

DATED

20th May

2013

CRAYFERN HOMES LIMITED

(1)

and

OTHERS

(2)

and

HAMPSHIRE COUNTY COUNCIL

(3)

and

THE COUNCIL OF THE BOROUGH OF HAVANT

(4)

**DEED OF VARIATION
AND PLANNING OBLIGATION**

Pursuant to (inter alia)

Section 106 and Section 106A of the Town and Country Planning Act 1990
Relating to Land south of Scratchface Lane, adjacent to A3M and West of
Brooklands Road and Hillmead Gardens, Havant in Hampshire

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

THIS DEED OF VARIATION is made the 20th day of May 2013
BETWEEN

- (1) **STUART BENFORD MASON** of Manor Farm, Hambledon, Hampshire PO7 6RW and **ANDREW BENFORD MASON** of Gable End House, 70 Churchgate Street, Bury St Edmunds Suffolk IP33 1RL and **TIMOTHY NELSON MASON** of Rookwood Cottage, Dean Lane End, Rowlands Castle and **MELANIE JEAN FLINT** of Lone Barn, Catherington, Waterlooville Hampshire PO8 0SF (the "First Owner")
- (2) **JOHN ROBERT BROAD** of 15 Sea View Road, Drayton, Portsmouth, Hampshire PO6 1EN and **ANTHONY THOMAS BROAD** of 18 Brecon Avenue, Portsmouth, Hampshire PO6 1PH (the "Second Owner")
- (3) **ALAN DOUGLAS SLAPE** of 36 Brooklands Road, Bedhampton Havant, Hampshire PO9 3NT (the "Third Owner")
- (4) **KELLY ANNE BROAD** of 34 Brooklands Road, Bedhampton, Hampshire PO9 3NT (the "Fourth Owner")
- (5) **CRAYFERN HOMES LIMITED** (Company Registration Number 02703219) whose registered office is at Victoria House, 14 St Johns Road, Hedge End, Southampton, SO30 2AB (the "Developer" and the "Fifth Owner")
- (6) **BARCLAYS BANK PLC** (Company Registration Number 1026167) whose registered office is at 1 Churchill Place, London, E14 5HP ("Barclays")
- (7) **THE GUINNESS PARTNERSHIP LIMITED** (Industrial and Provident Act Number IP31693R) of 17 Mendy Street, High Wycombe, Buckinghamshire HP11 2NZ ("the Association")
- (8) **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester Hampshire
- (9) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Civic Offices Civic Centre Road Havant Hampshire PO9 2AX ("the Council")

WHEREAS:

1. This Deed is supplemental to a Deed of Agreement dated 22nd day of October 2012 made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) and Section 111 of the Local Government Act 1972

between the parties as are parties hereto and in the same order in relation to the development of land south of Scratchface Lane, adjacent to A3M and West of Brooklands Road and Hillmead Gardens, Havant in Hampshire ("the Section 106 Agreement")

2. The First Owner is the freehold owner of the First Property free from encumbrances save only as mentioned in the Property and Charges Registers of title number SH8381.
3. The Second Owner is the freehold owner of the Second Property free from encumbrances save only as mentioned in the Property and Charges Registers of title number HP266669.
4. The Third Owner is the freehold owner of the Third Property subject to a mortgage in favour of Barclays but otherwise free from encumbrances save only as mentioned in the Property and Charges Registers of title number HP164469.
5. The Fourth Owner is the freehold owner of the Fourth Property free from encumbrances save only as mentioned in the Property and Charges Registers of title number HP142244.
6. The Fifth Owner is the freehold owner of the Fifth Property free from encumbrances save only as mentioned in the Property and Charges Registers of title number HP291227.
7. The Developer has with consent of the First Owner, the Second Owner, the Third Owner, the Fourth Owner and the Fifth Owner ("the Owners") made the Application.
8. The Parties hereto agree and consent to the terms of the Section 106 Agreement being varied in respect of the site as hereinafter provided.

NOW THIS DEED WITNESSETH as follows:

PRELIMINARY AND RECITALS

A Definitions

- A.1 Save as otherwise provided words and phrases in this Deed shall have the meanings contained in the Section 106 Agreement.

B Purpose of Deed

- B.1 This Deed is supplemental to and varies certain of the obligations contained in the Section 106 Agreement.
- B.2 The Deed is being entered into to amend the layout of the Development referred to within the Section 106 Agreement;
- B.3 The provisions of this Deed bind the Land (and each and every part of it) the parties and their successors in title save where this Deed expressly provides to the contrary

C Statutory Authorities

- C.1 The Council and the County Council are for the purposes of Sections 106 and 106A of the Act the authorities which can enforce the respective terms of this Agreement
- C.2 This Deed is made pursuant to the provisions Section 106 and 106A of the 1990 Act Section 111 of the Local Government Act 1972 the Housing Acts and Section 2 of the Local Government Act 2000 and all other powers enabling

D Planning

- D.1 This Deed is supplemental to the Section 106 Agreement which is varied by the provisions of this Deed

E Liability for this Deed

- E.1 The Planning Obligations restrictions covenants limitations and obligations in this Deed relating to all clauses within the Section 106 Agreement and this Deed of Variation relate to and are binding in their entirety upon the Owners and their successors in title and assigns and their interest in the Land save as otherwise provided shall bind and run with the land and each and every part of it.
- E2 Barclays consents to the completion of this deed and declares that its interest in the Land shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of their interest in the Land.

- E3 Barclays shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when Barclays is in possession of all or any part of the Land.

1 DEFINITIONS AND INTERPRETATION

- 1.1 The definitions contained in the Section 106 Agreement apply unless the context otherwise requires
- 1.2 The provisions of this Deed shall unless the context otherwise requires be construed as follows:
- 1.2.1 Words importing one gender shall include all other genders
- 1.2.2 The singular includes the plural and vice versa
- 1.2.3 Reference to a statute includes any amendment, modification, extension consolidation or re-enactment of it and any statutory instrument, regulation or order made under it which is for the time being in force
- 1.2.4 References to any "Clause" or "Sub-Clause" (or any part of them) shall (unless the context otherwise requires) be references to a Clause Sub-Clause (or any part of them) of this Deed
- 1.2.5 Headings to clauses of this Deed do not affect the interpretation or construction of this Deed

2 EFFECT OF AGREEMENT

- 2.1 The covenants restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Owners and their successors in title.
- 2.2 This Deed also varies and supplements certain of the provisions of the planning obligations contained in the Section 106 Agreement.

3 LAND BOUND AND ENFORCING AUTHORITY

- 3.1 The provisions of this Deed and the covenants restrictions limitations and obligations given by the Owners shall bind and run with the Land and each and every part of it and shall be binding against the Owners and their successors in title and assigns to the Land and each and every part of it save as provided elsewhere in this Deed

4 LOCAL LAND CHARGE REGISTRATION

- 4.1 This Deed is registerable by the Council as a local land charge in the Register of Local Land Charges kept by the Council.

5 THE OWNERS' COVENANTS

- 5.1 The Owners for themselves and their successors in title to the Land and each and every part of it hereby covenant in favour of the Council and the County Council to observe perform and abide by the obligations restrictions limitations and covenants contained in this Deed and in the Section 106 Agreement as varied by this Deed and the said obligations restrictions limitations and covenants shall run with and bind with the Land and each and every part of it as set out below.

6 VARIATIONS TO THE SECTION 106 AGREEMENT

- 6.1 The variations set out in the Schedule hereto shall have effect.

7 AGREEMENTS AND DECLARATIONS

It is hereby agreed and declared by the parties hereto that:

- 7.1 Except in so far as legally or equitably permitted this Deed shall not prejudice fetter or affect the exercise of any statutory power duty or discretion of the Council
- 7.2 The terms of the Section 106 Agreement except as varied by this Deed are confirmed as if the same were set out in this Deed in full and that such terms as so varied shall for all purposes be deemed incorporated in this Deed.
- 7.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed

IN WITNESS whereof this Deed has been executed as a Deed by the parties hereto the day and year first before written

EXECUTED as a **DEED** by)
STUART BENFORD)
MASON in the presence of:)

[REDACTED]

Signature

Name:

Address

[REDACTED]

EXECUTED as a **DEED** by)
ANDREW BENFORD)
MASON in the presence of:)

[REDACTED]

Signature of witness

[REDACTED]

Name:

Address:

[REDACTED]

EXECUTED as a **DEED** by)
TIMOTHY NELSON MASON)
in the presence of:)

[REDACTED]

Signature of witness

[REDACTED]

Name:

Address:

[REDACTED]

EXECUTED as a **DEED** by)

MELANIE JANE FLINT in)

the presence of:)

Signature of wit

Name

Address

EXECUTED DEED by)

JOHN ROBERT BROAD in)

the presence of:)

Signature of witn

Name:

Address

EXECUTED as a **DEED** by)

ANTHONY THOMAS)

BROAD in the presence of:)

Signature of wit

Name:

Address:

EXECUTED as a **DEED** by
ALAN DOUGLAS SLAPE in
the presence of:

)
)
)

[Redacted]

Signature

Name:

Address

[Redacted]

EXECUTED as a **DEED**
KELLY ANNE BROAD
the presence of:

Signature of witness:

Name:

Address:

[Redacted]

[Redacted]

EXECUTED as a **DEED**
For and on behalf of
BARCLAYS BANK PLC
by its authorised signatory

Signed for and on behalf of **BARCLAYS BANK PLC** by
John Kenneth Henderson
as duly appointed Attorney under a Power of Attorney
dated 5th October 2012 in the presence of:

Witness

Carmel Anderson

[Redacted]

[Redacted]

Authorised Signatory

EXECUTED as a **DEED** by
affixing the Common Seal of
THE GUINNESS
PARTNERSHIP LIMITED in
the presence of:



Authorised Signatory

Signature:

Authorised Signatory

Signature:

EXECUTED as a **DEED** by)
CRAYFERN HOMES)
LIMITED acting by a director)
and its secretary or two)
directors:

Name of Director

Signature:

Name of Director

Signature:

EXECUTED as a DEED by affixing)
THE COMMON SEAL of)
THE HAMPSHIRE COUNTY COUNCIL)
in the presence of:)



36/11/07



authorised signatory

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



12799



Deputy to the

Solicitor to the Council

SCHEDULE

Variation of Section 106 Agreement

1 Definitions

- 1.1 The following definitions in Clause 1 of the Section 106 Agreement shall be amended as set out below:-

Defined Term in Section 106 Agreement	Amended Defined Term	Amendment to definition
Application	Applications	Delete "shall mean the application submitted to the Council by the Developer given reference number APP/12/00612" Replace with "shall mean the application submitted to the Council by the Developer given reference number APP/12/00612 and the application for variation of condition 47 of Planning Permission APP/12/00612 to allow for a revised layout for the approved scheme, including change to house types comprising 2 No.1 bed flats, 7 No.2 bed flats, 27 No 2 bed houses, 48No. 3 bed houses, 8no. 4 bed houses; and garage/parking amendments allocated reference number APP/13/00103"
Development	Development (no change)	Delete "development authorised by the Planning Permission consisting of outline application for the erection of 92no.open market and affordable dwellings comprising 4No. 1 bed flats; 5No. 2 bed flats; 26No. 2 bed houses; 48No. 3 bed houses; 9No. 4 bed houses; new pumping station; new vehicular access from Brooklands Road including demolition of 2No. dwellings; and

		new pedestrian and cycle accesses onto Scratchface Lane and Portsdown Hill Road" Replace with "development authorised by the Planning Permission consisting of outline application for the erection of 92no. open market and affordable dwellings comprising 2No. 1 bed flats; 7No. 2 bed flats; 27No. 2 bed houses; 48No. 3 bed houses; 8No. 4 bed houses; new pumping station; new vehicular access from Brooklands Road including demolition of 2No. dwellings; and new pedestrian and cycle accesses onto Scratchface Lane and Portsdown Hill Road"
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2 Other Variations

- 2.1 Where a defined term which is amended in 1.1 above appears in the Section 106 Agreement it shall be deemed to include a reference to the amended defined term as set out in 1.1 above.
- 2.2 The Plan drawing reference 0212_10b appended to the Section 106 Agreement shall be removed and replaced by the Plan drawing reference 0212_10c as appended to this Deed