Dated: _____ 2012

Between:

[1] Development Securities (Littlehampton) Limited

[2] Arun District Council

[3] West Sussex County Council

Draft 07/March/2012

AGREEMENT

under Section 106 of the Town & Country Planning Act 1990
and other powers
Land on the south side of Courtwick Lane, Wick, Littlehampton, West Sussex

---

Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex BN17 5LF
DX 57406 LITTLEHAMPTON

Reference: _____
Committee: _____
Date: _____
Minute No: _____

This Deed is dated _____ 2012 and is made between:

[1] Development Securities (Littlehampton) Limited (company registration number 07190983) whose registered office is at Portland House, Bressenden Place, London SW1E 5DS ("the **Owner**")

[2] Arun District Council of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("**ADC**")

[3] West Sussex County Council of County Hall, Chichester, West Sussex, PO19 1RQ ("**WSCC**")

1. Background

1.1 The Owner is the registered proprietor under title number WSX185272 of the land on the south side of Courtwick Lane, Wick, Littlehampton, West Sussex shown for identification purposes only edged red on the attached plan and hereinafter called "the **Land**".

1.2 ADC is the local planning authority.

1.3 The WSCC is the Strategic Planning Authority and the local highway authority.

1.4 The Applicant has by planning application number LU/271/11 ("the **Application**") applied to ADC for planning permission for the Development at the Land.

NOW THIS DEED WITNESSETH:-

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 WSCC and ADC the successors to their respective functions.

3. Definitions and Interpretation

3.1 In this Deed the following expressions shall have the following meanings:-

"the **Act**" means the Town & Country Planning Act 1990 (as amended).

"**agreed**" or "**approved**" means agreed or approved in writing and given for the purpose of this Deed.

"the **Application**" means the planning application (number LU/271/11) received by ADC and made by the Owner for Planning Permission for the Development at the Land.

"the **Commencement Date**" means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and 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 the expressions "Commence" "Commences" Commencement" and "Commenced" shall be construed accordingly

"the **Contributions**" shall mean collectively the Local Highway and Access Improvements Contribution, the Lyminster Bypass Contribution, the Littlehampton Town Centre Management Contribution, the Wick Improvement Contribution and the Wick Information Centre Contribution.

"the **Development**" means the development of the Land proposed by the Application namely the erection of class A1 (retail) foodstore with associated servicing, car & cycle parking off Hawthorn Road, hard & soft landscaping, petrol filling station with associated kiosk & external works to existing office building to create an Enterprise

Hub with new point of access off Courtwick Lane & associated landscape works & cycle parking provision as authorised by the Planning Permission as issued or substantially in accordance with the Planning Permission as varied or renewed from time to time.

"the **Land**" means the freehold property situated at land on the south side of Courtwick Lane, Wick, Littlehampton, West Sussex registered at the Land Registry with Title Absolute under the Title Number WSX185272 all of which land is shown for identification purposes only edged red on the Plan.

"the **Littlehampton Town Centre Management Contribution**" means the sum of £175,000 (one hundred and seventy five thousand pounds) (index linked as hereinafter provided) to be used for the development and implementation of the town centre improvement schemes and initiatives in accordance with the "Littlehampton Vision" document dated [ ].

"the **Local Highway and Access Improvements Contribution**" means the sum of £243,000 (two hundred and forty three thousand pounds) (index linked as hereinafter provided) to be used towards one or more of the local highway and access improvements set out below:

(a) Lyminster Road Pedestrian Crossing;
(b) A259 (west) Pedestrian Crossing;
(c) A259 Speed Limit Reduction;
(d) Improvements to cycling infrastructure;
(e) Upgrading of bus stops close to the site; and
(f) Contribution towards the provision or enhancement of a bus service between the Development and Littlehampton town centre.

"the **Lyminster Bypass Contribution**" means the sum of £1,000,000 (one million pounds) (index linked as hereinafter provided) to be used towards the Lyminster Bypass.

"**Occupation**" means occupation of the Development for the purposes of the Planning Permission but not including occupation by personnel engaged in the construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and the terms "Occupy" and "Occupied" and cognate expressions shall be construed accordingly.

"**Plan**" means the plan annexed to this Deed hereto.

"**Planning Permission**" means the planning permission granted pursuant to the Application.

"**Secretary of State**" means the Secretary of State for Communities and Local Government or any other minister charged with performing the functions of the secretary of state under the 1990 Act.

"**Specified Date**" means the date upon which an obligation arising under this Deed is due to be performed.

"the **Wick Improvement Contribution**" means the sum of £180,000 (one hundred and eighty thousand pounds) (index linked as hereinafter provided) to be used for general improvements to the vicinity of the centre of Wick including new lighting, signage and websites to promote the retailers and services at Wick.

"the **Wick Information Centre Contribution**" means the sum of £80,000 (eighty thousand pounds) (index linked as hereinafter provided) to be used for ensuring the long term viability and enhancement of the Wick information centre and its services.

4. Enabling Provisions

This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000 and all other enabling powers.

5. Commencement

5.1 This Deed shall only come into effect upon the grant of the Planning Permission and the Commencement Date save for this Clause 5 and Clause 12~~1~~2.1.1 which shall come into effect immediately upon completion of this Deed.

5.2 On the Commencement Date the Owner will give to ADC and WSCC 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 Services and WSCC's County Planning Officer.

6. The Owner's Covenants

The Owner covenants with ADC and WSCC that it will observe and perform the covenants

and undertakings contained in Schedule 3 Paragraphs 1 to 5 inclusive of this Deed as planning obligations for the purposes of the 1990 Act.

7. ADC and WSCC's Covenants

ADC and WSCC joint and severally covenant with the Owner that they will observe and perform the covenants and undertakings contained in Schedule 3 Paragraphs 6 and 7 of this Deed as planning obligations for the purposes of the 1990 Act.

8. Severability

Each clause, sub-clause, schedule or paragraph shall be separate, distinct and severable from each other to the extent only that if any clause sub-clause, schedule or paragraph becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause, sub-clause, schedule or paragraph shall be held by the Secretary of State or the Courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause, sub-clause, schedule or paragraph be valid shall apply without prejudice to any other clause, sub-clause, schedule or paragraph contained herein.

9. Deed Governed by English Law

This Deed is subject to and will be construed in all respects in accordance with the provisions of English law.

10. Index Linking

10.1 The Owner undertakes to ADC and WSCC that the Contributions payable by the Owner under this Deed shall be increased by the application of the following formula:

$$A = B \times \frac{C}{D}$$

where:

A is the sum actually payable on the Specified Date

B is the original sum mentioned in this Deed

C is the Building Cost Information Service National All-In Tender Price Index for the quarter preceding the Specified Date

D is the Building Cost Information Service National All-In Tender Price Index for the quarter preceding the date of this Deed

$\frac{C}{D}$ is equal to or greater than 1

10.2 The adjustment in sub clause 10.1 shall only be made where the Specified Date is more than 6 months after the date of this Deed

11. Interest

The Owner agrees with ADC and WSCC to pay interest on sums due to ADC and WSCC 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.

12. Legal and Administrative Costs

12.1 The Owner agrees with ADC and WSCC:

Legal Costs

12.1.1 to pay on completion of this Deed to ADC and WSCC their respective reasonable legal costs incurred in preparing and entering into this Deed.

Monitoring Costs

12.1.2 to pay on the Commencement Date to ADC a contribution of £250 incurred in monitoring compliance with this Deed.

12.1.3 in addition to pay on the Commencement Date to ADC its additional administrative costs incurred in monitoring compliance with each obligation contained in this Deed in the sum of £50 for each obligation amounting in total to £250.00 calculated as follows:

12.1.3.1 Local Highway and Access Improvements Contribution £50.00
12.1.3.2 Lyminster Bypass Contribution £50.00
12.1.3.3 Littlehampton Town Centre Management Contribution £50.00
12.1.3.4 Wick Improvement Contribution £50.00
12.1.3.5 Wick Information Centre Contribution £50.00

and for the avoidance of doubt the GRAND TOTAL of sums due under clauses 12.1.2 and 12.1.3 above shall be £250 + £250 = £500

Monitoring Costs of ADC – Additional Provisions

12.1.4 For the avoidance of doubt ADC shall be entitled to utilise a proportion of any monetary contributions specified in this Deed for related project costs up to a

maximum of 5% of the sum or £15,000 which ever shall be the larger

12.1.5 For the avoidance of doubt the above charges are standard charges and shall not preclude ADC from claiming and receiving any reasonable additional monitoring and legal or enforcement costs above and beyond these standard charges when circumstances require that they be incurred in pursuing full compliance with this Deed whether through the courts or otherwise

13. Payment Notice

The parties to this Deed hereby agree that all payments due under this Deed shall be forwarded to ADC and WSCC as the relevant payee and shall have attached to them a copy of the Payment Notice contained in Schedule 2 to this Deed duly completed.

14. General

The parties agree that:

14.1 nothing in this Deed constitutes or constitutes an obligation to grant the Planning Permission

14.2 nothing in this Deed grants the Planning Permission or any other approval consent or permission required from WSCC or ADC in the exercise of any other statutory function

14.3 nothing in this Deed fetters or restricts the exercise by WSCC and ADC of any of their powers

14.4 the obligations contained in this Deed are planning obligations for the purpose of Section 106 of the Act

14.5 this Deed is enforceable by WSCC as to Schedule 3 Paragraph 1.1 and by ADC as to Schedule 3 Paragraphs 2.1, 2.2, 3.1 and 3.2

14.6 without prejudice to the definitions of the "Owner", "ADC" and "WSCC" it is not intended that 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

14.7 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

14.8 this Deed is a Local Land Charge and shall be registered as such

14.9 nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not at appeal) after the date of this Deed

14.10 no person shall be liable for any breach of the Planning Obligations or other provisions of this Deed after it shall have parted with its interest in the Site or any part of the Site in respect of which such breach occurs but without prejudice to any liability for any subsisting breach arising prior to parting with such interest

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

SCHEDULE 1

Commencement Notice

Pursuant to Clause 5.2 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 _____ 20

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 [2] County Planning Officer, West Sussex County Council, County Hall, Chichester, West Sussex, PO19 1RQ [DX: 30330] Chichester
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.

1. Payment to be made by/on behalf of .....

2. Land at: .....

3. Agreement dated: .....

4. Planning application reference number [where applicable]

5. 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	

SCHEDULE 3

Covenants

1. The Owner covenants with WSCC to pay the following contribution to WSCC prior to Occupation of the Development

   1.1 the Local Highway and Access Improvements Contribution;

2. The Owner covenants with ADC to pay the following contributions to ADC prior to the Commencement Date

   2.1 the Littlehampton Town Centre Management Contribution; and

   2.2 the Wick Improvement Contribution.

3. The Owner covenants with ADC to pay the following contributions to ADC prior to Occupation of the Development

   3.1 the Lyminster Bypass Contribution; and

   3.2 the Wick Information Centre Contribution.

4. The Owner covenants with ADC and WSCC that there shall be no Occupation of the Development unless and until the Local Highway and Access Improvements Contribution, Lyminster Bypass Contribution and Wick Information Centre Contribution have all been paid to and received by WSCC and ADC in accordance with the provisions of this Schedule 3.

5. The Owner covenants with ADC that the Development shall not be Commenced unless and until the Littlehampton Town Centre Improvement Contribution and the Wick Improvement Contribution have been paid to and received by ADC in accordance with the provisions of this Schedule 3.

6. ADC and WSCC covenant with the Owner that the Contributions shall not be expended or applied by ADC or WSCC (as appropriate) otherwise than in accordance with the purposes specified in this Deed.

7. WSCC and ADC covenant with the Owner that upon receipt of a written application by the Owner any amount of Contributions paid to and received by WSCC and ADC (as appropriate) under this Deed which has not been expended in accordance with the provisions of this Deed within 15 years of the date of receipt by WSCC or ADC (as appropriate) shall be returned to the Owner together with interest at 4% above the HSBC Bank base rate from time to time less reasonable administrative costs thereon.

EXECUTED AS A DEED by)
the said **DEVELOPMENT SECURITIES**)
(LITTLEHAMPTON) LIMITED)
(Registered Company Number 07190983))
in the presence of)

Director

Director/Secretary

SEALED with the **COMMON SEAL**
of **ARUN DISTRICT COUNCIL**
in the presence of:

Seal Book No:

Authorised Signatory

SEALED with the **COMMON SEAL**
of **WEST SUSSEX COUNTY COUNCIL**
in the presence of: