

DATED 10th April 2015

ANGUS MONRO (1)

and

THE COUNCIL OF THE BOROUGH OF HAVANT (2)

D E E D

Pursuant to (inter alia)

Section 106 of the Town and Country Planning Act 1990

Relating to land at 9 East Street, Havant in Hampshire PO9 1AA

Jo Barden-Hernandez
Solicitor to the Council
Havant Borough Council
Public Service Plaza
Civic Centre Road
Havant, Hampshire
PO9 2AX



THIS DEED is made the 10th day of April 2015
BETWEEN

- (1) ANGUS MONRO of 22 Culcross street Mayfair London W1K 7HE ("the Owner"); and
- (2) THE COUNCIL OF THE BOROUGH OF HAVANT OF Public Service Plaza Civic Centre Road Havant Hampshire PO9 2AX ("the Council")

WHEREAS:

- (1) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 for the area within which the Land is situate
- (2) The Owner is the freehold owners of the Land being registered with the title absolute at the Land Registry under title Number HP198757 for an estate in fee simple no other person having an interest therein at law or in equity
- (3) The Council is the Local Authority for the purpose of Section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this Deed will facilitate be conducive and incidental to the Council's functions
- (4) The Owner has submitted the Application for the Development to the Council and the Council being desirous of improving the area and general locality of the Land and wishing to restrict and regulate the development and use of the Land.

NOW THIS DEED WITNESSETH as follows:

1. Statutory Powers

This Deed is made pursuant to:

- 1.1 Section 106 of the Town and Country Planning Act 1990 and Section 111 of the Local Government Act 1972 to the intent that it shall bind the Owners and their successors in title to each and every part of the Land and its assigns

2. Interpretation

- 2.1 Reference in this Agreement to a Clause Schedule or Recital shall mean a Clause Schedule or Recital to this Agreement
- 2.2 Headings in this Agreement are for ease of reference only and shall not affect construction or interpretation of any of the provisions of this Agreement
- 2.3 In this Agreement where the context so admits:
 - 2.3.1 words importing one gender shall include all other genders
 - 2.3.2 words importing the singular shall include the plural and vice versa

3. Planning Obligations

The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Town and Country Planning Act 1990 and are enforceable by the Council

4. Covenants Binding on Implementation

- 4.1 The covenants, undertakings, obligations and restrictions in this Agreement shall become binding on the parties to this Agreement upon Implementation

5. Definitions

In this Agreement the following expressions shall unless the context shall otherwise require have the following meanings:

"The Act"	Means the Town and Country Planning Act 1990 as amended.
"Affordable Housing"	Means housing which is rented or sold (including an equity share in whole or part) below market levels by means of public or private subsidies such that it can be afforded by those Eligible Persons whose incomes are insufficient for them to afford adequate housing locally on the open market
"Affordable Housing Funding"	means one or more of the following funding sources; a) any funding from the HCA of finance to subsidise the cost of providing Affordable Housing Units on the Land provided by the HCA or any such other funding initiatives b) approval or such other indication from the HCA that the Land (or part thereof) will be acceptable as a reserve and/or strategic site and funding will be made available c) funding from a Registered Provider in anticipation of a grant allocation or other funding source
"Affordable Housing Land"	Means that part of the Land upon which the Affordable Housing Units are to be provided
"Affordable Housing Units"	means a minimum of 4 Residential Units (being

30% of the total Residential Units on the Development), comprising 4no 1 bedroom flats let as Affordable Rent which are to be made available by the Owners for Affordable Housing on the Affordable Housing Land as herein provided

"Affordable Rent"

means the letting of the Affordable Housing Units to an Eligible Person at a rent of up to 80% of the local market rents (inclusive of service charges) and such units shall have a minimum tenancy term of five (5) years and in accordance with the guidance issued by the HCA in 2011 (or, in the event of discontinuance, any replacement or updated guidance issued by the HCA)

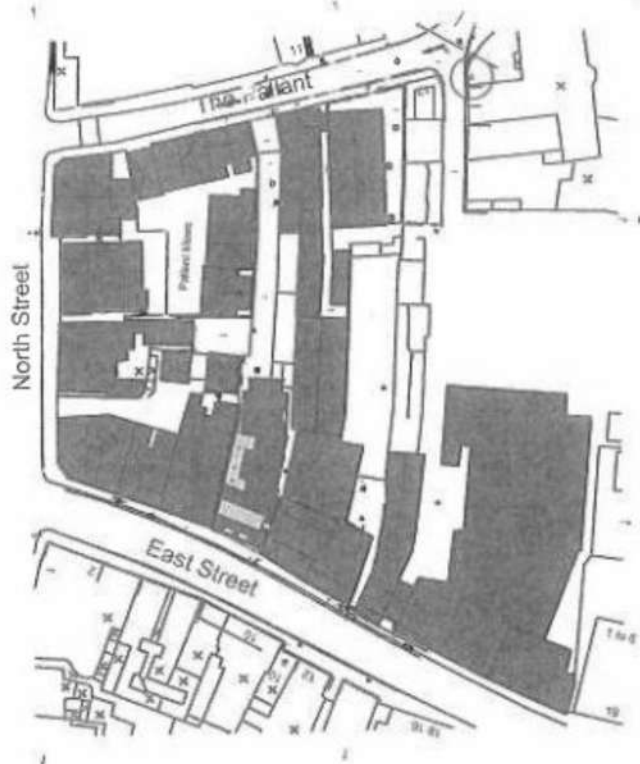
"Affordable Rented Accommodation" means, in relation to the Affordable Rented Housing Units, housing for rent available to Eligible Persons with the rent being at an Affordable Rent

"Affordable Rented Housing Units" means in relation to the Affordable Housing Units housing for rent available to persons who cannot afford to rent or buy houses generally available on the open market with the rent being at an Affordable Rent. The expression "Affordable Housing Unit" shall have a corresponding meaning as the context requires PROVIDED ALWAYS that, at the time of each letting, the rents shall not exceed 80% of the local gross Open Market rent and would not exceed 45% of the Universal Credit Allowance, whichever is the higher, unless otherwise agreed in writing with the Council and the rents shall only be increased annually in accordance with arrangements made for such rent increases established by the HCA

"Alternative Affordable Housing Provider"

means any organisation or body operating as a private landlord who is not an Registered Provider but who has entered into a management contract with an Registered Provider for the management of the Affordable Housing Units to ensure the

	Affordable Rented Accommodation are retained for future Eligible Persons and to ensure the recycling of any grant
"the Application"	Shall mean the application submitted to the Council by the Owners given reference number APP/14/00576 for the Development
"Commencement"	means the Implementation of the Development and "Commence" shall be interpreted accordingly.
"the Development"	Means Development authorised by the Planning Permission consisting of Demolition of existing single storey building (Class A2) and associated outbuilding to the rear; construction of four storey building comprising 8No. 1 bed and 3No. 2bed apartments with associated landscaping; cycle parking and refuse. (Revised Application).
"Eligible Person"	means persons who are unable to afford housing accommodation on the open market (whether by renting or purchasing) within the administrative area of the Council and who are on those registers retained or referred to by the Council from time to time in the discharge of its housing function and the expression "Eligible Persons" shall be construed accordingly
"Homebuy Agent"	means the body nominated by the HCA to be responsible for low cost home ownership nominations within the administrative area of the Council or in the event that nobody has been nominated such other body or organisation as the Council shall first approve in writing
"HCA"	means the Homes and Communities Agency being a body corporate charged under the Housing and Regeneration Act 2008 with the functions of regulating the provision of Affordable Housing within the Council's administrative area by any Registered Provider or if such body ceases to exist or is superseded the equivalent body



SCALE
1/1250

TITLE
Residential Proposals

DATE
Dec. 13

9, East Street - Havant

CONTRACTOR MUST CHECK ALL DIMENSIONS ON SITE ONLY. FORMER DIMENSIONS ARE TO BE VERIFIED FROM RECORDS. MUST BE REPORTED TO THE ARCHITECT BY THE CONTRACTOR.

DETAIL
Location Plan

© COPYRIGHT

AUTHOR
PG

DRAWING No
14/33/L01

A	B	C	D	E	F	G	H
J	K	L	M	N	O	P	Q
R	S	T	U	V	W	X	Y

PETER GALLOWAY



ARCHITECTS

HAVANT

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MOB. 07808 483362

E-MAIL: peter@pgparchitects.co.uk

"Indexed"	Means in respect of the Solent Disturbance Mitigation Contribution such sum to be index linked in accordance with the All Items Index of Retail Prices (RPI) published by the Office of National Statistics or any replacement thereof from the date hereof until the date of payment and such indexation shall only be applied in circumstances where the RPI at the date of payment stands at a higher level than it did at the date of this agreement (or any amendment/comparable replacement thereof)
"Interest"	means interest at 4 per cent above the base lending rate of the Nat West Bank plc from time to time
"Implementation"	Means the Implementation of the Planning Permission by the carrying out of a material operation under Section 56(4) of the Act excluding operations consisting of site clearance, demolition work on the Land, archaeological investigations, investigations for the purpose of assessing contamination, remedial action in respect of contamination, diversion and laying of services and the erection of means of enclosure for the purposes of site security and/or the display of advertisements
"the Land"	Means the Land at 9 East Street Havant in Hampshire shown for identification purposes only edged by red line on the Plan
"the Monitoring Fee"	means the sum of Ninety Four Pounds (£94) inclusive of any VAT used towards the costs to be incurred by the Council in the provision of suitably qualified and experienced persons whose function inter alia is to monitor coordinate and enforce section 106 Obligations.
"Occupation" and "Occupied"	Means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing

	or display or occupation in relation to security operations.
"Open Market Housing Units"	Means the residential units available for sale or rent on the open market but excluding the Affordable Housing Units
"the Owner"	Means the Owner and in the case of two or more owners each or all of them as owners of any or all parts of the Land and as parties to this Deed of Agreement acting and being obliged by this Agreement jointly and severally who is (or are) described in recital 2 of this Agreement being a person or persons identified in accordance with Section 106 (9)(c) of the Act.
"Plan"	Means the Peter Galloway drawing ref – 14/33/L01 annexed
"the Planning Permission"	Means the planning permission for the Development.
"Registered Provider"	means a Registered Provider as defined in Part 1 of the Housing Act 1996 registered by the HCA or any successor body pursuant to Section 3 of that Act and not removed from the register pursuant to section 4 of that Act and has been notified in writing to the Council
"Residential Units"	Means residential dwellings whether individually or in groups and whether divided vertically or horizontally
"the Solent Disturbance Mitigation Contribution"	means the sum of One Thousand and Eight Hundred and Ninety Two Pounds (£1,892) (Indexed) being a contribution to be applied by the Council and or the County Council in respect of the Special Protection Area avoidance and mitigation measures delivered through the Solent Interim Planning Framework.

6. With the intention and so as permanently to bind the Land and all parts thereof so far as lawfully may be effected and into whomsoever hands the same may come and so that the Obligations hereby created shall be enforceable both against the Owners and the Mortgagee (if any) and their respective successors the Owners and the Mortgagee (should it or they take possession of any part of the Land or exercise powers of sale under its security) HEREBY SEVERALLY COVENANT AND UNDERTAKE AS A PLANNING OBLIGATION TO COMPLY FULLY WITH THE OBLIGATIONS.
7. This instrument or document hereby expresses itself as executed as a Deed.
8. The Owner (and each of them acting in concert in the case of more than one joint owner) is immediately entitled to possession and occupation of a freehold estate in the Land no other person having an interest therein at law or (to the best of the Owner's knowledge and belief) in equity
9. This Deed is made pursuant to Section 106 of the Act with the intent that it shall bind the Owner's interest in the Land and be enforceable against them and the persons deriving title under them and shall be a planning obligation for the purposes of the Act.
10. This Deed shall have effect indefinitely from the time the Planning Permission is granted save as provided for in Clause 16 below.
11. In the event of any difference between the description of the Development in this Deed and the terms of the grant of permission issued by the Council in response to the Application the text of the grant of planning permission only shall be deemed to express the permission granted by the Council in response to the Application.
12. The obtaining consequent upon the provisions of this Deed of expressions of acceptance or satisfaction on the part of the Council with things done in discharge of Obligations or determinations of materiality for the purposes of this Deed shall be ineffective and not relied upon by any person unless in writing by the Council's Executive Head for Planning and the Built Environment for the time being or such other officer who may be identified in writing by the Council for this purpose.

13. In the event that any provision of this Deed is held to be invalid or unenforceable the remaining provisions of this Deed shall remain in full force and effect.
14. Nothing in this Deed shall be construed as prohibiting or limiting any right to develop any part of the Land in accordance with a planning permission granted by the Council or by the First Secretary of State on appeal or reference to him after the date of this Deed
15. No person or company shall be liable for any breach of this Deed unless he or it holds an interest in the part of the Land in respect of which such breach occurs or held such an interest at the date of the breach
16. If the Planning Permission expires within the meaning of section 91 of the 1990 Act or is revoked or otherwise withdrawn or modified by any statutory procedure without the consent of the Owners or their successors in title this Agreement shall cease to have effect
17. This Agreement is a local land charge and shall be registered as such pursuant to the provisions of the Local Land Charges Act 1975 and section 106(11) of the Act,
18. Owner's Obligations
Contributions
The Owner covenants to the Council;
 - 18.1 not to Occupy or introduce or cause permit or suffer to be Occupied the Development permitted by the Planning Permission at any time before the Owners shall have paid to the Council or caused to be paid to the Council the Solent Disturbance Mitigation Contribution (Indexed)
 - 18.2 not to Commence or introduce or cause permit or suffer to be Commenced the Development permitted by the Planning Permission at any time before the Owners shall have paid to the Council or caused to be paid to the Council the Monitoring Fee
 - 18.3 Affordable Housing
The Owners Covenant to the Council;

- 18.4 That no less than thirty per cent (4 Affordable Housing Units) of the total number of Residential Units to be provided on the Land will be Affordable Housing Units;
- 18.5 All Affordable Housing Units on the Land will be integrated and compatible with the design of the Open Market Housing Units
- 18.6 That no more than 5 of the Open Market Housing Units shall be constructed prior to provision of the Affordable Housing Units to provide a mixed development. All Affordable Housing Units on the Land will be integrated and compatible with the design of the Open Market Housing Units.
- 18.7 That the Affordable Housing Units will be constructed to at least the minimum standard required by the HCA (or such other successor body's standards) Design and Quality Standards (2007) and the Code for Sustainable Homes published by the Government (or such replacement guidance) or other similar standard as may be reasonably required by the Council.
- 18.8 Where Affordable Housing Funding has not been secured despite the use of reasonable endeavours so to do the Owners will notify the Council in writing that they have not been successful in securing Affordable Housing Funding The Council will then where it is reasonably satisfied that the Owners have complied with the obligations to use reasonable endeavours in all material aspects issue a written notice to the Owners confirming that in accordance with this Clause 18 authorising the Owners to adjust the proportion of Affordable Housing Units to a figure to be agreed with the Council such agreement not to be unreasonably withheld or delayed subject to:
- (a) the level of any Affordable Housing Funding available
 - (b) the HCA's "Economic Assessment Tool" or any such other economic assessment tool submitted by the Owners and agreed by the Council such agreement not to be unreasonably withheld or delayed to evaluate the portion of Affordable Rented Housing Units to be provided with the level of Affordable Housing Funding available and
 - (c) the results of any financial viability assessment carried out by the Owners
- 18.9 Not more than 3 of the Open Market Housing Units within the Development will be Occupied until either:
- (a) the Owner has entered into a binding contract or an agreement for lease with a Registered Provider or an Alternative

Affordable Housing Provider for the transfer of the freehold or a long lease of no less than 125 years of the Affordable Housing Units to include the construction of the Affordable Housing Units (and have informed the Council to whom the Affordable Housing Units have been transferred) or

- (b) the Affordable Housing Units have been transferred fully provided with services to a Registered Provider or an Alternative Affordable Housing Provider and written evidence of compliance in respect of the above has been supplied to the Council to its satisfaction

18.10 Where the Owner intends to provide Affordable Housing Units in association with an Alternative Affordable Housing Provider or a Registered Provider they shall only be used if the Registered Provider and/or the Alternative Affordable Housing Provider can demonstrate to the Council:

- (a) A good judgement by the HCA or successor body; and
- (b) acceptable sustainable management arrangements and community development policies.

18.11 The transfer to the Registered Provider or Alternative Affordable Housing Provider of the Affordable Housing Land shall contain a covenant not to use the Affordable Housing Units otherwise than in accordance with the provision of this Deed.

18.12 The Owner for himself and his successors in title covenants as follows:

- (a) not to use the Affordable Housing Units otherwise than for the provision of Affordable Housing;
- (b) not to dispose of any of the Affordable Housing Units other than by way of sale for Affordable Rent to the intent that all Affordable Rented Housing Units shall be used for the purpose of providing Affordable Housing to Eligible Persons; and
- (c) to require the Registered Provider or the Alternative Affordable Housing Provider to enter into an agreement with the Council granting the Council the right to nominate 100 per cent of the Occupiers of the Affordable Rented Units when initially let and all subsequent true voids

- 18.13 Where the Owner intends to provide management services for the Affordable Housing Units in association with a Registered Provider or an Alternative Affordable Housing Provider they shall only be used if the provider can demonstrate to the Council that they are approved and regulated for such activities by the HCA or any successor body.
- 18.14 The Affordable Rented Accommodation shall only be occupied by Eligible Persons
- 18.15 In the event that the Open Market Units are transferred to a Registered Provider or to an Alternative Affordable Housing Provider, the Registered Provider or Alternative Affordable Housing Provider may, at its sole discretion, use the Open Market Units for the purpose of providing Affordable Housing to Eligible Persons.
- 18.16 For the avoidance of doubt, in the event of the Open Market Units being used for Affordable Housing in accordance with clause 18.15 above, the Affordable Housing restrictions contained in this clause 18 shall not apply to the Open Market Units so used.
- 18.17 In the event of any mortgagee of the Affordable Housing Units wishes to enforce its security by way of sale (whether as mortgagee or through a receiver) then, subject to the mortgagee having complied with the requirements contained in clauses 18.17.1 to 18.17.3, it may do so, after which the Affordable Housing Units (or the relevant part the mortgagee wishes to sell) may be used free from the covenants set out in this clause 18 of the Schedule PROVIDED THAT the Mortgagee shall first follow the procedures set forth below:
- 18.17.1 The mortgagee shall serve a notice in writing on the Council ("the Offer Notice") stating that it wishes to exercise its statutory power of sale, the price at which it intends to sell the Affordable Housing Units (or the relevant part) which shall be no greater than the open market value of the Affordable Housing Units (or the relevant part)
- 18.17.2 The Council shall be permitted 30 days in which to accept the offer of sale set out in the Offer Notice or to nominate an alternative Registered Provider;
- 18.17.3 If the sale pursuant to clause 18.17.2 has not been completed by the date 60 days after the date of the Offer Notice ("the Expiry Date") the mortgagee having been ready willing and able to

complete then the mortgagee may sell the Affordable Housing Units (or the relevant part thereof) by private treaty or otherwise and the Affordable Housing Units (or the relevant part thereof) will no longer be bound by the covenants in this clause 18;

18.18 The Affordable Housing Units provided on the Land will be monitored in order to ensure compliance with the obligations in this clause 18 the Owners or its successors in title shall at such dates to be agreed by the parties make written returns to the Council detailing:

- the affordable housing provision including
- the type of dwelling,
- the tenure of the dwelling,
- the net internal floor area of the dwelling
- details of the occupiers
- the grant funding provided for the dwelling
- technical information in relation to the Code for Sustainable Homes
- the location of the Affordable Housing Units
- any other information on the Affordable Housing Units as reasonably required by the Council.

19. Interest

19.1 Where any Contribution or instalment of any contribution payable under this Deed is not paid in full to the Council on or before the relevant due date for payment there shall be added to such Contribution or instalment of such Contribution compound interest on the Contribution or instalment of Contribution plus indexation calculated at 4% above the National Westminster Bank base lending rate with monthly rests between the relevant due date for payment and the date of actual payment

20. Commencement

20.1 The Owner will notify the Council in writing at least 14 days before Commencement of the Development

21. Council Discretion

Nothing in this Deed shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Town and Country Planning Act 1990 or under any other Act PROVIDED ALWAYS THAT this Deed shall remain in full force and effect notwithstanding the terms and conditions of any planning permission which may or have been at any time issued by the Council or any other appropriate person pursuant to the provisions of the said

Act

22. Disputes

Any dispute or difference between the parties in connection with this Agreement (which shall include any matter hereunder which the Council has the discretion to agree or approve but does not do so) shall be referred to and determined by a single arbitrator to be appointed by agreement by the parties to the dispute or in default of agreement to be either an independent and duly qualified surveyor to be appointed by the President for the time being of the Royal Institution of Chartered Surveyors or a member of any other appropriate professional body as may be agreed between the parties and any person appointed shall act as arbitrator under the Arbitration Act 1996. Such arbitrator's decision (including without limitation as to the payment of costs of the arbitration) shall be final and binding upon the parties save in respect of any decision which is founded upon error in law or legal interpretation by such arbitrator.

23. No Waiver

No waiver (whether expressed or implied) by the Council of any breach or default by the Owners in performing or observing any of the terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing at any time any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owners.

24. Costs

- 24.1 The Developer hereby agrees to pay the Council's reasonable legal and other costs in connection with the preparation of this Deed (limited to £1000.00) such costs to be paid on completion of this Deed.

25. Successors

The expression "the Owners" and "the Mortgagee" shall include their respective successors in title and assigns.

26. Council Successors

The expression "the Council" shall include successors to its functions as Local Planning Authority for the purposes of the Town and Country Planning Act 1990.

27. Notices

- 27.1 Save where particular clauses specify otherwise all notices to be served and notifications to be given for the Council shall be marked for the attention of the Executive Head of Planning and Built Environment.

28. Third Parties

The Contracts Rights of Third Parties Act 1999 shall not apply to this Agreement.

29. Liability

- (1) No person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- (2) If the planning permission shall expire before Commencement or shall at any time be revoked modified or otherwise withdrawn then this Agreement shall immediately determine and cease to have further effect but in ceasing to have further effect shall not prejudice any express or implied rights accrued or accruing to the Owners by virtue of anything by the covenant in connection with or arising from the terms of this Agreement
- (3) The Council will on the written request of the Owners at any time after the obligations of the Owners under this Agreement have been fulfilled issue written confirmation of it and cancel all related entries in the Register of Local Land Charges
- (4) This Agreement is a local land charge and shall be registered as such
- (5) The provisions of this Agreement shall not be enforceable against the owner-occupier or tenant of any dwelling which has been completed and purchased from the Owners or their successors in title following completion of the Development.

IN WITNESS whether the parties hereto have executed these presence as a Deed the day and year first before written

EXECUTED as a DEED by
ANGUS MONRO in the
presence of:

Signature of witness:

Name:

Address:

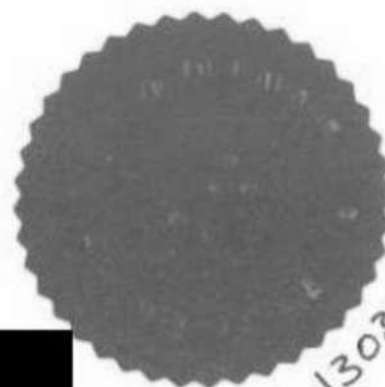
EXECUTED as a DEED by affixing
THE COMMON SEAL of
HAVANT BOROUGH COUNCIL
in the presence of:

)

)

)

Authorised Officer



13032

