

DATE 12 December 2022

ARUN DISTRICT COUNCIL (1)

WEST SUSSEX COUNTY COUNCIL (2)

LINDEN WATES (WALBERTON) LLP (3)

NATIONAL WESTMINSTER BANK PLC (4)

AGREEMENT UNDER SECTION 106A OF THE TOWN AND COUNTRY PLANNING ACT 1990 TO
VARY A SECTION 106 AGREEMENT DATED 1ST NOVEMBER 2017 IN RELATION TO THE LAND
EAST OF TYE LANE, WALBERTON

PLANNING APPLICATION WA/44/17/OUT

ARUN DISTRICT COUNCIL

ARUN CIVIC CENTRE

MALTRAVERS ROAD

LITTLEHAMPTON

WEST SUSSEX

BN17 5LF

REF CMS7172

DATED THIS 12th DAY OF December 2022

PARTIES

- (1) ARUN DISTRICT COUNCIL of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex. BN17 5LF ("ADC")
- (2) WEST SUSSEX COUNTY COUNCIL of County Hall, Chichester, West Sussex PO19 1RQ ("WSCC-")
- (3) LINDEN WATES (WALBERTON) LLP (LLP Regn. No. OC421410) of Cowley Business Park, High Street, Cowley, Uxbridge UB8 2AL ("the Owner")
- (4) NATIONAL WESTMINSTER BANK PLC (Co. Regn. No.00929027) of 250 Bishopsgate, London, EX2M 4AA ("the Chargee")

BACKGROUND

- 1.1 ADC is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 for the area in which the Land is situated
- 1.2 WSCC is the strategic planning authority, the local highway authority, the local education authority and the authority responsible for providing library and fire and rescue services
- 1.3 The Owner is the registered owner of the freehold interest in those parts of the Land registered at HM Land Registry under title numbers WSX314358 and WSX267804
- 1.4 The Chargee has a legal charge over the Owner's interest in the Land described in 1.3 above, pursuant to a Charge dated 25 June 2021
- 1.5 On 1st November 2017 the Council entered by deed into a Section 106 Agreement with (1) David Henry Tupper, Hilary Jennifer Tupper, Andrew William Brooke and David Mark Spofforth (2) Wates Developments Limited and (3) West Sussex County Council
- 1.6 The parties have agreed to amend the Original Agreement
- 1.7 This agreement is made under section 106A of the Act and is supplemental to and varies the Original Agreement.

AGREED TERMS

1. INTERPRETATION

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

1.1 Definitions

Original Agreement means the Section 106 Agreement dated 1st November 2017 between (1) David Henry Tupper, Hilary Jennifer Tupper, Andrew William Brooke and David Mark Spofforth (2) Wates Developments Limited (3) Arun District Council and (4) West Sussex County Council as varied by a deed of variation dated 31 May 2019 and made between Arun District Council (1) West Sussex County Council (2) Linden Wates (Walberton) LLP (3) and Wates (Walberton) (4)

- 1.2 Unless the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this Deed

- 1.3 Clause headings shall not affect the interpretation of this Deed
- 1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)
- 1.5 Unless the context otherwise requires, words in the singular shall 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 ADC and WSCC the successors to their 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

2. STATUTORY PROVISION

This Deed is made pursuant to the provisions of sections 106 and 106A of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers

3. VARIATIONS TO THE ORIGINAL AGREEMENT

- 3.1 All words and expressions defined in the Original Agreement shall bear the same meaning in this deed except where otherwise provided or where the context otherwise requires.
- 3.2 The definitions, clauses, obligations and provisions of the Original Agreement shall remain in full force and effect except as varied or added to by this deed and shall continue to be applicable to the Land in respect of the Development and remain to be performed to the extent that they have not already been performed
- 3.3 The parties agree that from the date of completion of this deed the Original Agreement shall be varied as set out in the First Schedule hereto

4. COVENANTS BY THE OWNER

- 4.1 The Owner covenants with ADC and WSCC to comply with their obligations in the Original Agreement as varied by this deed

5. LOCAL LAND CHARGE

- 5.1 This Deed shall be registered as a Local Land Charge

6. COUNCIL COSTS

- 6.1 The Owner shall pay to ADC on or before the date of completion of this deed, ADC's reasonable and proper legal costs of £500.00 together with all disbursements incurred in connection with the preparation, completion and registration of this deed
- 6.2 The Owner shall pay to WSCC on or before the date of completion of this deed, WSCC's reasonable and proper legal costs of £500.00 together with all disbursements incurred in connection with the preparation, completion and registration of this deed

7. **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

8. **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

9. **CHARGEES CONSENT**

The Chargee consents to the Owner entering into this deed and in the event that the Chargee takes possession of the Land or any part of it and/or exercising its power of sale under the provisions of their respective charge then the Chargee and their respective successors in title will observe and perform and be bound by the terms and conditions of this deed and of the Original Agreement in so far as the same remain to be observed and performed

FIRST SCHEDULE

VARIATIONS

1. In the Original Agreement:

1.1 Clause 11.1 shall be deleted in its entirety and replaced with:

"11.1 That it shall prior to Occupation of the 50th Market Housing Unit to be Occupied enter into a Section 278 Agreement with Highways England to secure the Highways England Contribution";

1.2 In Clause 11.2.1 reference to "Commencement of Development" shall be replaced with the text "Occupation of the 50th Market Housing Unit to be Occupied";

1.3 Clause 12.1 shall be deleted and replaced with:

"That it shall prior to Occupation of the 50th Market Housing Unit to be Occupied enter into a Section 278 Agreement to enable it to undertake the Additional Highway Works".

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

The common seal of ARUN DISTRICT COUNCIL was affixed to this document in the presence of:

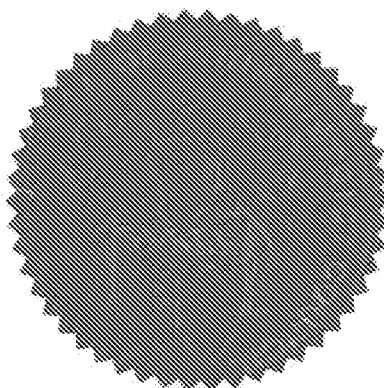
Authorised signatory



Seal Book No. 403/2022

Name: SDFINA AHMED

Job Title: SOLICITOR



The Common seal of

WEST SUSSEX COUNTY COUNCIL

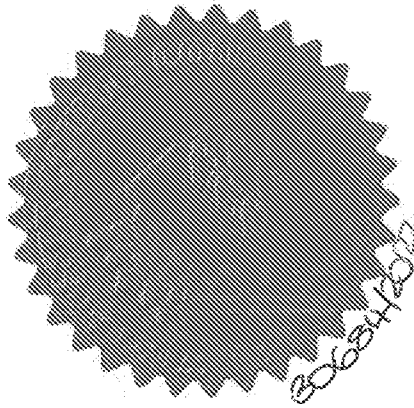
Was affixed to this document in the presence of

Authorised signatory

Seal Book No.

Name:

Job Title:



SIGNED

by LINDEN WATES (WALBERTON) LLP

acting by two members

by Keith Carnegie

a duly authorised signatory of

VISTRY WATES FINANCE LLP

)

)

)

(Signature)

by David Bowen

a director, for and on behalf of

VISTRY WATES NOMINEE LIMITED

)

)

)

(Signature)

Executed and Delivered as a deed
for and on behalf of National Westminster
Bank Plc by a duly authorised Attorney
in the presence of:- **Sue Windle**

)

)

)

Witness' Signature - Bank Employee

Jane Copestake

Appointed Documentor
Credit Documentation

ARUN DISTRICT COUNCIL