

Dated 18th July 2017

SOUTHERN CO-OPERATIVE PROPERTIES LIMITED (1)

P D SCAMMELL LIMITED (2)

and

HAVANT BOROUGH COUNCIL (3)

S.106 Unilateral Undertaking relating to 157 Milton Road,
Cowplain, Waterlooville PO8 8RE

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THIS UNILATERAL UNDERTAKING is given on

18th July 2017

BY

- (1) **SOUTHERN CO-OPERATIVE PROPERTIES LIMITED** incorporated and registered in England and Wales with company number 5016485 whose registered office is at 1000 Lakeside Western Road North Harbour Portsmouth PO6 3FE (the **Owner**) and
- (2) **P D SCAMMELL LIMITED** incorporated and registered in England and Wales with company number 3287788 whose registered office is at Highland House Mayflower Close Chandlers Ford Eastleigh SO53 4AR (the **Developer**)

TO:

- (3) **HAVANT BOROUGH COUNCIL** of Public Service Plaza Civic Centre Road Havant PO9 2AX (the **Council**)

INTRODUCTION

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- (B) The Owner is the freehold owner of the Site.
- (C) The Developer is the contracting purchaser of the Site.
- (D) The Owner 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.
- (E) The Council resolved on 2017 to grant the Planning Permission subject to the prior completion of this Deed.
- (F) The Owner is prepared to enter into this Deed in order to secure the planning obligations it creates.

THIS DEED PROVIDES:

OPERATIVE PART

1 Definitions

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

Act

means the Town and Country Planning Act 1990.

Application

means the application for full planning permission dated 5th March 2017 submitted to the Council for the Development and allocated reference number APP/17/00234.

Commencement of means 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

Development	(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	means the Development of the Site with Erection of 5 No Flats and 2 No Detached Houses with associated parking, cycle and refuse storage as set out in the Application.
Dwelling	means any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission.
Occupation	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 and Occupied shall be construed accordingly.
Plan	means the plan attached to this Deed.
Planning Permission	means the full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in ~~Error! Reference source not found.~~ <i>Schedule 1</i>
Site	means the land against which this Deed may be enforced as shown edged red on the Plan.
TRO Contribution	means such sum as the Council may reasonably require for the purpose of implementing (which reference shall include all connected administration, supervision and the carrying out of) such traffic management measures as they consider appropriate to ensure that any overspill parking from the Development does not interfere with the capacity, operation or safety of the adjoining local highway network providing such sum shall not exceed THREE THOUSAND POUNDS (£3,000) plus the costs of advertising the proposals and any works.

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.

Revision	Date



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Drawing Title Location Plan	
Scale 1:1250	Drawn
Date 08.09.16	Checked
Drawing No P01	Revision

Client PD Scammell Limited
Project 157 Milton Road, Cowplain
Project No 150308

Tony Oldfield Architects

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- 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 and County 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 Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000.
- 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:

- 4.1 the grant of the Planning Permission; and
- the Commencement of Development

6.1
save for the provisions of clauses ~~error! Reference source not found~~, 8, 10 and 11 which shall come into effect immediately upon completion of this Deed.

The Owner's covenants

Schedule 2
The Owner covenants with the Council as set out in ~~error! Reference source not found~~.

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 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.
- 6.4 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.

- 6.5 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.
- 6.6 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.
- 6.7 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.
- 6.8 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 Waiver**
- No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.
- 8 Change in ownership**
- 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 Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.
- 9 VAT**
- All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.
- 10 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.
- 11 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.
- 12 Costs**
- The Developer hereby covenants to pay to the Council on completion of this deed the sum of £731.00 in respect of its legal and other costs in connection with the preparation and approval of this deed such costs to be paid prior to completion of 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 and DELIVERED)

as a DEED by the said)

SOUTHERN CO-OPERATIVE)

PROPERTIES LIMITED)

In the presence of:)

W Signature

I Name

T Address

N

E

S

S Occupation

SILENA DOMINY
1000 LAKESIDE
WESTERN ROAD
PORTSMOUTH
COMPANY SECRETARY

EXECUTED and DELIVERED)

as a DEED by the said)

PD SCAMMELL LIMITED)

In the presence of:)

W Signature

I Name

T Address

N

E

S

S Occupation

Stark Decor
24 pavers wood clote
Chandeliers
SoS3 2FY
High end decoration to refurbish.

EXECUTED as a DEED by affixing THE)

COMMON SEAL of THE COUNCIL OF THE)

BOROUGH OF HAVANT in the presence of:)

AUTHORISED SIGNATORY

ALEXANDER KIRK
SOLICITOR

SCHEDULE 1

Details of the Owner's title and description of the Site

157 Milton Road Cowplain Waterlooville Hampshire PO8 8RE as the same is registered at the Land Registry with Title Absolute under Title Number HP549041

SCHEDULE 2

The Owner's covenant with the Council

The Owner covenants to pay or cause to be paid to the Council at the written request of the Council at any time during the period from the Commencement of Development and ending 3 years from first Occupation of the Development the TRO Contribution