

DATED _____

2016

SWAYTHLING HOUSING SOCIETY LIMITED (1)

THE COUNCIL OF THE BOROUGH OF HAVANT (2)

HAMPSHIRE COUNTY COUNCIL (3)

FOREMAN HOMES LIMITED (4)

LLOYDS BANK PLC (4)

PLANNING OBLIGATION BY DEED OF AGREEMENT UNDER SECTION 106 OF THE TOWN
AND COUNTRY PLANNING ACT 1990

relating to the development of land at Ranelagh Road, Havant, Hampshire

DATE

2016

PARTIES

- (1) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant Portsmouth PO9 2AX ("Council")
- (2) **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester Hampshire SO23 8UJ
- (3) **THE SWAYTHLING HOUSING SOCIETY LIMITED** of Collins House Bishopstoke Road Eastleigh Hampshire SO50 6AD ("Owner")
- (4) **JACOBS FOREMAN DEVELOPMENTS LIMITED** incorporated and registered in the United Kingdom with Company Number 04622599 whose registered office is at Unit 1 Station Industrial Park Duncan Road Park Gate Southampton SO31 1BX ("Developer")
- (5) **LLOYDS BANK PLC** (Company Registration Number 2065) of Pendeford Securities Centre Pendeford Business Park Wobaston Road Wolverhampton WV9 5HZ ("Mortgagee")

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The County Council is a local planning authority for the purposes of the Act, the highway authority for Hampshire (save for trunk roads and special roads), the transport authority for Hampshire for the purposes of the Transport Acts of 1985 and 2000 and the education authority for the area within which the Land is situate.
- 3 The Owner and the Developer are the freehold owners of the Site.
- 4 The Mortgagee has the benefit of a registered charge over part of the Site dated 20 June 2014.
- 5 The Developer has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- 6 The Council has resolved to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	the Town and Country Planning Act 1990.
"Application"	the application for full planning permission dated [] submitted to the Council for the Development and allocated reference number [].

"Building Price Index"	All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation.
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed 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" shall be construed accordingly.
"Development"	the Development of the Site with [...insert description of the development...] as set out in the Application.
"Dwelling"	any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission..
"Index"	All Items Index of Retail Prices issued by the Office for National Statistics
"Interest"	interest at 4% per cent above the base lending rate of National Westminster Bank Plc from time to time.
"Occupation" and "Occupied"	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.
"Plan"	the plan attached to this Deed.
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Second Schedule.
"Site"	the land against which this Deed may be enforced being the land registered at the Land Registry under title number SH39688 and known as land at Ranelagh Road Havant Hampshire as shown edged red on the Plan.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 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 severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

4 CONDITIONALITY

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses 11, 12 and 13 which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S and DEVELOPER'S COVENANTS

The Owner and Developer covenant with the Council as set out in the First and Second Schedule.

6 MISCELLANEOUS

- 6.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 6.2 This Deed shall be registrable as a local land charge by the Council.

- 6.3 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Development and Building Control and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 6.4 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 6.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 6.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 6.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.8 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 6.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 6.10 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

7 MORTGAGEE'S CONSENT

The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

8 INDEXATION

- 8.1 All of the contributions payable in accordance with the First Schedule (except for any Off Site Transport Contribution) shall be increased on 1st April following the date of this deed and on each succeeding 1st April until the date on which the sum is payable by an amount equivalent to the increase in the Index
- 8.2 The Off Site Transport Contribution payable in accordance with the First Schedule shall be increased on 1st April following the date of this deed and on each succeeding 1st April until the date on which the sum is payable by an amount equivalent to the increase in the Building Price Index

9 INTEREST

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

10 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

11 DISPUTE PROVISIONS

11.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

11.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 11.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

11.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

11.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

12 EXISTING S.106 AGREEMENT

[Clause to be inserted confirming that the covenants given by the "Developer" within the s.106 Agreement dated 30 July 2013 shall apply and be deemed as incorporated within this s.106 Agreement save that there shall be no double counting of contributions payable]

13 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

14 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

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

FIRST SCHEDULE

The Owner and Developer's Covenants with the Council

1. Definitions

For the purposes of this Schedule the following expressions shall have the following meanings:

"Affordable Housing Commuted Sum" means the sum of £[] towards []

"Contributions" means the Affordable Housing Commuted Sum, the Education Contribution and the Off Site Transport Contribution

"Education Contribution" means the sum of £[] towards []

"Off Site Transport Contribution" means the sum of £[] towards []

2. Contributions

- 2.1 The Owner and the Developer covenant with the Council and the County Council to pay the Contributions prior to Occupation of []% of the Dwellings.

(Execution of s. 106 agreement)