

IMPORTANT: PLEASE READ THESE NOTES BEFORE COMPLETING THE ATTACHED DOCUMENT.

The attached document is called a Planning Obligation Unilateral Undertaking and is often referred to as a Section 106 Agreement. When you develop a piece of land or property in the area indicated on the attached map as 'Pagham Harbour buffer Zones A & B', you are required to pay a contribution towards preserving this area. It is referred to as Pagham Harbour Access Management Contribution.

The amount that you are required to contribute is worked out at £871 per unit.

The reason for this contribution is because Pagham Harbour is designated as a Special Protection Area and Ramsar site, meaning that it is recognised at an international level in terms of playing an important role linked to the movement of species, specifically waders and wildfowl.

A full explanation can be found on the following link:

<http://www.arun.gov.uk/planning-obligations>

Once you have completed and signed your Unilateral Undertaking it must be returned to the Council, with all the supporting documents for checking, together with the legal fee.

CHECKLIST OF SUPPORTING DOCUMENTS TO SEND IN WITH THIS LEGAL AGREEMENT:

1. Proof of Ownership Documents:

- An up to date Official Copy of the Land Registry Title Register and
- Title Plan relating to the property/land that is the subject of the Planning Application.

Details about ordering these documents can be found on the official Land Registry Website:

<https://www.gov.uk/search-property-information-land-registry>

You need to provide the Council with the above documents to prove your ownership of the Property, and your ability to complete the attached legal document as the owner. It will be apparent from the Title Register if anyone else has an interest in the Property that ought to be a party to the deed, such as a Mortgagee.

2. Payment:

The payment for the legal checking fee currently £200

Payment can be made by:

- Cheque made payable to Arun District Council
- Debit or Credit Card Payment by telephoning 01903 737711. You must have the planning application reference number and make it clear you are paying the Legal checking fee for the Unilateral Undertaking in respect of the Pagham Harbour Access Management Contribution not the planning application fee

You will only need to pay the actual contribution at the point of commencing work unless in exceptional circumstances you are unable to get the agreement signed. In this case the contribution must be paid up front before the application will be determined.

3. Other Supporting Documents:

- A plan showing the boundaries of the Property **edged red**. You may use the location plan that accompanied your Planning Application with the consent of copyright owner. **The plan should be signed by the Owner/Applicant, namely the same person who is party to the Unilateral Undertaking.**
 - If the mortgagee is signing by way of Power of Attorney a copy of the Power of Attorney showing the name of the person who has signed the deed **must** be provided.
- COMPLETING YOUR UNILATERAL UNDERTAKING:**

FIRST THINGS FIRST - IS THERE A MORTGAGEE?

If yes:

- (a) **The Mortgagee must be included as a signatory.**

Anyone with an interest in the land ought to be a party to the deed. If your mortgagee or lender refuses to sign the deed please contact the Council for advice on how to proceed.

If no:

Please make the following amendments to your document:

- Page 1 – Top of the page: This DEED is ... Remove (2) [Mortgagee]
Page 1 – Background – (B) Remove '[subject to a mortgage in favour of the Mortgagee]
Page 1 – Background – (D) Remove this whole paragraph
Page 5 – (Ownership) Paragraph 9.1 – Remove '[and the Mortgagee]'
Page 5 – (Notices) Remove Paragraph 10.2(c)
Page 6 – Paragraph 13 Mortgagee's consent – Remove whole paragraph
Page 7 – Remove Row 3 in the signatures table (row referring to Mortgagee)

COMPLETING THE REST OF YOUR UNILATERAL UNDERTAKING:

All areas highlighted in yellow must be completed. Below is guidance on what to insert in each case:

Front Cover Page

Top – 'Dated' insert the date that you have signed the document.

Then complete the Property address that the Planning Application relates to, and then the name and address of each owner and mortgagee, if applicable.

MAIN DOCUMENT:

PAGE 1:

- Top of Page – insert date that you have signed the document
- Complete the names and addresses of **each** owner at (1), and the name and address of the mortgagee at (2) if applicable. If not, remove.
- (D) Check the Land Registry Title Register and complete the date of charge in favour of the mortgagee, the charge number, and the Title number.
- Paragraph 1.1 **Access Management Contribution** - Complete the amount. The amount is worked out at £871per unit.

PAGE 2:

Development - Complete a description of the Development, this should mirror the description that appears on the Planning Application.

Planning Application - Complete the Planning Application reference number. This is the unique number given to you by the Council.

Property - Complete the address and Land Registry Title Register number, as shown on your Land Registry Title document.

PAGE 5:

Paragraph 10.2 (b) - Complete the owner's details.

Paragraph 10.2 (c) - Complete the mortgagee's details, or remove if there is no mortgagee.

PAGE 7:

Signature Page – Complete the following boxes:

1. Owner signature and witness signature and details.
2. If the Owner is a Company, complete this row.
3. Mortgagee seal and signature.

ARUN DISTRICT COUNCIL POLICY MAP 3 – BOGNOR REGIS

DATED

_____ 17th November 2021 _____

**PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER
SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990**

**RELATING TO LAND AT
ANCIENT MARINER, 59 WEST STREET, BOGNOR, PO21 1XB**

Parties:

**OWNER ANCIENT MARINER, 59 WEST STREET LTD
2 ASHFORD ROAD, BRIGHTON, BN1 6LJ**

and

**[MORTGAGEE –HAZELDINE CAPITAL LIMITED - 3 NORTON CLOSE - HOVE - EAST
SUSSEX - BN3 3AP TEL 01273 321885 WWW.HAZELDINECAPITAL.CO.UK
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13. [Mortgagee's consent] (this will be removed if there is no mortgagee)
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THIS DEED is dated 17th November 2021

(2) *EITHER (COMPANY):

Ancient Mariner, 59 West Street Ltd incorporated and registered in England and Wales with company number 13164820 whose registered office is at 2 Ashford Road, Brighton. BN1 6LJ

(3) Hazledine Capital Ltd incorporated and registered in England and Wales with company number 10714816 whose registered office is **HAZELDINE CAPITAL LIMITED - 3 Norton Close - Hove - East Sussex - BN3 3AP**

IN FAVOUR OF Arun District Council of The Civic Centre Maltravers Road Littlehampton BN17 5LF **Council**

BACKGROUND

(A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.

(B) The Owner is the registered proprietor with Title Absolute of the land registered at HM Land Registry under Title Number [] known as land at [] [which is subject to a mortgage in favour of the Mortgagee].

(C) The Owner has made the Planning Application and is proposing to carry out the Development.

(D) [The Mortgagee is the registered proprietor of the charge dated 30th June 2021 referred to in entry number unknown of the charges register of Title and has agreed to enter into this deed to give its consent to the terms of the unilateral undertaking.]

(E) In consideration of Pagham Harbour policy ENV DM2 of the Local Plan 2011-2031, and Cabinet's approval of the tariff based system on 20 July 2015 and a reduction in the tariff on 10 April 2017, the Owner gives this undertaking to perform the obligations set out in this deed.

AGREED TERMS

1. INTERPRETATION

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

1.1 Definitions:

Access Management Contribution: the sum of £5226 five thousand two hundred and twenty six pounds towards the cost of delivering measures to avoid, or mitigate to an acceptable level, the harm caused to Pagham Harbour by the Development.

Base Rate: the higher of [5%] and the base rate from time to time of Barclays Bank plc.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 [but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property.] **Commenced** and **Commences** shall be construed accordingly.

Commencement Date: the date of Commencement of Development.

Default Interest Rate: [4%] per annum above the Base Rate.

Development: the development of the Property by *Change of use from single dwelling (C3) to 6 No self-contained flats (C3), a 10- bedroom co-living housing unit (Sui Generis) & insertion of 3 No new front windows*, as described in the Planning Application.

Pagham Harbour: A Special Protection Area, also known as a Natura 2000 site, based in Pagham, West Sussex in the District of Arun, identified as being of international importance for the breeding, feeding, wintering or migration of rare and vulnerable species of European Union birds.

Plan: the plan attached to this deed.

Planning Application: an application for planning permission registered by the Council under reference number **BR/247/21/PL**

Planning Permission: means a Planning Permission for the Development pursuant to the Planning Application.

Property: the freehold land at 59 West Street, Bognor, PO21 0XB shown edged red on the Plan and registered at HM Land Registry with absolute title under title number(s) unknown

TCPA 1990: Town and Country Planning Act 1990

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in [England **OR** Wales].

1.2 Clause headings shall not affect the interpretation of this deed.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.

1.7 A reference to the Council shall include the successors to its 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.

1.10 A reference to **writing** or **written** excludes faxes and e-mail.

1.11 A reference to **this deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.

1.12 References to clauses are to the clauses of this deed.

1.13 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.

1.14 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.

2. STATUTORY PROVISIONS

2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, Localism Act 2011 and any other enabling powers.

2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.

2.3 This deed shall come into effect on the date of grant of the Planning Permission.

2.4 The obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. COVENANTS WITH THE COUNCIL

The Owner covenants with the Council to pay the Access Management Contribution to the Council on or before the Commencement Date.

4. RELEASE

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

5. DETERMINATION OF DEED

This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;

- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

6. LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the Council.

7. INTEREST ON LATE PAYMENT

If the Access Management Contribution has not been paid to the Council prior to or on the Commencement Date, the Owner shall pay the Council interest on the Access Management Contribution at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the Commencement Date to and including the date of payment.

8. COUNCIL'S COSTS

The Owner shall pay to the Council on the date of this deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

9. OWNERSHIP

9.1 The Owner warrants that no person other than the Owner [and the Mortgagee] has any legal or equitable interest in the Property.

9.2 Until the obligations in clause 3 have been complied with the Owner will give to the Council within 14 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

10. NOTICES

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

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

10.2 Any notice [or other communication] to be given under this deed must be sent to the relevant party as follows:

- (a) to The Planning Department of Arun District Council, quoting the Planning Application number at the following address: The Civic Centre Maltravers Road Littlehampton BN17 5LF;

(b) for the attention of the Owner Christina Templeman Director Ancient Mariner, 59 West Street Ltd at 2 Ashford Road, Brighton BN1 6LJ

(c) [to the Mortgagee at: HAZELDINE CAPITAL LIMITED - 3 Norton Close - Hove - East Sussex - BN3 3AP Tel 01273 321885 www.hazeldinecapital.co.uk marked for the attention of Paul Hazledine

10.3 Any notice or other communication given in accordance with clause 10.1 and clause 10.2 will be deemed to have been received:

(a) 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 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 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 9.00 am on the next Working Day;

(b) if sent by pre-paid first class post or other next working day delivery service at [9.00 am] on the second Working Day after posting.

10.4 A notice or other communication given under this deed shall not be validly given if sent by e-mail.

10.5 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.

11. 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.

12. 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.

13. [MORTGAGEE'S CONSENT

13.1 The Mortgagee consents to the completion of this deed and declares that its interest in the Property shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property.

13.2 The Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property.]

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

1. Signed as a Deed by Ancient Mariner, 59 West Street Ltd	 OWNER SIGNATURE WITNESS SIGNATURE
2. Executed as a deed by Ancient Mariner, 59 West Street Ltd] acting by [Andrew Babbayan a director and Christina Templeman], [a director OR its secretary]	 [SIGNATURE OF FIRST DIRECTOR] Director [SIGNATURE OF SECOND DIRECTOR OR SECRETARY] [Director OR Secretary]
3. Executed as a deed by Hazledine Capital by affixing the Corporate Seal in the presence of:	 [AUTHORISED SIGNATORY]