

DATED THIS 4 DAY OF DECEMBER 2020

FROM:

(1) FRONTIER ESTATES (MOS) LIMITED

TO:

(2) ARUN DISTRICT COUNCIL

AND

(3) WEST SUSSEX COUNTY COUNCIL

Unilateral Undertaking
pursuant to Section 106 of the Town
and Country Planning Act 1990 relating
to land at Former Poultry Farm, West of
Yapton Road, Middleton-on Sea, West
Sussex PO22 6DY.
Application ref: M/68/20/PL

Date: 4 DECEMBER

2020

FROM:

1. **FRONTIER ESTATES (MOS) LIMITED**(Company Number 12021085) of 25 Oldbury Place, London W1U 5PR ("the Owner")

TO:

2. **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("the Council"); and
3. **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ ("the County Council")

WHEREAS

1. The Council is the local planning authority, for the purposes of the Act for the area in which the Land is situated and the authority responsible for the provision of housing, leisure and recreation services and is agent for the Clinical Commissioning Group ("CCG") and Sussex Police.
2. The County Council is a planning authority for the area in which the Land is situated and is the authority responsible for the provision of education, library and fire and rescue services and is the Local Highway Authority for the area in which the Land is situated.
3. The Council shall be responsible for enforcing this Deed for all purposes.
4. The County Council shall be responsible for enforcing this Deed so far as library and fire and rescue services are concerned.
5. The Owner is the registered proprietor with Title Absolute of the land registered at HM Land Registry under Title Number WSX411151.
6. The Owner submitted the Application on 11 September 2020 and on 2 December 2020 the Council resolved to grant Planning Permission subject to the completion of this Deed.
7. It is considered that certain planning obligations should be entered into so as to create planning obligations in favour of the Council and the County Council pursuant to Section 106 of the Act and the Owner intends subject to the terms hereof to be bound by and observe and perform the covenants herein contained.
8. This undertaking is made as a Deed.

NOW THIS DEED WITNESSETH as follows:

1. Interpretation

In this Deed unless otherwise stated the following expressions shall where the context so admits have the following meanings:

"Act"	means the Town and Country Planning Act 1990 as amended
"Agreed" or "Approved"	means agreed or approved in writing and given for the purpose of this Deed.
"Application"	means an application in respect of the Land for the Development and given Council reference M/68/20/PL
"CIL Regulations"	means the Community Infrastructure Regulations 2010 (as amended)
"Commencement"	means the carrying out of a material operation as defined in section 56(4) of the Act in respect of the Development but excluding for the purposes of this Deed and for no other purpose) any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof enabling works site clearance archaeological investigations and digs exploratory boreholes operations permitted by the Town and Country Planning General Permitted Development) Order 1995 the erection of hoardings and fencing temporary diversion of services and signage (including the formation of temporary construction accesses) and "Commence" and "Commenced" shall be construed accordingly
"Commencement Notice"	means a notice in the form annexed to this to this Deed as Appendix 1
"CPI"	means the Consumer Price Index published from time to time by the Office of National Statistics

"the Development"

means the demolition of the existing structures & redevelopment to provide a new 66-bedroom care home, (the "**Care Home**") arranged over two storeys together with associated access, car & cycle parking, structural landscaping & amenity space provision

"Fire and Rescue Contribution"

means a financial contribution of £1,250.00 (one thousand, two hundred and fifty pounds) payable in accordance with paragraph 2 of the Second Schedule to be used towards the supply and installation of additional fire safety equipment to vulnerable persons homes in West Sussex Fire and Rescue Services Southern Area serving Middleton

"Index"

means the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any successor government office, ministry or department but in the case of the Library and Fire and Rescue Contribution the All-In Tender Price Index published by the Building Costs Information Services of the Royal Institution of Chartered Surveyors

"Interest Rate"

means the rate 4% above the base rate from time to time of Lloyds Bank applicable at the Specified Date or the actual date on which the relevant obligation under this Deed is paid whichever is the higher

"Land"

means the land at the Old Poultry Farm, west of Yapton Road, Middleton-on-Sea, West Sussex PO22 6DY shown for the purposes of identification outlined in red on the Plan attached hereto as Appendix 3 and being registered at the Land Registry under the title number WSX411151

"Library Contribution"

means a sum of £13,455.00 (thirteen thousand, four hundred and fifty five pounds) payable in accordance with paragraph 1 of the Second Schedule to be used towards expansion of the facilities at

Bognor Regis Library

"Monitoring Fee"	means a sum of £300.00 (three hundred pounds) payable to the Council in accordance with paragraph 1 of the First Schedule in accordance with Regulation 122(2A) of CIL in respect of the cost of monitoring (including reporting under CIL) in relation to the delivery of these planning obligations
"NPPF"	means the National Planning Policy Framework in force at the time that this Deed is completed or at the time any appeal is determined
"Occupation"	means occupation of the Development for the purposes of the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration marketing and display or security purposes and "First Occupation" and "Occupiers" and "Occupy" and "Occupied" shall be construed accordingly
"Operative Date"	means the date the Proposed Development is Commenced
"Owner"	means the FRONTIER ESTATES (MOS) LIMITED and includes its respective successors in title
"Payment Notice"	means a notice in the form annexed as Appendix 2
"Plan"	means the plan annexed hereto as Appendix 3 and marked "Plan"
"Planning Obligations"	means the obligations, conditions and stipulations set out in the First Schedule and the Second Schedule and "Planning Obligation" shall be construed accordingly
"Planning Permission"	means a planning permission granted by the Council pursuant to the Application
"Recorded Delivery"	means post that when received must be signed for by the recipient
"RICS"	means the Royal Institute of Chartered

Surveyors

- "Specified Date"** means the date upon which an obligation arising under this Deed is to be carried out or is due to be performed
- "Working Days"** means a weekday (Saturdays, Sundays and public holidays days excepted) and **"Working Day"** shall be construed accordingly

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 a separate legal personality).
- 2.3 A reference to a **"company"** shall include any company, corporation or other body corporate, where and however incorporated or established.
- 2.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 2.5 Unless the context otherwise requires a reference to one gender shall include a reference to other genders.
- 2.6 A reference to any party shall include that party's representatives, successors and permitted assigns and to any person deriving title through or under the party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 2.7 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.
- 2.8 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.
- 2.9 A reference to **"writing"** and **"written"** does not include fax or email.
- 2.10 References to clauses and Schedules are to the clauses

and schedules of this deed

- 2.11 An obligation on a party not to do something includes an obligation not to allow that thing to be done
- 2.12 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.
- 2.13 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.

3. LEGAL BASIS

- 3.1 This Deed is made under Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations under Section 106 of the Act and are enforceable by the Council and the County Council as local planning authorities as appropriate against the Owners in accordance with Section 106 of the Act.

4 CONDITIONALITY

- 4.1 This Deed is conditional upon:
 - 4.1.1 the grant of the Planning Permission
 - 4.1.2 the Commencement of the Development,save for the provisions of Clauses 7.1, 7.2 and 7.4 which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

- 5.1 The Owner covenants to the Council so as to bind the Land to perform the obligations as set out in First Schedule.
- 5.2 The Owner covenants to the County Council so as to bind the Land to perform the obligations as set out in Second Schedule.

CERTIFICATES

- 6.1 The Owner covenants that:
- 6.1.1 where this Deed imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Specified Date the Owner shall give the Council or the County Council notice of the Specified Date not more than seven days after such Specified Date; and
- 6.1.2 if the Owner fails to give the notice required under this Clause the Council or the County Council shall acting reasonably be entitled in their absolute discretion to determine the Specified Date and may give notice to the Owner of that determination.

MISCELLANEOUS

- Nothing in this Deed constitutes an obligation to grant planning permission.
- 7.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.1 This Deed shall be registered by the Council as a local land charge.
- 7.3 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.4 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.6 Nothing contained or implied in this Deed shall prejudice

or affect the rights discretions powers duties and obligations of the Council or the County Council under all statutes by laws statutory instruments orders and regulations in the exercise of their functions as a local authority

- 7.7 All payments due under this Deed shall be forwarded to the payee and shall have attached to them a copy of the Payment Notice duly completed.

8 EXCLUSIONS OF LIABILITY

- 8.1 No person shall be liable for any breach of any of the Planning Obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land, or such part of the Land to which the breach relates, but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.2 No person shall be liable for any breach of any of the Planning Obligations or other provisions of this Deed which relate to a part of the Land in which it does not have an interest.
- 8.3 This Deed shall not be enforceable against the occupiers, or residents of the Care Home or any mortgagee, chargee or receiver appointed by the owners of the Care Home.
- 8.4 The obligations in this Deed shall not bind or be enforceable against any statutory undertaker who has or takes in future an interest in the Land for the purpose of providing apparatus pursuant to its statutory undertaking for the Development.
- 8.5 Any legal charge entered into in respect of the Land or any part of the Land after this Deed has been completed shall take effect subject to this Deed PROVIDED THAT the mortgagee under such a legal charge shall have no liability under this Deed unless it causes the breach after it becomes a mortgagee in possession of the land comprised in the legal charge and the mortgagee shall not be liable for any breach of this Deed that occurs prior to the mortgagee taking possession of the land.

9 WAIVER

No waiver (whether expressed or implied) by the Council, County Council as the case may be, or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council, County Council or the Owner from enforcing

any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10

CHANGE IN OWNERSHIP

The Owner covenants to give the Council and the County Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan provided that the Owner shall not be required to give notice to the Council or County Council of any change of occupation affecting the Care Home.

11

FUTURE SECTION 73 CONSENTS

- 11.1 Subject to clauses 11.2 to 11.5 below, if any Section 73 Consent is granted after the date of this Deed:
- 11.1.1 the obligations in this Deed shall relate to and bind such Section 73 Consent; and
 - 11.1.2 the definitions of Application, Development and Planning Permission (other than for the purposes of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself;
- 11.2 nothing in this clause shall fetter the discretion of the Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;
- 11.3 to the extent that any of the obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent;
- 11.4 the provisions of this clause 11 shall not apply to any Section 73 Consent which necessitates or requires amendments to the substantive terms or obligations of or contained within this Deed;
- 11.5 the Council has the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it necessary to do so.

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INDEX LINKED

- 12.1 Unless there is an express provision to the contrary the Owner covenants that any sum payable by the Owner and referred to in the First Schedule shall be increased by the application of the following formula:

		$A = (B \times C) \text{ divided by } D$
Where	A	is the sum actually payable on the Specified Date
	B	is the original sum mentioned in this Deed
	C	is the RPI Index for the month two months before the Specified Date
	D	is the RPI Index for the month two months before the date that Planning Permission is granted
	C/D	is equal to or greater than 1

- 12.2 Unless there is an express provision to the contrary the Owner covenants that any sum payable by the Owner and referred to in the Second Schedule shall be increased by the application of the following formula:

		$A = (B \times C) \text{ divided by } D$
Where	A	is the sum actually payable on the Specified Date
	B	is the original sum mentioned in this Deed
	C	is the Index for the quarter preceding the Specified Date
	D	is the Index for the quarter preceding the date that Planning Permission is granted
	C/D	is equal to or greater than 1

- 12.3 Where reference is made to the Index and that index ceased to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the index is not replaced to an alternative reasonably comparable basis or index as the Council or the County Council (as applicable) may advise the Owner in writing.

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INTEREST

Interest will be paid on sums due to the Council and the County Council under this Deed, but not paid on the Specified Date, from the Specified Date until actual payment. The rate of interest shall be the Interest Rate.

14 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

15 NOTICES

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

15.1.1 delivered by hand; or

15.1.2 sent by prepaid first class post or other next working day delivery service.

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

15.2.1 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 Application number;

15.2.2 to the County Council at Monitoring and Records Team, Strategic Planning Division, County Hall, West Street, Chichester, West Sussex, PO19 1RQ quoting the Application number; and

15.2.3 to the Owner at 25 Oldbury Place, London W1U 5PR

or at such other address as the relevant party shall specify by notice to the other parties.

15.3 Any notice or other communication given in accordance with clause 15.1 and clause 15.2 will be deemed to have been received:

15.3.1 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 am on a Working Day, the notice will be deemed to have been received at 9 am on that day, and if delivery occurs after 5 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 am on the next Working Day;

15.3.2 If sent by pre-paid first class post or other next working day delivery service at 9 am on the second Working Day after posting.

15.4 A notice or other communication given under this deed shall not be validly given if sent by email.

15.5 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.

16 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

17 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.

FIRST SCHEDULE

The Owner's Covenants to the Council

The Owner covenants to the Council as follows:

1 MONITORING FEE

- 1.1 Prior to the Commencement of the Development to pay to the Council the Monitoring Fee.
- 1.2 Not to cause or permit the Development to be Commenced until the Monitoring Fee has been paid to the Council.

SECOND SCHEDULE

The Owner's Covenants to the County Council

The Owner covenants to the County Council as follows:

1 LIBRARY CONTRIBUTION

- 1.1 Prior to the Commencement of Development to pay to the County Council the Library Contribution.
- 1.2 Not to cause or allow the Development to Commence before the Library Contribution has been paid to the County Council.

2 FIRE AND RESCUE CONTRIBUTION

- 2.1 Prior to the Commencement of Development to pay to the County Council the Fire and Rescue Contribution.
- 2.2 Not to cause or allow the Development to Commence before the Fire and Rescue Contribution has been paid to the County Council.

APPENDIX 1
(Commencement Notice)

Pursuant to Appendix 1 in the Planning Obligation Described Below

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) Group Head of Planning, Arun District Council, Arun Civic Centre,
Maltravers Road, Littlehampton, West Sussex BN17 5LF (DX: 57406 Littlehampton);

(2) Monitoring and Records Team, Strategic Planning Division of County Hall,
Chichester, West Sussex PO19 1RQ (DX: 157410 Chichester 8)

From:

Development At: the Old Poultry Farm, west of Yapton Road, Middleton-on-Sea,
West Sussex PO22 6DY

Nature of Development: Demolition of the existing structures & redevelopment to
provide a new 66-bedroom care home

Planning Permission Date & Reference: Planning ref: M/68/20/PL

Planning Obligation Date & Parties:

Start Date:

APPENDIX 2
(Payment Notice)

Payment of Monies due under a Section 106 Planning Obligation / Agreement

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)	paragraph no.	
(b)	contribution towards	
(c)	amount of contribution due	
(d)	Date upon which contribution is due	
(e)	amount of contribution enclosed	
(f)	amount of monitoring sum	

APPENDIX 3

PLAN

EXECUTED as a DEED on behalf of
FRONTIER ESTATES (MOS) LIMITED

Acting by

Director

In the presence of:

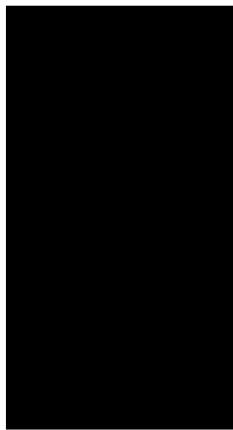
Signature of witness:

Name of witness:

Address of witness: 2 CATERHAM RD, LONDON, SE13 5AR



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DEVELOPMENT DESCRIPTION

DRAWING STATUS
PLANNING APPLICATION

NO.	DATE	DESCRIPTION
1	15/01/2020	Initial Design
2	15/01/2020	Final Design
3	15/01/2020	Final Design
4	15/01/2020	Final Design
5	15/01/2020	Final Design
6	15/01/2020	Final Design
7	15/01/2020	Final Design
8	15/01/2020	Final Design
9	15/01/2020	Final Design
10	15/01/2020	Final Design

Edmund Williams
Architects

PROJECT
YAPTON RD, MIDDLETON-on-SEA
PROPOSED 86 BED CARE HOME

TITLE
SITE LOCATION

NO.	DATE	DESCRIPTION
1	15/01/2020	Initial Design
2	15/01/2020	Final Design
3	15/01/2020	Final Design
4	15/01/2020	Final Design
5	15/01/2020	Final Design
6	15/01/2020	Final Design
7	15/01/2020	Final Design
8	15/01/2020	Final Design
9	15/01/2020	Final Design
10	15/01/2020	Final Design