DATED 3 APRIL 2013

ADUR DISTRICT COUNCIL

and

BURRELL INVESTMENTS LIMITED

and

UNITY TRUST BANK PLC

and

COUTTS & COMPANY

DEED OF VARIATION OF SECTION 106 UNILATERAL UNDERTAKING

Relating to land known as unit 1-2, 48 Marlborough Road Lancing Business Park, Lancing

THIS DEED OF VARIATION OF A SECTION 106 UNILATERAL UNDERTAKING dated 28 May 2009 is made the 3 day of April 2013

BETWEEN:

1. **Adur District Council** of Civic Centre Ham Road Shoreham By Sea West Sussex BN43 6PR ("the Council")

AND

2. **Burrell Investments Limited** (company registration number 4050769) whose registered office is care of Dennis and Robinson Limited of Blenheim Road Churchill Industrial Estate Lancing West Sussex BN15 8UH ("the Owner")

AND

3. **Unity Trust Bank Plc** (company registration number 1713124) whose registered office is at Nine Brindleyplace Birmingham B1 2HB ("the First Mortgagee")

AND

4. **Coutts & Company** (company registration number 36695) (an unlimited company) whose principal office is at 440 Strand London WC2R 0QS ("the Second Mortgagee")

RECITALS

WHEREAS:

1. This Deed of Variation is supplemental to and varies a unilateral undertaking dated 28 May 2009 given by the Owner and the First

Mortgagee and Second Mortgagee to the Council ("the Unilateral Undertaking") a copy of which is attached to this Deed at Appendix 1

2. The Owner has submitted to the Council a planning application registered by the Council under reference AWDM/0687/12 ("the New Application") to replace extant outline permission ADC/0191/08

3. The Council has resolved to grant the planning permission pursuant to the New Application ("the New Permission") subject to conditions and to the completion of this Deed of Variation without which planning permission would not be granted

4. The parties hereto have agreed to enter into this Deed of Variation for the purpose of securing that the terms of the Unilateral Undertaking shall apply to the New Permission

IT IS HEREBY AGREED as follows:

1. PRELIMINARY

1.1 This Deed of Variation is made pursuant to Section 106A of the Town and Country Planning Act 1990 (as amended) Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other powers enabling

1.2 The terms contained in this Deed of Variation shall take effect upon the grant of the New Permission

2. AGREED CHANGES TO THE UNILATERAL UNDERTAKING

2.1 The parties to this Deed of Variation hereby agree that the Unilateral Undertaking shall be varied as follows:

2.2 Recital (F) is amended to replace reference "ADC/0191/08" with "AWDM/0687/12" and the reference to "(classes B12/B2/B8)" to "(classes B1/B2/B8)".

2.3 The definition of "Planning Permission" at clause 1.1.6 is amended to replace reference "ADC/0191/08" with "AWDM/0687/12".

2.4 The definition of "Property" at clause 1.1.7 is amended to replace the words "21 Churchill Industrial Estate Blenheim Road Lancing" with "Unit 1-2, 48 Marlborough Road Lancing Business Park Lancing BN15 8UF" registered under title number WSX38787.

3. THIRD PARTY RIGHTS

3.1 The provisions of this Deed of Variation are not intended to be enforceable by any third party pursuant to the Contract (Rights of Third Parties) Act 1999

4. DECLARATION

4.1 Save as modified by this Deed of Variation the Unilateral Undertaking shall continue in force and effect in all respects

4.2 It is agreed and declared that in interpreting this Deed of Variation all other meanings definitions and interpretations set out in the Unilateral Undertaking shall apply

5. MISCELLANEOUS

5.1 The Owner shall on the date of this Deed of Variation pay the Council's reasonable costs for the negotiation and completion of this Deed of Variation

5.2 This Deed of Variation shall be registered as a Local Land Charge

APPENDIX 1: THE UNILATERAL UNDERTAKING

Dated 28TH MAY 2009

BURRELL INVESTMENTS LIMITED

UNITY TRUST BANK PLC

COUTTS & COMPANY

to

ADUR DISTRICT COUNCIL

UNILATERAL UNDERTAKING

pursuant to s106 of the Town and Country Planning Act 1990 (as amended)

SpeechlyBircham

THIS UNILATERAL UNDERTAKING is made this 28TH day of MAY 2009

BY

(1) **BURRELL INVESTMENTS LIMITED** whose registered office is care of Denny and Robinson of Blenheim Road Churchill Industrial Estate Lancing West Sussex BN15 8GH (**the Owner**)

(2) **UNITY TRUST BANK PLC** whose registered office is at Nine Brindleyplace Birmingham B1 2HB (**the First Mortgagee**) and

(3) **COUTTS & COMPANY** whose principal office is at 440 Strand London WC2R OQS (**the Second Mortgagee**)

TO

(4) **ADUR DISTRICT COUNCIL** of Civic Centre Ham Road Shoreham by Sea West Sussex BN43 6PR (**the District Council**)

WHEREAS:

(A) The District Council is the local planning authority for the purposes of the Act for the area within which the Property is situated and by which the obligations contained in this Undertaking are enforceable

(B) The Owner is registered as the owner of the freehold interest in the Property at the Land Registry under title number WSX38787

(C) The Owner intends to develop part of the Property pursuant to the Planning Permission

(D) The First Mortgagee holds a legal charge dated 3 April 2006 registered under Title Number WSX38787

(E) The Second Mortgagee holds a legal charge dated 3 April 2008 registered under Title Number WSX38787

(F) The Owner under its trading name of Manhattan Furniture has applied to the District Council for planning permission under reference ADC/0191/08 for 13 employment units (classes B12/B2/B8) in 4 blocks (total 1783 square metres) and studio and staff canteen (324 square metres) with associated access roads parking and landscaping

(G) The Owner considers that the Property should be bound by this Planning Obligation

NOW THIS DEED WITNESSES THE FOLLOWING:

1. INTERPRETATION

1.1 In this Undertaking the following words and expressions shall have the following meanings assigned to them:

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

1.1.2 **Application** means the planning application referred to in Recital (F) of this Undertaking

1.1.3 **Development** means the development on the Property of the 13 employment units (Classes B1/B2B8) in 4 blocks (total 1,783sqm) and studio and staff canteen (324sqm) with associated access roads parking and landscaping

1.1.4 **Employment Units** mean the 13 employment units to be constructed as part of the Development

1.1.5 **Occupy** and **Occupation** means occupation of the Employment Units for the purposes permitted by the Planning Permission but not including occupation by persons engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

1.1.6 **Planning Permission** means the planning permission under reference number ADC/0191/08 granted pursuant to the Application

1.1.7 **Property** means the freehold land known as unit 21 Churchill Industrial Estate Blenheim Road Lancing as is registered at the Land Registry under title number WSX38787 and as is shown for the purposes of identification only edged red on the Plan

1.1.8 **Planning Obligation** means the planning obligation set out in the Schedule to this Undertaking

1.1.9 **Plan** means the plan annexed to this Undertaking

1.2 Words importing one gender shall be construed as importing another gender

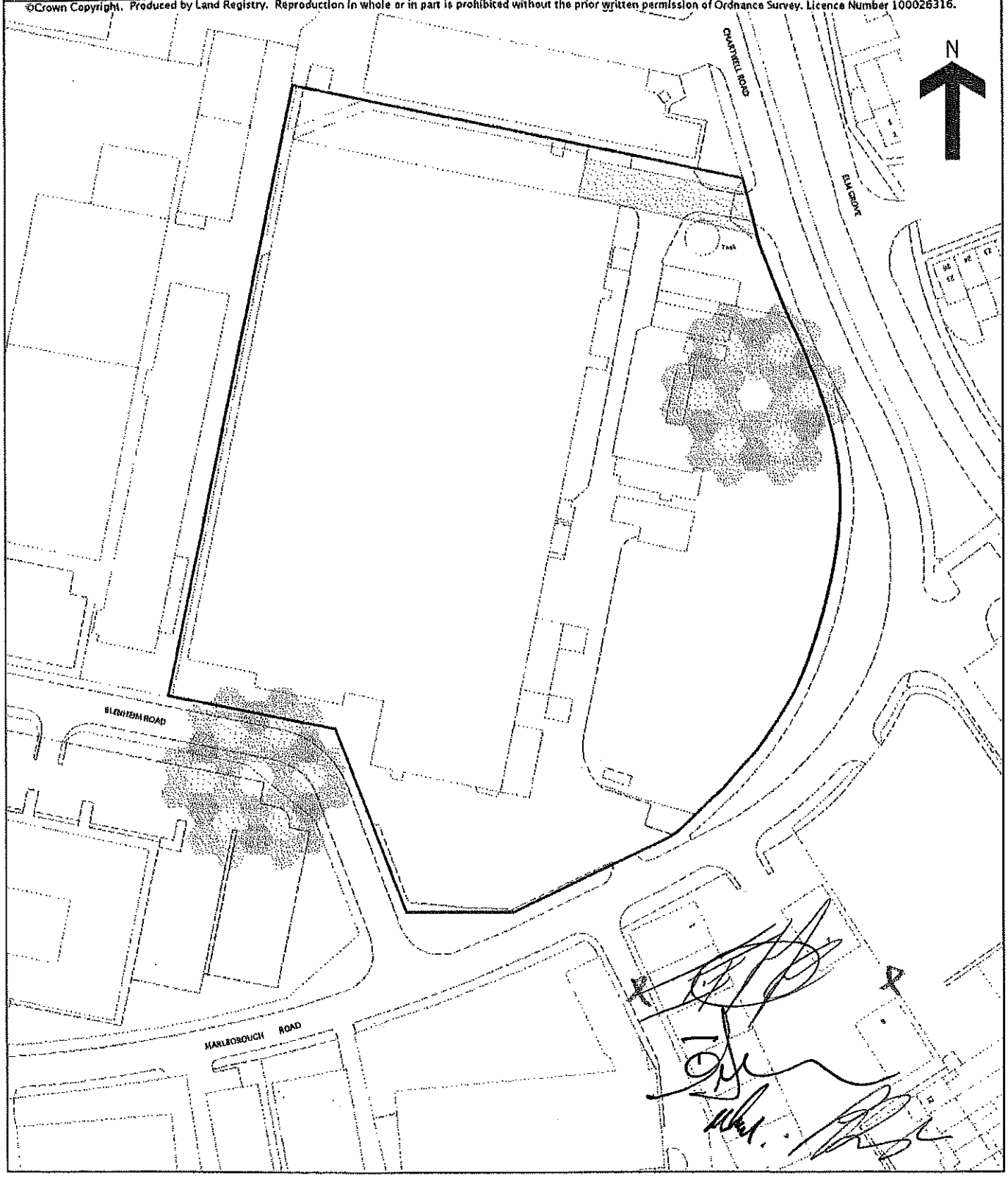
1.3 Words importing the singular shall be construed as importing the plural and vice versa

1.4 Where any party comprises more than one person the obligations and liability of that party under this Undertaking shall be joint and several obligations and liability of those persons

Land Registry Official copy of title plan

Title number WSX38787
Ordnance Survey map reference TQ1703NE
Scale 1:1250
Administrative area WEST SUSSEX: ADUR

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This official copy is incomplete without the preceding notes page.

1.5 The expression **the Owner** and **the First Mortgagee** and **the Second Mortgagee** shall include respective successors in title and assigns (or those otherwise deriving a legal interest in the Property) of each as shall any reference to any person company trust body or association

1.6 Any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of such statute for the time being in force and all instruments thereunder

2. LEGAL EFFECT

2.1 The Owner the First Mortgagee and the Second Mortgagee acknowledge that the obligations in the Schedule to this Undertaking are planning obligations and are enforceable jointly and severally by the District Council in accordance with the provisions of S106(3) of the Act against the Owner the First Mortgagee and the Second Mortgagee and successors in title and persons deriving title under each and shall bind the interests held by those persons in the Property

2.2 This Undertaking shall come into effect upon the grant of the Planning Permission

2.3 This Undertaking is a Local Land Charge and shall be registered as such

2.4 Save in respect of liability for any antecedent breach of this Undertaking the Owner the First Mortgagee and the Second Mortgagee shall upon parting with all of its interest in the Property be released from all obligations rights and duties under the terms of this Undertaking

2.5 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Undertaking and no person other than the parties hereto (and any successors in title or assigns or successor bodies) shall have any rights under or be able to enforce the provisions of this Undertaking

2.6 This Undertaking shall (unless otherwise proposed by the parties hereto) be revoked and be of no further effect if the Planning Permission shall lapse without having been implemented or shall be revoked or modified other than at the request of the parties hereto

2.7 This Undertaking is made pursuant to s106 of the Act, s111 of the Local Government Act 1972 and all other powers and enactments thereby enabling and which may be relevant for the purposes of the enforcement of the undertakings, covenants and or obligations contained in this Undertaking to the intent that it shall bind The Owner and its successors in title and assigns and every part of the Property.

2.8 This Undertaking shall be governed by and construed in accordance with the Laws of England and each of the parties hereby submits to the exclusive jurisdiction of the English Courts.

2.9 Any Notice consent or approval required to be given under this Undertaking shall be in writing and shall be delivered personally or sent by prepaid first class recorded delivery post telex or facsimile transmission. The address for service of any such notice consent or approval as aforesaid shall in the case of the parties be the address given above or such address for service as shall have been previously been notified by the party and in the case of the District Council shall be Adur District Council Civic Centre Ham Road Shoreham by Sea West Sussex BN43 6 PR

3. OBLIGATIONS

3.1 The Owner undertakes:

3.1.1 to pay the District Council's legal costs reasonably incurred in connection with the acceptance of this Undertaking in the amount of two hundred and thirty five pounds (£235)

3.1.2 To serve notice on the District Council confirming that the Employment Units are about to be or have just become Occupied

3.2 The Owner covenants with the District Council that it will comply in all respects with the Planning Obligation

4. MORTGAGEE CONSENT

4.1 The First Mortgagee and the Second Mortgagee hereby consent to the Owner entering into this Undertaking and agree to be bound by it only in the event that either one or both become a mortgagee in possession of the Property

5. EXECUTION

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

THE SCHEDULE

The Planning Obligation

The Owner hereby covenants with the District Council that it will within 7 days of the first Occupation of the Employment Units pay the sum of forty six thousand pounds (£46,000) to the District Council as a contribution towards sustainable transport improvements in the area comprised within the list of "schemes to be progressed if developer funding is available"

SIGNED as a **DEED** by **BURRELL INVESTMENTS LIMITED** acting by a Director and its secretary (or by two Directors)

Director

Director/Secretary

SIGNED as a **DEED** by **UNITYTRUST BANK PLC** acting by a Director and its secretary (or by two Directors)

Director

Director/~~Secretary~~

SIGNED as a **DEED** by **COUTTS & COMPANY** acting by a Director and its secretary (or by two Directors)

Director

Director/Secretary

The common seal of Coutts & Co was hereto affixed in the presence of:-

Authorised Sealing Officer

THE COMMON SEAL of **ADUR DISTRICT COUNCIL** is hereunto affixed in the presence of

Director

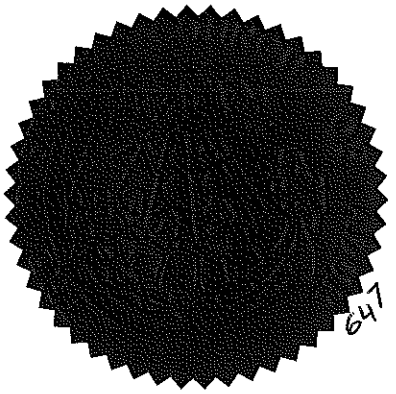
Director/Secretary

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

THE COMMON SEAL OF ADUR DISTRICT COUNCIL was hereunto affixed
in the presence of:-

Authorised Officer

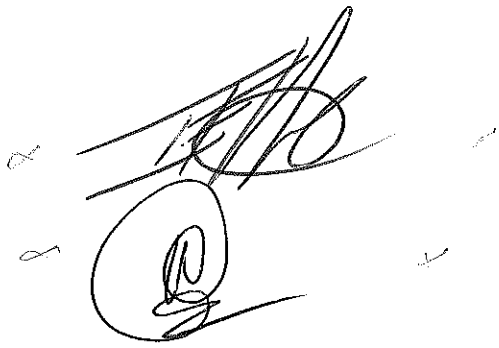
Solicitor to the Council



SIGNED AS A DEED BY BURRELL INVESTMENTS LIMITED acting by a
Director and its secretary
(or by two Directors)

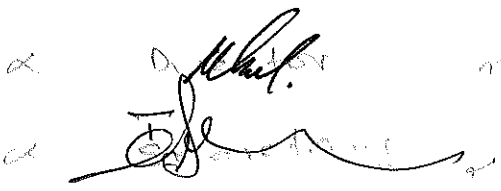
Director

Director / Secretary



SIGNED AS A DEED BY UNITY TRUST BANK PLC acting by a
Director and its secretary
(or by two Directors)
Director

Director / ~~Secretary~~



EXECUTED AS A DEED, FOR & ON BEHALF
~~THE COMMON SEAL~~ OF COUTTS & CO
~~was hereto affixed~~ BY ITS LAWFUL ATTORNEY
in the presence of:- BARRY IAN WILLIAMSON

~~Authorised Sealing Officer~~

GARY RODGERS - WITNESS
C/O COUTTS & CO
440 STRAND
LONDON WC2R 0QS

FOR AND ON BEHALF OF COUTTS & CO.,
440, STRAND, WC2R 0QS

