

Note Please scan and email plans to all these persons

FROM:

Delwyn Jones
Planning Solicitor
Ext: 37737
Ref: AL/58/15
Dated :18/4/16

TO: Deeds Store Clerk

For circulation to :-

R Bentley S106 Monitoring Officer
Technical Support Unit – N Spencer and L Coney

FOR CIRCULATION TO :-

Planning Case Officer J Baeza /D Vick
Local Land Charges Officer C Bardwell
Planning Admin
Accountancy S Southerton
NNDR and Council Tax /Iain Bell
Clare Thompson Sarah Hunt Sarah Wingate

West Sussex County Council County Hall
Chichester PO19 1RW

SITE NAME: Oldlands Farm Phase 2
PARTY NAME: COMV Developments
PLANNING OBLIGATION COMPLETION
REQUEST FOR TSU TO VALIDATE APPLICATION
RECEIVED BY PLANNING nk
RECEIVED BY LEGAL SERVICES 14/3/16
RETURNED BY LEGAL SERVICES 18/4/16

OBSERVATIONS there were 3 parties and late instructions and some WSCC points were subject to long negotiation –but the deed was completed within a reasonable time
The above is now completed. If the Planning Obligation does not accompany this memo, it is being scanned and will follow as soon as possible.

PLANNING TSU

You can now validate this application. Please forward to your relevant Team Member ASAP, as I am not always advised, who the TSU Officer is.
Please send a receipt for legal fees paid and banked by you. .

DEEDS STORE CLERK:

The original planning obligation is attached.

Please place the original planning Obligation attached in the Deeds Store.

Before you do so please scan one copy and forward it to the Service Delivery and Monitoring Officer . The SD&MO will then update the Ocella records and circulate it to the other addressees of this memo.

SERVICE DELIVERY & MONITORING OFFICER

Please on receipt of this memo and enclosure circulate to all the above addressees and update Ocella.

PLANNING OFFICER:

Please issue planning permission OR get TSU to validate the application as the facts of the case require.. A copy of the planning obligation is on the file.

LOCAL LAND CHARGES OFFICER:

Please register this planning obligation as a Local Land Charge. A copy of it is attached.

NNDR/COUNCIL TAX

You are included because you may have records or notice of occupation of properties/developments after construction/changes of use which you should notify Planning about so invoices can be issued for payment of S106 money due

ALL OF YOU

A summary of the provisions of the obligation is:

Obligation	Time Limit
WSSC	On start occupation of development
Highways £50,000	

PLANNING ADMIN:

A copy is enclosed for your files. Please enter this on the Planning Register as a PE format.

The legal fees received for the preparation of this agreement are to be collected by TSU.

Delwyn Jones
Planning Solicitor

- (1) ARUN DISTRICT COUNCIL
- (2) WEST SUSSEX COUNTY COUNCIL
- (3) COMV DEVELOPMENTS LIMITED

Deed of Agreement

**under section 106 Town and Country Planning Act 1990 relating to
land at Oldlands Farm, Bognor Regis, West Sussex**

18 April

THIS DEED OF AGREEMENT is made on DO NOT DATE 2016

BETWEEN:

- (1) **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("**the Council**")
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, PO19 1RQ ("**the County Council**"); and
- (3) **COMV DEVELOPMENTS LIMITED** of The Estate Office, No 2 Basing Park, Privett, Alton, Hampshire GU34 3NS ("**the Owner**");

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and therefore entitled to enforce the obligations contained in this Agreement.
- (B) The County Council is also a local planning authority for the purposes of the 1990 Act and the local highway authority for the purposes of the 1980 Act for the area within which the Site is located and therefore entitled to enforce the obligation relating to the Highways Contribution contained in this Agreement.
- (C) The Owner is the registered freehold proprietor with title absolute of the Site registered at Her Majesty's Land Registry ("HMLR") under title number WSX364102.
- (D) On 27 January 2016 the Council's Development Control Committee resolved to approve the Planning Application subject to completion of a legal agreement to secure the payment of the Highways Contribution as provided for herein. The parties have therefore agreed to enter into this Agreement to secure the payment of said contribution by the Owner to the County Council in the event of the carrying out of the Development on the Site pursuant to the Planning Permission.
- (E) The parties enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced respectively as appropriate by the Council and/or the County Council against (as the case may be) the Owner and their successors in title.

OPERATIVE PROVISIONS

1. INTERPRETATION

1. In this Agreement, the following words and expressions have the following meanings:

"1980 Act"

means the Highways Act 1980

"1990 Act"

means the Town and Country Planning Act 1990 (as amended)

"Commencement of Development"

means the initiation of the Development by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act and "Commenced," "Commence the Development" and "Commencement" shall be construed accordingly SAVE THAT for the purposes of this Agreement none of the following operations shall constitute a material operation:

- a) construction of boundary fencing or hoardings;
- b) construction of any temporary accesses PROVIDED THAT any such temporary access shall first be approved by the County Council as local highway authority;
- c) archaeological investigations;
- d) ground investigations and Site survey works;
- e) interim landscaping works on the Site;
- f) demolition works or the removal of all de-mountable or portable buildings on the site;
- g) the probing of the ground within the Site for obstructions;

h) the erection of security cameras on the site; and

i) the erection of a site compound or of temporary facilities for security personnel

j) site levelling works

k) the laying of service infrastructure into the Site

l) provision of utility sub-stations etc

"Development"

means the redevelopment of the Site (and in the case of the flood compensation works other land adjacent to the Site) through:

(i) earth works to facilitate a flood compensation area; and

(ii) the creation of up to 20,453 square metres of B2 general industrial floorspace together with B8 warehousing and distribution floorspace

pursuant to the Planning Permission

"Highway Works"

means a scheme or schemes of works to the A29/BRNRR and A29/Steayning Way roundabouts as identified in the Systra transport assessment (dated 11/06/2015 Ref: 103032/12) to the draft Enterprise Bognor Regis Local Development Order or such other scheme or schemes of works to those roundabouts as are agreed in writing between the Owner and the County Council

"Highway Works Contribution"

means the sum of £50,000 (fifty thousand pounds)

"Occupation"

means occupation of any building forming part of the Development for the purposes authorised by the Planning Permission but for the avoidance of doubt shall exclude occupation for the purposes of undertaking

	construction, marketing or security and "Occupy" and "Occupied", where it is a defined term, shall be construed accordingly
"Planning Application"	means the hybrid planning application for the Development on the Site submitted by Hanbury Properties Limited to the Council on 02 June 2015 and given reference number AL/58/15/OUT
"Planning Permission"	means a planning permission granted by the Council for the Development on the Site pursuant to the Planning Application
"Site"	means that part of the freehold property known as Oldlands Farm, Bognor Regis measuring 6.04ha as is shown edged red on the Site Plan (and labelled "6.04ha") and is registered at HMLR under title number WSX364102
"Site Plan"	means the plan attached to this Agreement numbered DLA.1643.L003.01 Rev B
"Specialist"	has the meaning given to it in Clause 9.2

2. GENERAL

In this Agreement:

- 2.1 The clause headings do not affect its interpretation;
- 2.2 Unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 2.3 References to any statute or statutory provision include references to:
- 2.4 All Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
- 2.5 Any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;

- 2.6 References to the Site include any part of it, except where a particular part of the Site is expressly referred to in this Agreement or on an attached plan;
- 2.7 References to any party in this Agreement include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act and references to the County Council include any successor local highway authority exercising powers under the 1980 Act;
- 2.8 "including" means "including, without limitation";
- 2.9 Any covenant by the Owner not to do any act or thing includes a covenant not to knowingly permit or allow the doing of that act or thing;
- 2.10 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually; and
- 2.11 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected; and
- 2.12 Words importing the singular number only shall include the plural number and vice versa and words importing any particular gender shall include masculine feminine and neuter genders.
- 2.13 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

3. EFFECT OF THIS AGREEMENT

- 3.1 This Agreement is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council and the County Council.
- 3.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in sections 111 and 135 of the Local Government Act 1972, section 2 Local Government Act 2000 and Section 1 of the Localism Act 2011 and all other relevant enabling powers.
- 3.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council or the County Council of any of their statutory powers, functions or discretions in relation to the Site or otherwise.

3.4 This Agreement will be registered as a local land charge by the Council. Following the performance and satisfaction of all of the obligations contained in this Agreement the Council shall forthwith effect the cancellation of the relevant entry made in the Register of Local Land Charges in respect of this Agreement

3.5 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with any planning permission, other than the Planning Permission, granted after the date of this Agreement, whether or not pursuant to an appeal.

4 COMMENCEMENT DATE

4.1 This Agreement will come into effect on the date hereof but the planning obligation set out in Clause 5.1 below shall not take effect or be enforceable against the Owner unless or until:

4.1.1 The Planning Permission is granted; and

4.1.2 The Development is Commenced.

5 OBLIGATIONS OF THE PARTIES

5.1 The Owner covenants with the Council and the County Council to pay the Highways Contribution to the County Council prior to first Occupation of any building forming part of the Development on the Site and the Owner covenants with the Council and the County Council not to Occupy or permit Occupation of any building comprised within the Development on the Site unless or until the Owner has paid the Highways Contribution to the County Council in full.

5.2 The County Council agrees with the Owner that upon receipt of the Highways Contribution from the Owner it will hold said monies in an interest bearing account and will use or expend said monies on the Highway Works and for no other purposes and further agrees that in the event that at the date falling 10 (ten) years from the date of payment of the Highways Contribution to the County Council the Highways Contribution or part thereof remains unspent the County Council will repay to the Owner the Highways Contribution (or unspent part thereof) plus interest accrued within 1 (one) month of any written request from the Owner.

5.3 The Council and the County Council agree with the Owner to act reasonably, properly and diligently in exercising their discretion and discharging their functions under this Agreement. In particular, where any notice, consent, approval,

authorisation, agreement or other similar affirmation is required under the terms of the Agreement, the Council and the County Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation.

5.4 Subject to Clause 5.5 any obligations of the Owner under this Agreement may be enforced by the Council and the County Council against any owners of the Site at the relevant time jointly or against each of them individually.

5.5 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or where any obligations are expressed to relate to a particular part of the Site the part of the Site in respect of which such breach occurs but they will remain liable for any breaches of the Agreement occurring before that date and for the avoidance of doubt the reservation or retention of any rights or easements over the Site contained in any transfer of the Site (or part thereof) shall not constitute an interest for the purposes of this Clause.

5.6 The obligations in this Agreement shall not be binding upon:

5.6.1 Individual occupiers of completed commercial units within the Development;

5.6.2 any statutory undertakers who have an interest in the Site solely by virtue of having plant or apparatus situated therein; or

5.6.3 any chargee or mortgagee who acquires an interest in the Site by way of a legal charge or mortgage unless said chargee or mortgagee is in possession of the Site.

6 TERMINATION OF THIS AGREEMENT

6.1 This Agreement will come to an end and cease to have effect (insofar only as it has not already been complied with) if:

6.1.1 the Planning Permission is quashed or revoked; or

6.1.2 the Planning Permission expires.

6.2 Where the Agreement comes to an end under **clause 6.1** the Council is on the written request of the Owner to vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site.

7 NOTICES

- 7.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 7.2 Save for where expressly provided below any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service.
- 7.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- 7.3.1 if delivered by hand, at the time of delivery;
- 7.3.2 if sent by post, on the second working day after posting; or
- 7.3.3 if sent by recorded delivery, at the time delivery was signed for.
- 7.4 If a notice, demand or any other communication is served after 5.00 pm on a working day, or on a day that is not a working day, it is to be treated as having been served on the next working day.
- 7.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

8 COSTS OF THIS AGREEMENT

- 8.1 Upon completion of this Agreement the Owner is to pay to the Council its reasonable and proper legal, expert and administrative costs incurred in connection with the preparation, negotiation and completion of this Agreement of £300 (three hundred pounds) and for the avoidance of doubt, no value added tax is payable by the Owner on the costs contained herein.
- 8.2 Upon completion of this Agreement the Owner is to pay to the County Council its reasonable and proper expert costs and legal costs incurred in connection with the preparation, negotiation and completion of this Agreement of £650 (six hundred and fifty pounds) and for the avoidance of doubt no value added tax is payable by the Owner on the costs specified herein

9 DETERMINATION OF DISPUTES

- 9.1 If any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other written notice requiring the dispute to be determined under this **clause 9**. The notice is to propose an appropriate Specialist

and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

- 9.2 For the purposes of this **clause 9** a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development.
- 9.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under **clause 9.4**.
- 9.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.
- 9.5 The Specialist is to act as an independent expert and:
- 9.5.1 each party may make written representations within ten working days of his appointment and will copy the written representations to the other party;
- 9.5.2 each party is to have a further ten working days to make written comments on the other's representations and will copy the written comments to the other party;
- 9.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
- 9.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
- 9.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
- 9.5.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 working days of his appointment.
- 9.6 Responsibility for the costs of referring a dispute to a Specialist under this **clause 9**, including costs connected with the appointment of the Specialist and

the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

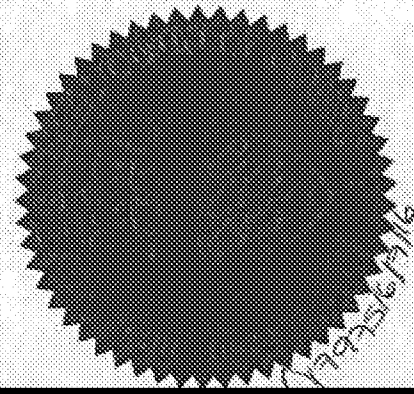
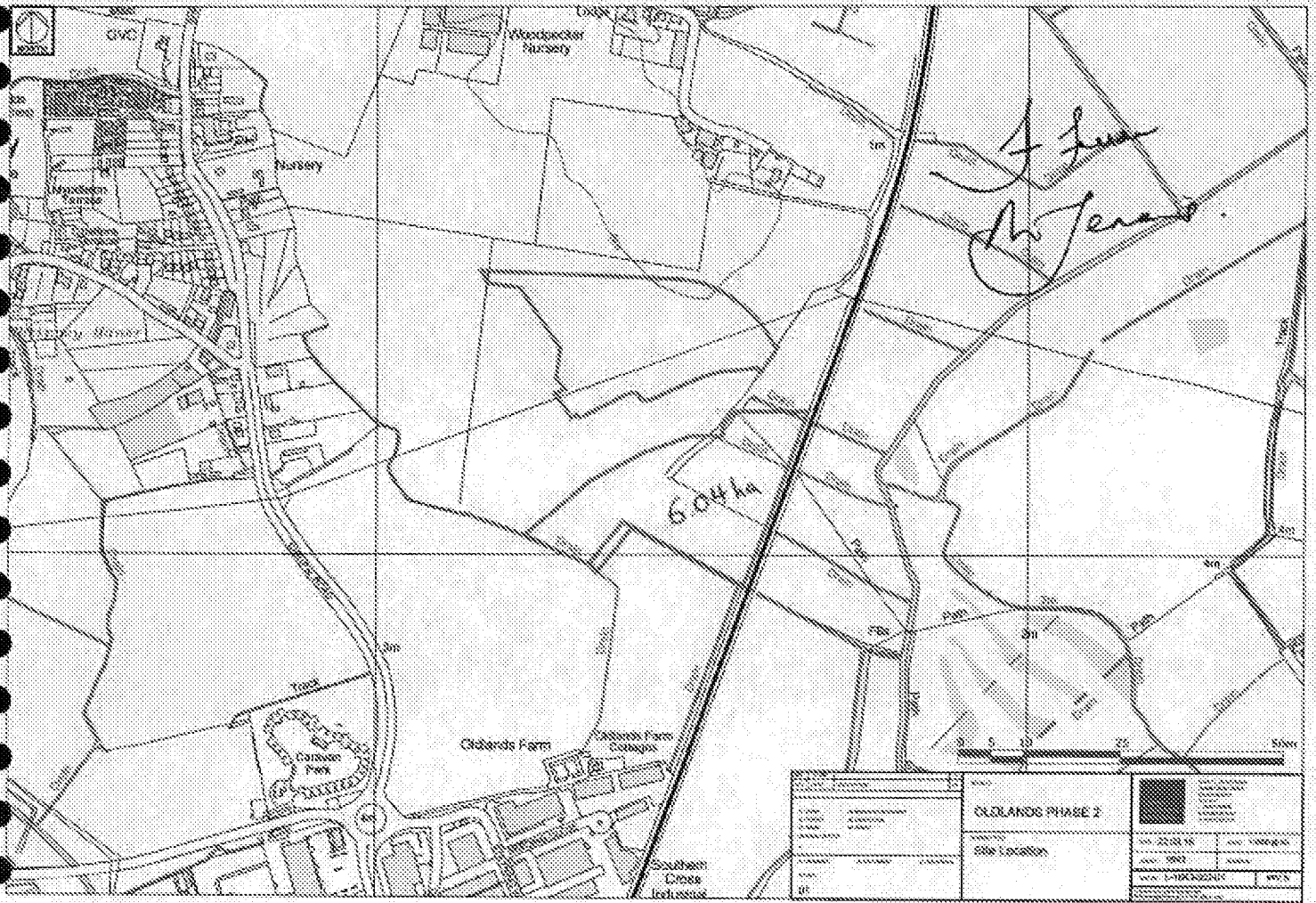
10 JURISDICTION

10.1 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales.

10.2 The courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement. This clause operates for the benefit of the Council and the County Council who retain the right to sue and enforce any judgment against the parties against whom this Agreement is enforceable in the courts of any competent jurisdiction.

11 EXECUTION

11.1 The parties have executed this Agreement as a deed and it is delivered on the date set out above.



EXECUTED AS A DEED BY AFFIXING TO THIS
DEED

THE COMMON SEAL OF
ARUN DISTRICT COUNCIL

)



Seal Book Number:
Authorised Signatory:

284/2016

NAME
SIGNATURE
JOB TITLE

THE COMMON SEAL OF
WEST SUSSEX COUNTY COUNCIL

was affixed in
the presence of:

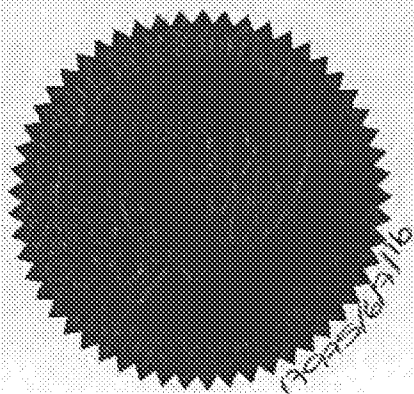
)

)

)



Authorised Signatory



EXECUTED AS A DEED by:

COMV DEVELOPMENTS LIMITED

Acting through:

A Director

A Director/Secretary

