or deed 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 and plans are to the clauses and plans of this deed.
- 1.13 An obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.14 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.15 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 1972 Act, section 1 Localism Act 2011 and any other enabling powers.
- 2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 This deed shall come into effect on the date of grant of the Planning Permission but not otherwise.

- 2.4 The obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. COVENANTS WITH THE COUNCIL

The Owner covenants with the Council:

- 3.1 to give the Council at least 7 days prior written notice of the date of Commencement of Development such notice to be addressed to the Council's Head of Planning Services, or equivalent post or authorised delegate Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton BN17 5LF;
- 3.2 not to Commence Development or cause or permit the Commencement of Development until the Affordable Housing Contribution has been paid to the Council;
- 3.3 in the event that the Owner fails to pay the Affordable Housing Contribution by the date of the Commencement of Development to pay to the Council interest on the same calculated on a daily basis at a daily rate of $1/365^{\text{th}}$ of the annual rate of interest of 4% greater than the HSBC Bank Plc base rate in force from time to time from the date of Commencement of Development to the date of payment thereof; and
- 3.4 to retain forever the use of the land shown coloured pink on the Plan as open space for the benefit of and use by the occupiers of the dwellings constructed or to be constructed in the housing development in Littlehampton known as "The Poplars".

4. 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.

5. DETERMINATION OF DEED

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

- 5.1 expires before the Commencement of Development;
- 5.2 is varied or revoked other than at the request of the Owner; or
- 5.3 is quashed following a successful legal challenge.

6. CONDITIONALITY

The obligations on the Owner imposed by this Deed are conditional on the grant of Planning Permission

7. ACKNOWLEDGEMENT AND AGREEMENT BY THE COUNCIL

- 7.1 Subject to the Owner complying with its obligations under clause 10, the Council acknowledges the receipt of the 2014 Affordable Housing Contribution prior to the date of this deed and confirms that the Owner's obligation to pay the Affordable Housing Contribution pursuant to clause 3.2 has been discharged by the payment of the 2014 Affordable Housing Contribution.
- 7.2 The Council hereby releases the Owner from its obligation under clause 3.4 of the Unilateral Undertaking (which clause shall have no further force or effect) such obligation being replaced by the obligation imposed by clause 3.4 of this deed.

8. LOCAL LAND CHARGE

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

9. COUNCIL'S LEGAL AND MONITORING COSTS

9.1 The Owner undertakes with the Council to:-

9.1.1 pay in addition to the Contributions

9.1.2 the sums set out in the table below

9.1.3 at the time or times set out in the table below and

9.1.4 for the purposes set out in the table below

Payee	Time for Payment	Amount	Purpose
The Council	Before completion of this Deed	£500	The Council's Legal Fees

9.2 The Council acknowledges the receipt from the Owner the sum of £500 to pay its reasonable legal fees in connection with the negotiation and preparation of this deed.

9.3 For the avoidance of doubt the Council shall be entitled to utilise a proportion of the Affordable Housing Contribution for related project costs up to a maximum of 5% of the sum or £15,000 which ever shall be the larger.

9.4 For the avoidance of doubt the above charges are standard charges and shall not preclude the Council 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

10. INDEX LINKING

10.1 The Owner undertakes to the Council that any sums payable by the Owner under this deed shall (subject to clause 9.2) be increased by the application of the following formula:

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

Where:

A is the sum actually payable by the Owner;

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 date that the payment is actually made;

D is the Building Cost Information Service National All-In Tender Price Index for the quarter preceding the date of this deed; and

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

D

and in the case of the Affordable Housing Contribution the date of the payment to be applied in "C" is 25 March 2015 and "the date of this deed" in "D" shall be deemed to be 9 May 2014

- 10.2 The adjustment in this clause 9 shall only be made where the date that the payment is actually made is more than 6 months after the date of this deed.

11. OWNERSHIP

- 11.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property.

- 11.2 Until the obligations in clause 3 have been complied with the Owner will give to the Council within 10 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

11.2.1 the name and address of the person to whom the disposition was made; and

11.2.2 the nature and extent of the interest disposed of.

12. COUNCIL'S OBLIGATIONS REGARDING 2014 AFFORDABLE HOUSING CONTRIBUTION

The Council will use the 2014 Affordable Housing Contribution exclusively for the purpose set out in the definition of "Affordable Housing Contribution" in clause 1.1 and that if and to the extent that it shall not have been spent by the Council pursuant to the purpose specified in this deed by the date that is 15 years after the date that the 2014 Affordable Housing Contribution was paid then the Council shall upon the written request of the Owner refund to the Owner any unexpended sum.

13. NOTICES

- 13.1 Any notice required to be given under this deed shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice at its address as set out below:

13.1.1 Council: Head of Planning Services or equivalent or delegate at Arun Civic Centre, Maltravers Road, Littlehampton BN17 5LF;

13.1.2 Owner: Richard Andrew, Hargreaves, Rustington House, Worthing Road, Rustington, West Sussex BN16 3PS;

or as otherwise specified by the relevant person by notice in writing to each other person.

- 13.2 Any notice shall be deemed to have been duly received:

13.2.1 if delivered personally, when left at the address and for the contact referred to in this clause;

13.2.2 if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; or

13.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

14. THIRD PARTY RIGHTS

No person other than a party to this undertaking, and their respective successors and permitted assigns, and the Council and County Council and the successors to their respective statutory functions shall have any rights to enforce any term of this deed.

15. MISCELLANEOUS

- 15.1 If any court or competent authority finds that any provision of this deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this deed shall not be affected.
- 15.2 If any invalid, unenforceable or illegal provision of this deed would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 15.3 On the Owner's written submission of evidence showing to the Council's satisfaction that the Affordable Housing Contribution has been paid to the County Council the Council shall effect the cancellation of all entries made in the Register of Local Land Charges in respect of this deed.
- 15.4 No covenants or obligations contained in this deed shall be binding on any freehold or leasehold owners or occupiers of any Dwelling on the Property nor on any part of the Property that may in future be acquired by a statutory undertaker for the purposes of its undertaking or operational land as defined in section 263 of TCPA 1990

16. 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 and Wales.

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
HARGREAVES RESIDENTIAL
DEVELOPMENTS LIMITED
acting by:-

Dire

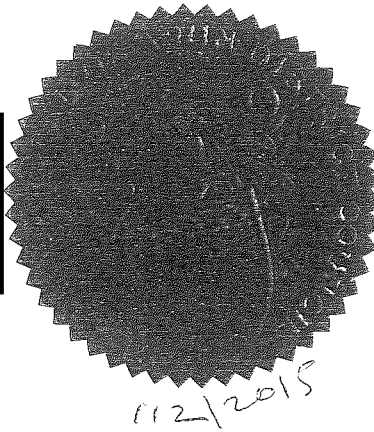
RICHARD R. ANDREW

Director/Secretary

PATRICK HAMILTON

SEALED by THE ARUN DISTRICT
COUNCIL in the presence of

Seal book number





Receipt No. 79474

Official Receipt

VAT Registration No. 193 5586 24

Thank you for your payment

Received from:

HARGREAVES MANAGEMENT LTD
RUSTINGTON HOUSE
WORTHING ROAD
RUSTINGTON
WEST SUSSEX
BN16 3PS

Address if relates to property other than shown above:

Paid Arun LTN 4 39759 06 L01 12:05 08/04/15 NP 352-L01-AFFR 11920.00

Paid Arun LTN 4 39760 06 L01 12:05 08/04/15 NP 020-937-S106 350.00

For office use only:

Ref. No.	Description	Amount	
352-L01	DEPOSITS S106	11920	00
AFFR	AFFORDABLE HOUSING		
020-937	PLANNING MONITORING	350	00
S106	FEES		
Total £		12270	00

Received

- the sum printed in machines figures details of which are indicated above.

To be valid this form of receipt must be passed through a Finance department receiving machine.

05.03.13 H

