

Dated:

19th September 2018

Between:

[1] Commercial Development Projects Limited [The Owner]

[2] Arun District Council [ADC]

DEED OF UNILATERAL UNDERTAKING

under Section 106 of the Town & Country Planning Act 1990
and other powers

Land at South of New Road A259 and East of Brook Lane Angmering

Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex BN17 5LF
DX 57406 LITTLEHAMPTON
Reference: A/23/15/OUT

This Deed of Unilateral Undertaking is dated *19th September* 2018 and is made by

[1] Commercial Development Projects Limited Co reg No 993768 whose registered office is at
Huddersfield Road Elland West Yorkshire HX5 9BW ["the Owner"]

In favour of Arun District Council of Arun Civic Centre, Maltravers Road, Littlehampton, West
Sussex, BN17 5LF ["ADC"]

1.0 Background

- 1.1 The Owner is the registered proprietor of the land lying to the South of New Road A259 and East of Brook Lane Angmering which is registered at the Land Registry under title number WSX142361 and is shown for identification purposes only hatched red on the attached plan [and hereinafter called "the Land"].
- 1.2 ADC is the local planning authority and is the local authority responsible for the economic development of its area.
- 1.3 Planning application number A/23/15/OUT made to ADC is a hybrid application and seeks [a] full planning permission to develop the Land by erecting on it a retail unit Class A1 comprising 1487 sqm [1022 sqm ground floor and 465 sqm mezzanine] with associated access car parking servicing landscaping and associated works and [b] outline planning permission for a public house Class A4 comprising 581 sqm at ground floor level. The application is a Departure from the Development Plan.
- 1.4 On 9 May 2018 ADC resolved to grant planning permission pursuant to the Application subject to the prior completion of this Deed. This Deed provides for the Owner to enter into planning obligations to address the impact of the Development.

2. Interpretation

In this Deed:

- 2.1 Words importing the masculine include the feminine and vice versa.
- 2.2 Words importing the singular include the plural and vice versa.

- 2.3 Words importing persons include companies and corporations and vice versa.
- 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.
- 2.5 Any reference to a clause or schedule or plan is to one in to our attached to this Deed.
- 2.6 Any reference to a colour or letter is to be on the plans attached to this Deed.
- 2.7 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it.
- 2.8 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 ADC the successors to its functions.
- 2.9 "the Act" means the Town & Country Planning Act 1990
- 2.10 "agreed" or "approved" means agreed or approved in writing and given for the purpose of this Deed.
- 2.11 "the Application" means the planning application number A/23/15/OUT to develop the Land
- 2.12 "Commencement of the Development" means the same as in S56 of the Act but disregarding such works as archaeological investigation demolition and site clearance
- 2.13 "COVTEC Railway Crossing Contribution" means the sum of TWELVE THOUSAND FIVE HUNDRED POUNDS £12,500.00 for the purpose of funding the cost of the suggested COVTEC early warning system and/or alternative works to the railway crossing.
- 2.14 "Public Transport Contribution" means the sum of SEVENTY FIVE THOUSAND POUNDS (£75,000.00) to be used towards the continuation of the No.12 Bus Route

bringing passengers into the Village of Rustington. Such route to include from Littlehampton, along the Littlehampton seafront, to Rustington Village Centre, then on to Manor Road Retail Park to include the new Marks and Spencer Store or such other store as may be situated on the Land.

- 2.15 "the Development" means the development of the Land proposed by the Application or permitted by planning permission granted pursuant to the Application or carried out substantially in accordance with such planning permission.
- 2.16 "Retail Unit" means the retail unit (Class A1) approved in the planning permission.
- 2.17 "Specified Date" means the date upon which an obligation arising under this Deed is due to be performed.
- 2.18 "Town Centre [Littlehampton] Manager and related Projects Contribution" means the sum of NINETY NINE THOUSAND FOUR HUNDRED AND FORTY FOUR POUNDS (£99,444.00) for the purpose of funding the employment of a Town Centre [Littlehampton] Manager to promote the vitality and attractiveness as a shopping venue of the town and also to fund projects aimed at those purposes carried out or organised or promoted by the Town Centre Manager
- 2.19 "Town Centre [Littlehampton] Marketing Promotion and Events and related Projects Contribution" means the sum of FORTY THOUSAND POUNDS £40,000.00 for the purpose of funding the marketing and promotion and advertising of the town as a vital and attractive shopping venue
- 2.20 "Town Centre [Littlehampton] Environmental Improvements Contribution" means the sum of SEVENTY FIVE THOUSAND POUNDS £75,000.00 for the purpose of funding the provision of street furniture and pathways improvements public art and capital projects aimed at marketing and promoting of the town as a vital and attractive shopping venue
- 2.21 "Town Centre [Littlehampton] Manager" means one individual or several people who fulfil such a role as described in clauses 2.17 2.18 2.19 of this Deed and covering the town and the distribution of money between them to be determined by ADC.

3. Enabling Provisions

This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 Localism Act 2011 and all other enabling powers.

4. Commencement

4.1 This Deed shall not come into effect until the grant of planning permission pursuant to the Application but the obligations in Clauses 5 6 7 and 8 shall become effective only on the Commencement of the Development in accordance with Section 56 of the Act.

4.2 On Commencement of the Development the Owner will give to ADC notice in writing of that commencement in the form of The Commencement Notice annexed to this Deed as Schedule 1 addressed to ADC's Head of Planning or equivalent post.

5. Town Centre [Littlehampton] Manager and related Projects Contribution

The Owner agrees with ADC:-

5.1 [a] on Commencement of the Development to pay to ADC or its nominee the first half of the Town Centre [Littlehampton] Manager and related Projects Contribution

[b] on the first anniversary of the Commencement of the Development to pay to ADC or its nominee the second half of Town Centres [Littlehampton] Manager and related Projects Contribution

5.2 not to occupy or cause or allow to be occupied any part of the Development before the Town Centre [Littlehampton] Manager and related Projects Contribution shall have been paid

6. Town Centre [Littlehampton] Environmental Improvements Contribution

The Owner agrees with the ADC:-

6.1 [a] on Commencement of the Development to pay to ADC or its nominee the first half of the Town Centre [Littlehampton] Environmental Improvements Contribution

[b] on the first anniversary of the Commencement of the Development to pay to ADC or its nominee the second half of Town Centre [Littlehampton] Environmental Improvements Contribution

6.2 not to occupy or cause or allow to be occupied any part of the Development before the Town Centre [Littlehampton] Environmental Improvements Contribution shall have been paid

7. Town Centre [Littlehampton] Marketing Promotion and Events and related Projects Contribution

The Owner agrees with ADC:-

7.1 [a] on Commencement of the Development to pay to ADC or its nominee the first half of the Town Centre [Littlehampton] Marketing Promotion and Events and related Projects Contribution

[b] on the first anniversary of the Commencement of the Development to pay to ADC or its nominee the second half of Town Centre [Littlehampton] Marketing Promotion and Events and related Projects Contribution

7.2 not to occupy or cause or allow to be occupied any part of the Development before the Town Centre [Littlehampton] Marketing Promotion and Events and related Projects Contribution shall have been paid

8 COVTEC Railway Crossing Contribution for Level Crossing Safety

The Owner agrees with ADC:

8.1 [a] on Commencement of the Development to pay to ADC or its nominee the first half of the COVTEC Railway Crossing Contribution

[b] on the first anniversary of the Commencement of the Development to pay to ADC or its nominee the second half of the COVTEC Railway Crossing Contribution

8.2 not to occupy or cause or allow to be occupied any part of the Development before the COVTEC Railway Crossing Contribution shall have been paid

8.3 Prior to the Commencement of the Development to submit to ADC for approval (such approval not to be unreasonably withheld or delayed) details of warning signage, including its size design height from the ground and specific location where it will be sited in the vicinity of Brook Lane, which discourages pedestrian access over private land which lies to the south-west of the Land

8.4 Not to Commence the Development, without first erecting on the Land the warning signage in accordance with the details approved by ADC pursuant to clause 8.3

9 PUBLIC TRANSPORT CONTRIBUTION

The Owner agrees with ADC:

- 9.1 Prior to occupation of the Retail Unit to pay to ADC the sum of fifteen thousand pounds (£15,000.00)
- 9.2 Not to allow, cause or permit the Retail Unit to be occupied until the sum of fifteen thousand pounds (£15,000.00) referred to in clause 9.1 above has been paid to ADC
- 9.3 On the first anniversary of the occupation of the Retail Unit to pay to ADC the sum of fifteen thousand pounds (£15,000.00).
- 9.4 On the second anniversary of the occupation of the Retail Unit to pay to ADC the sum of fifteen thousand pounds (£15,000.00).
- 9.5 On the third anniversary of the occupation of the Retail Unit to pay to ADC the sum of fifteen thousand pounds (£15,000.00).
- 9.6 On the fourth anniversary of the occupation of the Retail Unit to pay to ADC the sum of fifteen thousand pounds (£15,000.00).

10. Certificates

The Owner agrees with ADC:

- 10.1 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 to the ADC notice of the Specified Date not more than seven days after such Specified Date
- 10.2 if the Owner fails to give the notice required under this Clause ADC shall be entitled in its reasonable discretion to determine the Specified Date and shall give notice to the Owner of its determination

11. Index Linking

- 11.1 The Owner undertakes to ADC that any sums payable by the Owner under this Deed shall be increased by the application of the following formula:

$$A = B \times C$$

D

where:

- A is the sum actually payable on the Specified Date
 - B is the original sum mentioned in this Deed
 - C is the Retail Price Index for the month immediately preceding the Specified Date
 - D is the Retail Price Index for the month immediately preceding the date of this Deed
- C
- D is equal to or greater than 1

10.2 The adjustment in this clause shall only be made where the Specified Date is more than 6 months after the date of this Deed

12. Interest

The Owner agrees with ADC to pay interest on sums due to ADC under this Deed but not paid on the Specified Date from the Specified Date until actual payment. The rate of interest shall be 4% above the HSBC Bank base rate from time to time.

13. Legal and Administrative Costs

The Owner agrees with ADC

Legal Costs

12.1 to pay on completion of this Deed to ADC ADCs reasonable legal costs in the sum of £500 incurred in preparing and entering into this Deed

14. Payment Notice

The Owner hereby agrees that all payments due under this Deed shall be forwarded to the ADC and shall have attached to them a copy of the Payment Notice contained in Schedule 2 to this Deed duly completed.

15. General

In relation to this Deed:

- 15.1 nothing in this Deed constitutes or constitutes an obligation to grant planning permission
- 15.2 nothing in this Deed grants planning permission or any other approval consent or permission required from ADC in the exercise of any other statutory function
- 15.3 nothing in this Deed fetters or restricts the exercise by ADC of any of its powers
- 15.4 the obligations contained in Clauses 5 6 7 and 8 are planning obligations for the purpose of Section 106 of the Act
- 15.5 this Deed constitutes a deed
- 15.6 this Deed is enforceable by ADC
- 15.7 nothing in this Deed confers or is intended to confer a benefit on a third party under the Contracts [Rights of Third Parties] Act 1999
- 15.8 This Deed shall apply to the Development as authorised by the planning permission issued pursuant to the Application or to the Development after variation or renewal of the planning permission from time to time
- 15.9 This Deed is a Local Land Charge and shall be registered as such
- 15.10 No covenants or obligations contained in this Deed shall be binding upon any part of the Land that may in future be acquired by a statutory undertaker for the purposes of its undertaking or operational Land as defined in the Section 262 of the Act
- 15.11 The Owner shall be released from all liability under this Deed after it has disposed of all its interest in the whole of the Land or the part of the Land to which the liability relates (but without prejudice to the rights of ADC in respect of any subsisting breach of the Owner's obligations in this Deed which occurred prior to disposing of such interest).

16. Arbitration

Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing arising out of or connected with this Deed shall be referred to the decision of a single arbitrator (acting as an expert and not as an arbitrator) to be agreed by the parties or failing agreement between them to be nominated by the

President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force

17. **Severability**

The invalidity or unenforceability of any provisions of this Deed shall not affect the validity or enforceability of any other provision of this Deed, which shall remain in full force and effect.

SCHEDULE 1

Commencement Notice

Pursuant to Clause 4.2 in 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 _____ 201

Signed _____

On Behalf Of: _____

TO:	[1] Head of Planning Services, Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF [DX: 57406] Littlehampton
FROM:	
DEVELOPMENT AT:	
NATURE OF DEVELOPMENT:	
PLANNING PERMISSION DATE & REFERENCE	
PLANNING OBLIGATION DATE & PARTIES	
START DATE:	

SCHEDULE 2

Payment Notice

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

Please answer all the questions.

Payment to be made by/on behalf of

Land at:

Agreement dated:

Planning application reference number [where applicable]

Obligation in Agreement

[a]	clause 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	

EXECUTED by Commercial Development

Projects Limited acting by:

Director

Secretary/Director

