

Dated 12th March 2018

(1) MALTRAVERS ROAD LIMITED

and

to

(2) WEST SUSSEX COUNTY COUNCIL AND ARUN
DISTRICT COUNCIL

Deed of Unilateral Undertaking
Creating Planning Obligations under Section 106 Town and Country Planning Act 1990
Relating to Land on the south side of Maltravers Road Littlehampton BN17 5NA

This DEED OF UNDERTAKING is made the 12th day of March 2018

BY

- (1) **MALTRAVERS ROAD LIMITED (10891628)** whose registered office is at Great Big Knowle Farm, Broad Oak Heathfield TN21 8UU (the Owner")

TO WEST SUSSEX COUNTY COUNCIL and ARUN DISTRICT COUNCIL ("the Council")

BACKGROUND

- (A) For the purposes of the Act, the Council is the local planning authority for the area within which the Site is located and the local planning authority which is entitled to enforce the obligations contained in this Deed of Undertaking.
- (B) The Owner is the freehold owner of the whole of the Site registered at the Land Registry with title absolute under the title numbers.
- (C) The Owner has made the Planning Application to the Council for permission to develop the site according to the Planning Application.
- (D) The Owner give this Undertaking in anticipation of the grant of Planning Permission by the Council subject to the Owner entering into this Undertaking which makes provision for regulating the Development and securing the matters referred to in this Undertaking.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

"the Act"	the Town and Country Planning Act 1990;
"Commencement of Development"	shall mean the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is begun other than (for the purposes of this Undertaking 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" and similar expressions shall be construed accordingly
"Development"	shall Mean Change of use of former United Services Club (Sui Generis) to 10 No. flats (C3 Dwelling House) with associated landscaping, parking, bins and recycling in accordance with the Planning Permission

"Dwelling"	Means 10 self-contained unit of residential accommodation comprised within the Development (and for the avoidance of doubt this definition shall include houses flats and apartments as appropriate comprised within the Development)
"Contribution"	Shall mean the sum of £19,405.00 to be paid by the Owner to the Council as a contribution towards educational equipment.
"Interest Rate"	shall mean interest at 4% above the base lending rate of the Bank of England from time to time
"Legal and Administrative Costs Contribution"	Shall mean a contribution of £ to the legal and administrative costs of the Council in considering and approving this Undertaking
"Owner"	shall mean the <i>Owner</i>
"Plan"	shall mean the plan annexed to this undertaking (if required)
"Planning Application"	shall mean the application for planning permission submitted on 3 rd October 2017 to the Council for the Development and allocated reference number LU/323/17 by the Council
"Planning Permission"	shall mean the Planning Permission which may be granted by the Council pursuant to the Planning Application
"Site"	Means the freehold property being land on the south side of Maltravers Road Littlehampton as shown edged in red on the Plan and registered at the Land Registry under the Title Number WSX392985
"Undertaking"	Shall mean this Deed of Undertaking

2. INTERPRETATION AND CONSTRUCTION

- 2.1 The clause headings in this Undertaking are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Undertaking, unless stated otherwise.

- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.4 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Undertaking states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions, policies and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Site include any part of it.
- 2.8 References to "written" "writing" or "written down" does not include faxes or e-mail.
- 2.9 References to any party in this Undertaking include the successors in title of that party and any references to the Council include any successor local planning authority exercising planning powers under the Act.
- 2.10 References to "including" means "including, without limitation" and where appropriate in context shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.11 Words imposing an obligation on a party to do any act whatsoever include an obligation to procure that act and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of that obligation.
- 2.12 Where two or more people form a party to this Undertaking, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.13 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Undertaking shall be unaffected.

3. EFFECT OF THIS UNDERTAKING

- 3.1 This Undertaking is made by Deed pursuant to Section 106 of the Act
- 3.2 To the extent that they fall within the terms of section 106 of the Act, the obligations contained in this Undertaking are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council against the Owner .
- 3.6 The remedies provided in this Undertaking are cumulative and not exclusive of any remedies provided by law.
- 3.7 None of the terms of this Undertaking may be rescinded or varied except in accordance with Sections 106A and 106B of the Act.

4. COMMENCEMENT

- 4.1 Unless otherwise provided, this Undertaking its terms provisions covenants and obligations shall have effect from the date first shown above.
- 4.2 The Owner shall give to the Council not less than seven days written notice of intention to Commence Development on the Site and shall confirm in writing within seven days following Commencement of Development that it has Commenced PROVIDED THAT failure to provide either of the said notifications shall not render this Undertaking inoperative.
- 4.3 The Owner shall be deemed to have Commenced the Development pursuant to the Planning Permission if they Commence works referable to the Development amounting to a material operation as defined in Section 56(4) of the Act (not being works for which planning permission is not required) on the Site whether or not:
- 4.3.1 The Owner has satisfied all conditions precedent to Commencement set out in the Planning Permission
- 4.3.2 Those works are in accordance with the Planning Permission

5. OBLIGATIONS OF THE PARTIES

- 5.1 The Owner hereby UNDERTAKES AND COVENANTS as owner of the Site and so as to bind their interest in the Site with the Council to comply with its obligations as set out in this Undertaking and the Schedule in relation to the Development.
- 5.2 Where in this Undertaking the Owner undertakes to comply with any requirement prior to Commencement of Development the Owner shall not Commence Development nor permit any other person to Commence Development before the said requirement has been satisfied.
- 5.3 Where any payment is made in accordance with this Unilateral Undertaking it shall be provided with notice in writing giving the date of this Unilateral Undertaking and to the effect that it is paid in accordance with this Unilateral Undertaking and including reference to the Planning Application reference number assigned by the Council to the Planning Application

6. REGISTRATION

- 6.1. The Owner acknowledges that this Undertaking is a Local Land Charge and registrable as such the Register of Local Land Charges maintained by the Council.

7. NOTIFICATION

- 8.1 Any notice, demand or any other communication served under this Undertaking will be delivered by hand or sent by first or second class post, pre-paid or recorded delivery.

8.2 Any notice, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Undertaking or to such other address as one party may notify in writing to the others at any time as its address for service and in the case of service upon the Council shall be marked for the attention of the City Solicitor.

8.3 The Owner undertakes 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 Undertaking 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 details of the area of the Site transferred to the transferee by reference to a plan.

8. TERMINATION

9.1 In so far only as it has not already been complied with this Undertaking shall lapse and be of no further effect if:

9.1.1 the Planning Permission is quashed, revoked or otherwise withdrawn at any time so as to render this Agreement or any part of it irrelevant, impractical or unviable or

9.1.2 the Planning Permission expires before the Commencement of Development without having been implemented

9.1.3 the Council refuses to grant the planning permission in respect of the Planning Application

9. INDEXATION

Any sum referred to in this Undertaking shall be increased by an amount equivalent to the increase in the Retail Prices Index from the date of this Undertaking until the date on which such sum is payable.

10. INTEREST

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

11. JURISDICTION

The County Court in whose district the Site is situated shall have full jurisdiction to hear and determine any proceedings arising from or relating to this Undertaking or for the enforcement of its terms or any of them.

12. COSTS

The Owner shall pay to the Council on completion of this Undertaking the Legal and Administrative Costs Contribution.

IN WITNESS whereof the parties hereto have caused this Undertaking to be executed as a deed the day and year first before written

EXECUTED AS A DEED by
MALTRAVERS ROAD LIMITED acting by a
Sole Director in the presence of

 
Am. M. L. 22/10/74
73 Church Road Hove S10 2SS

SCHEDULE

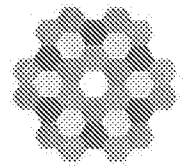
CONTRIBUTION

The Owner for themselves and their successors in title to the Site covenant as follows:

- 1 To pay the Contribution on giving notice of Commencement of Development on the Site in accordance with Clause 4.2 of this Unilateral Undertaking
- 2 Not to cause or permit Commencement of Development until the Contribution and the Legal and Administrative Costs Contribution have first been paid to the Council.
- 3 If any payment of any sum due under this Undertaking is paid late, Interest will be payable in respect of that sum from the date payment is due to the date of payment.

HM Land Registry
Official copy of
title plan

Title number **WSX392985**
Ordnance Survey map reference **TQ0301NW**
Scale **1:1250**
Administrative area **West Sussex : Arun**



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