Wedlake Bell

DATED 4th February 2013

HARGREAVES RESIDENTIAL DEVELOPMENTS LIMITED

PLANNING OBLIGATION BY WAY OF
UNILATERAL UNDERTAKING UNDER
SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990
relating to
Land at The Poplars, Littlehampton, West Sussex BN17 6GZ
Planning Application Reference: LU/182/12/Appeal

Wedlake Bell

52 Bedford Row
London
WC1R 4LR
[redacted]

Ref DME/HAR/328/254/WB1-7083349-3

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THIS DEED is entered into on 4th February 2013

BY:

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"**)

IN FAVOUR OF:

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 Council refused to grant a planning permission for the Development pursuant to the Application and the Owner has appealed to the Secretary of State against such refusal under the Appeal.

(E) The Council wishes to ensure that if Planning Permission is granted by the Secretary of State 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.

(G) 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 thirteen thousand seven hundred and ninety six pounds (£13,796) 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: the appeal made to the Secretary of State under Planning Inspectorate appeal reference APP/C3810/A/12/2184847.

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.

Contributions: together the Affordable Housing Contribution and the Play Facilities Contribution

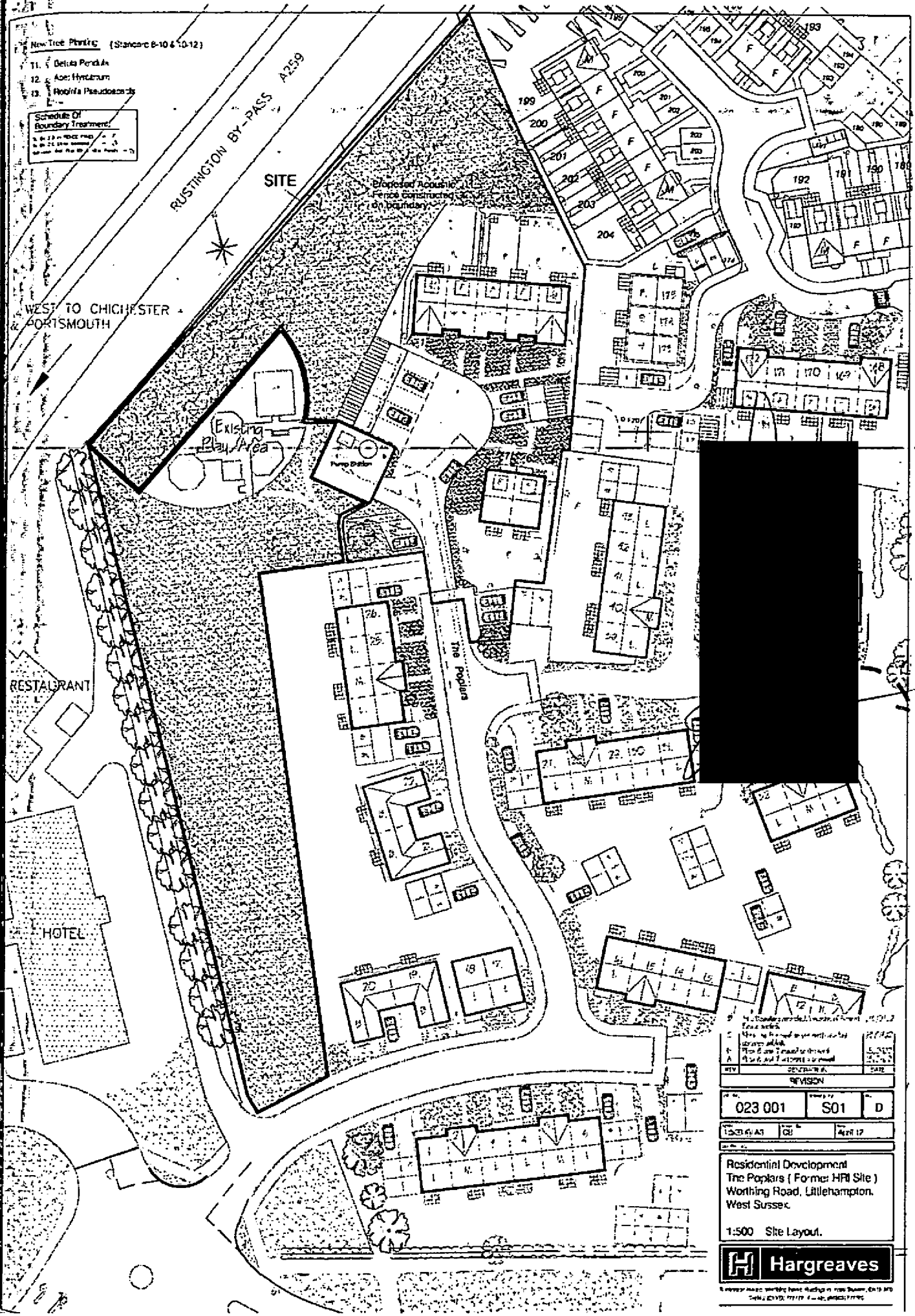
Council: Arun District Council of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF.

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.

Play Facility Contribution: the sum of seven thousand pounds (£7,000) towards the provision of children's play facilities in the vicinity of the Property.


New Tree Planting (Standard 8-10 & 10-12)
11. Betula Pendula
12. Acer Hyracanum
13. Prunus Pseudocerasus
Schedule Of Boundary Treatment
RUSTINGTON BY-PASS A259
SITE
Proposed Acoustic Fence constructed on boundary
WEST TO CHICHESTER & PORTSMOUTH
Existing Play Area
Pump Station
The Poplars
RESTAURANT
HOTEL
REVISION
023 001
S01
D
Residential Development
The Poplars (Former HRI Site)
Worthing Road, Littlehampton.
West Sussex.
1:500 Site Layout.
Hargreaves

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/182/12.

Planning Permission: the planning permission to be granted by the Secretary of State pursuant to TCPA 1990 and pursuant to the Planning Application and the Appeal.

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 1972 Act: the Local Government Act 1972.

TCPA 1990: Town and Country Planning Act 1990.

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.

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 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, 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 both the Affordable Housing Contribution and the Play Facilities Contribution have been paid to the Council;

3.3 in the event that the Owner fails to pay either Contribution by the date of the Commencement of Development to pay to the Council interest on the relevant Contribution calculated on a daily basis at a daily rate of 1/365th 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

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

6.2 In addition the obligation on the Owner to pay the Affordable Housing Contribution is conditional on a finding on behalf of the Secretary of State in his determination of the Appeal that such obligation is:-

6.2.1 necessary to make the Development acceptable in planning terms;

6.2.2 directly related to the Development; and

6.2.3 fairly related in scale and kind to the Development;

in accordance with the CIL Regulations.

7. LOCAL LAND CHARGE

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

8. COUNCIL'S LEGAL AND MONITORING COSTS

8.1 The Owner undertakes with the Council to:-

8.1.1 pay in addition to the Contributions

8.1.2 the sums set out in the table below

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

8.1.4 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
The Council	On Commencement of	£300	Council monitoring of

	the Development		compliance with this deed

8.2 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.

8.3 For the avoidance of doubt the Council shall be entitled to utilise a proportion of either of the Contributions for related project costs up to a maximum of 5% of the sum of £15,000 which ever shall be the larger.

8.4 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

9. INDEX LINKING

9.1 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:

$$A = B\,x = \frac{C}{D}$$

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

C/D is equal to or greater than 1

9.2 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.

10. OWNERSHIP

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

10.2 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:

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

10.2.2 the nature and extent of the interest disposed of.

11. BASIS OF PAYMENT OF CONTRIBUTIONS

Any payment of the Contributions by the Owner will be with the intent and expectation that the Council will use them exclusively for the respective purposes set out in the definitions of "Affordable Housing Contribution" and "Play Facilities Contribution" in clause 1.1 and that if and to the extent that either Contribution shall not have been spent by the Council pursuant to the purposes specified in this deed by the date that is 5 years after the date that the relevant Contribution is paid then the Council shall upon the written request of the Owner refund to the Owner any unexpended sum.

12. NOTICES

12.1 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:

12.1.1 Council: Head of Planning Services at Arun Civic Centre, Maltravers Road, Littlehampton BN17 5LF;

12.1.2 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.

12.2 Any notice shall be deemed to have been duly received:

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

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

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

13. 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.

14. MISCELLANEOUS

14.1 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.

14.2 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.

14.3 On the Owner's written submission of evidence showing to the Council's satisfaction that the 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.

14.4 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

15. 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:-

[redacted]

Director

~~Director~~/Sec

WB1-7065721-3