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WB/10/0895/AW

DATED 4 May 2011

By AVID DEVELOPMENTS LIMITED (1)

In favour of

WORTHING BOROUGH COUNCIL (2)

S106 Agreement

relating to

223 Brighton Road
Worthing
West Sussex BN11 2EY

Jeremy Cook
Executive Head of Legal and
Democratic Services
Town Hall
Chapel Road
Worthing
West Sussex BN11 1HA

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THIS AGREEMENT is made the day of Two thousand and eleven

BETWEEN

1) AVID DEVELOPMENTS LTD whose registered office is at 70 South Street Lancing West Sussex BN15 8DJ

IN FAVOUR OF

2) WORTHING BOROUGH COUNCIL of The Town Hall Chapel Road Worthing West Sussex BN11 1HA (the "Council")

WHEREAS:

(1) THE Owner is the freehold owner of the Property which interest is registered under Title No. WSX170464 at H M Land Registry

(2) The Owner intends to develop the Property pursuant to the Planning Permission registered WB/10/0895/FULL Against Title No. WSX170464 at H M Land Registry

(3) The Council is the local planning authority for the purposes of the Act and for the area in which the Property is located

(4) The Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	the Town and Country Planning Act 1990

"Application"	the application for full planning permission submitted to the Council for the Development and allocated reference number WB/10/895/FULL
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly.
"Development"	the Development of the Site for conversion and partial demolition of Public House and erection of two and half storey extension off north and east of original pub building to provide for 8 No. residential apartments (5 No. 2 bed self contained flats and 3 No. 3 bed self contained flats), together with associated soft/hard landscaping and art piece, 9 car parking spaces and storage for 16 cycles and 1 scooter, alteration of existing access onto Ham Road and stopping up of 2 redundant accesses as set out in the Application
"Dwelling"	a dwelling (including a house, flat or maisonette) to be constructed under the Planning Permission
"Executive Head of Planning"	The Executive Head of Planning Regeneration &
"Regeneration & Wellbeing"	Wellbeing for the time being or such other proper officer of the Council responsible for planning functions.
"First Occupation"	Occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in

	construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
"Flood Defence Contribution"	means the sum of Fifteen thousand five hundred and forty-five pounds (£15,545.00) for flood defence works in locality.
"Index"	All Items Index of Retail Prices issued by the Office for National Statistics [All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation].
"Interest"	interest at 4% per cent above the base lending rate of the Bank of England from time to time.
"Party and Parties"	means the Owner, Mortgagee and or the Council.
"Plan"	the plan attached to this Deed
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application.
"Site"	the land against which this Deed may be enforced as shown edged red on the Plan.
"Total Access Demand Contribution"	means the sum of Four thousand four hundred and fifty-five pounds (£4,455.00)

2 CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.

2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and County Council the successors to their respective statutory functions.

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

4 CONDITIONALITY

This Deed is conditional upon:

(i) the grant of the Planning Permission; and

(ii) the Commencement of Development

save for the provisions of Clauses 6, 12 and 13 which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

5.1 The Owner covenants with the Council to pay the Council prior to the First Occupation of the Dwellings the:

5.1.1 'Total Access Demand Contribution' towards the provision of transport.
5.1.2 'Flood Defence Contribution" towards the provision of flood defence.

6 MISCELLANEOUS

6.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

6.3 This Deed shall be registerable as a local land charge by the Council.

6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of:

(i) the Council by the Executive Head of Planning Regeneration and Wellbeing

And any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

6.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

6.6 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.

6.7 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.

6.8 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 Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.9 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.

[redacted] shall prohibit or limit the right to develop any part of the [redacted] with a planning permission (other than the Planning [redacted] (whether or not on appeal) after the date of this Deed.

No waiver (whether expressed or i[redacted] default in performing or observing an[redacted] this Deed shall constitute a contin[redacted] prevent the Council from enforcing a[redacted] for acting upon any subsequent breach or default.

8 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site 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 Site or unit of occupation purchased by reference to a plan.

9 INDEXATION

Any sum referred to in clause 5 shall be increased by an amount equivalent to the increase in the index from the date hereof until the date on which such sum is payable.

10 INTEREST

If any payment due under this Deed is paid late, interest will be payable from the date payment is due to the date of payment.

11 VAT

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

12 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales.

13 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.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

Signed as a Deed by AVID DEVELOPMENTS LIMITED)
acting by MAX EMIL EICHENHOFER, a director,)
in the presence of:-)

SIGNATURE OF WITNESS

Director

NAME HELEN NORTON
ADDRESS 13 SOUTH STREET
LANCING BN15 8AH
OCCUPATION OF WITNESS SOLICITOR

Land Registry Official copy of title plan

Title number WSX170464
Ordnance Survey map reference TQ1602NW
Scale 1:1250
Administrative area WEST SUSSEX: WORTHING

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