

DATED

13 MARCH

2019

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) GARY IAN ROBINSON

and

(3) LLOYDS BANK PLC

SECTION 106 AGREEMENT

relating to Aura House, New Road, Havant

THIS AGREEMENT is made on

13 MARCH

2019

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**);
2. **GARY IAN ROBINSON** of 2 New Road, Havant, PO9 1DE (**Owner**); and
3. **LLOYDS BANK PLC** incorporated and registered in England and Wales with company number 00002065 whose registered office is at 25 Gresham Street, London, EC2V 7HN (**Mortgagee**).

BACKGROUND

- (A) For the purposes of the Act, the Council is the local planning authority for the area within which the Land is situated.
- (B) The Owner is the freehold owner of the whole of the Land together with land registered at the Land Registry with title number HP152550 shown edged blue on the Plan.
- (C) The Mortgagee is the proprietor of a registered charge dated 3 July 2014 referred to in entry number 3 of the charges register of title number SH39001 and is the proprietor of a registered charge dated 3 July 2014 referred to in entry number 3 of the charges register of title number HP494977 and the has agreed to enter into this Agreement to give its consent to the terms of this deed.
- (D) The Owner has submitted the Application to the Council for permission to develop the Land in accordance with the Planning Permission.
- (D) The Owner and the Mortgagee enter into this Agreement in anticipation of the grant of Planning Permission being made subject to the Owner entering into this Agreement which makes provision for regulating the Development and securing the matters referred to in this Agreement.
- (E) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner, the Mortgagee and their successors in title.

The parties agree as follows:

1 DEFINITIONS

From the date of this Agreement unless the context otherwise requires, the following definitions apply:

"the Act"	the Town and Country Planning Act 1990
"Agreement"	this deed of Agreement
"Application"	the application submitted by the Owner to the Council for planning permission to carry out the Development and given the Council's reference number APP/18/00449

"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is begun other than (for the purposes of this Agreement 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, and "Commence" and similar expressions shall be construed accordingly
"Development"	the construction of a 2 storey extension to the existing building to create additional office space
"Extant Planning Permission"	means the planning permission granted by the Council with reference APP/17/00972 for the construction of a 2 storey office extension, with hipped, gable and portion of flat roof
"Implement"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the development permitted under the Extant Planning Permission is begun and "Implemented" and similar expressions shall be construed accordingly
"Index Linked"	Increased in accordance with the following formula: Amount payable = the payment specified in this deed x (A/B) where: A= the last figure published for the Consumer Prices Index that applied immediately preceding the date that payment was due B= the last figure published for the Consumer Prices Index that applied immediately prior to the date of this Agreement
"Interest"	means interest at 4% above the base lending rate of the Barclays Bank PLC from time to time
"Land"	means the freehold property being land at Aura House, New Road, Havant, PO9 1DE and registered at the Land Registry with title number SH39001 and HP494977 and shown edged red on the Plan.
"Plan"	the site location plan attached to this Agreement with drawing number C3295-01 Rev B
"Planning Permission"	the conditional planning permission that may be granted in pursuance of the Application
"Working Day"	a day other than a Saturday or Sunday or public holiday in England.

2 INTERPRETATION

- 2.1 The clause headings in this Agreement are for reference only and do not affect its construction or interpretation.

- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Agreement, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Land include any part of it.
- 2.8 References to any party in this Agreement include the successors in title of that party and any references to the Council include any successor local planning authority exercising planning powers under the Act.
- 2.9 References to "including" mean "including, without limitation".
- 2.10 Any covenant by the Owner or the Mortgagee not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.11 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement shall be unaffected.

3 STATUTORY PROVISIONS

- 3.1 This Agreement is made by deed pursuant to sections 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 To the extent that they fall within the terms of section 106 of the Act, the obligations contained in this Agreement are planning obligations for the purposes of those sections of the Act and are enforceable by the Council.
- 3.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.
- 3.4 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.

4 COMMENCEMENT

This Agreement shall have effect from the date hereof.

5 OWNER COVENANTS

The Owner covenants with the Council to comply, observe and perform the obligations as set out in this Agreement.

6 MORTGAGEE'S CONSENT

6.1 The Mortgagee consents to the completion of this Agreement and declares that their interest in the Land shall be bound by the terms of this Agreement as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Land.

6.2 The Mortgagee shall not be personally liable for any breach of the obligations in this Agreement unless such breach is committed or continuing at a time when the Mortgagee is in possession of all or any part of the Land in which case the Mortgagee shall be bound by the obligations in this Agreement as if the Mortgagee had been the Owner at the time that it was executed.

7 REGISTRATION

This Agreement shall be registered by the Council as a Local Land Charge in the Register of Local Land Charges maintained by the Council.

8 RELEASE

8.1 No party shall be liable for any breach of a covenant, restriction or obligation contained in this Agreement after parting with all of its interest in the Land except in respect of any breach subsisting prior to parting with such interest.

8.2 No planning obligations contained in this Agreement shall be binding on any land held by any of the statutory undertakers for their operational purposes.

9 NOTICES

9.1 The Owner agrees with the Council to give the Council immediate written notice of any change in Ownership of any of its interests in the Land occurring before all the obligations under this Agreement have been discharged and such notice shall give details of the transferee's full name and:

9.1.1 registered office where the transferee Owner is a company; or

9.1.2 usual address where the transferee is not a company,

together with details of the area of the Land transferred by reference to a plan

9.2 Any notice, demand or any other communication to be given under or in connection with this Agreement shall be in writing and will be effective only if delivered by hand or sent by recorded delivery to the party due to receive the notice, demand or communication.

9.3 Any notice, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service and in the case of service upon the Council shall be marked for the attention of the Head of Legal.

9.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:

9.4.1 if delivered by hand, at the time of delivery; or

9.4.2 if sent by recorded delivery, at the time delivery was signed for.

9.5 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served on the next Working Day.

9.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

10 COSTS OF THIS AGREEMENT

Upon completion of this Agreement the Owner shall pay to the Council their reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement.

11 DETERMINATION OF DISPUTES

11.1 If any dispute arises out of this Agreement the dispute shall be referred to an arbitrator appointed jointly by the parties if the parties cannot agree on the arbitrator's identity the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors.

11.2 The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction then equally).

12 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

12.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not made for the benefit of nor shall any of its provisions be enforceable by any person other than the parties to this Agreement and their successors in title.

13 INDEXATION

13.1 All financial contributions payable to the Council shall be Index Linked.

13.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

14 INTEREST

If any financial contribution due under this Agreement is paid late Interest will be payable from the date payment is due until the date of payment.

15 TERMINATION

15.1 The obligations in this Agreement (with the exception of clause 10) shall cease to have effect if before the Commencement of Development, the Planning Permission:

15.1.1 expires;

15.1.2 is varied or revoked other than at the request of the Owner; or

15.1.3 is quashed following a successful legal challenge.

16 FUTURE PERMISSIONS

- 16.1 Nothing in this Agreement 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 on appeal) after the date of this Agreement.
- 16.2 This Agreement shall apply to any planning permission subsequently granted under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission (a "Subsequent Permission") and the Planning Permission shall be construed to include the development as stated in the Subsequent Permission unless otherwise required by the Council or the circumstances in clause 15.1.2 arise.

17 WAIVER

No failure or delay by the Council to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver (whether express or implied) for any breach or default by the Owner in performing or observing any of the covenants, restrictions or obligation contained in this Agreement. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18 JURISDICTION

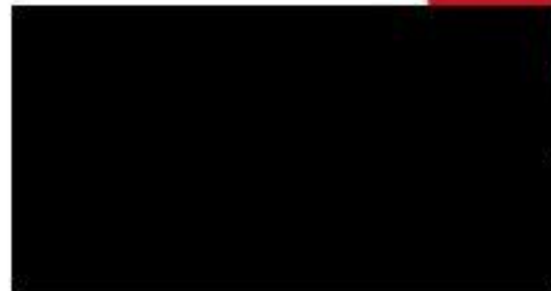
- 18.1 This Agreement shall be governed by and interpreted in accordance with the laws of England.
- 18.2 The Courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

IN WITNESS of which this document has been duly executed as a deed and delivered on the date stated at the beginning of this document.

EXECUTED as a DEED by affixing

THE COMMON SEAL of the COUNCIL OF THE
BOROUGH OF HAVANT

in the presence of:



EXECUTED as a **DEED** by

GARY IAN ROBINSON

in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

SIGNED as a **DEED** by

attorney for and on behalf of

LLOYDS BANK PLC

in the presence of:

Witness Signature:

Witness Name:

Witness Address:

SCHEDULE

The Owner covenants with the Council:

1. Commencement

to give to the Council not less than ten Working Days' written notice of their intention to Commence Development, such notice shall specify the date of Commencement and include a reference to the Planning Permission

2. Extant Planning Permission

2.1 to immediately cease carrying out any works that are being undertaken on the Land in accordance with the Extant Planning Permission upon the grant of the Planning Permission

2.2 not to cause or permit Commencement of Development under the Planning Permission where development under the Extant Planning Permission has been Implemented

2.3 not to permit or otherwise allow at any time following Commencement of Development under the Planning Permission, any works to be undertaken pursuant to the Extant Planning Permission; and

2.4 for the avoidance of doubt the Owner must elect either:

2.4.1 to Implement and carry out works under the Extant Planning Permission; or

2.4.2 to Commence Development under the Planning Permission,

but shall not be entitled to carry out any works permitted by the Extant Planning Permission in combination with, or separate from the Planning Permission, where Development under the Planning Permission has Commenced.