

DATED

12 OCTOBER

2017

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) THFESO LIMITED

AGREEMENT

Under Section 106 Town and Country Planning Act 1990
relating to land at 188 to 190 Sea Front, Hayling Island, PO11 9HS

THIS AGREEMENT is made on

12 OCTOBER

2017

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**)
2. **THFESO LIMITED** incorporated and registered in England and Wales with company number 09136974 whose registered office is at Three Oaks Botley Road, Bishops Waltham, Southampton, Hampshire, SO32 1DR (**Owner**)

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.
- (C) The Application has been submitted by the Owner for permission to develop the Land in accordance with the Planning Permission.
- (D) The Owner enters 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 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
"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/17/00311
"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, erection of any temporary means of enclosure,

the temporary display of site notices or advertisements and "Commence Development" and similar expressions shall be construed accordingly

"Common Parts"

the parts of the Land which do not comprise a Dwelling or the curtilage of a Dwelling and which are intended to benefit the occupiers of the Dwellings as a whole or to enhance their occupation and shall without prejudice to the generality thereof include the unadopted roads, communal parking areas, footways, footpaths, landscaped areas, street lighting, underground service media, amenity spaces, sustainable drainage systems, driveways and trees

"Development"

the construction of 3 buildings to form 18 studio flats providing a mixture of 1, 2 and 3 bedroom flats and associated parking and landscaping following the demolition of 2 detached houses and annexe

"Disposal"

in relation to each Dwelling means:

(a) the first occupation by anyone permitted or suffered to occupy the Dwelling whether by:

I. a person who has acquired or has contracted to acquire any of the estates further defined in this definition at (b) (c) and (d) below in the Dwelling; or

II. who otherwise occupies the Dwelling;

and for the avoidance of doubt, such occupation shall not include occupation for the purpose of constructing fitting out decoration or marketing of or display or occupation in relation to security operations for the Development; or

(b) the creation of a legal term of years in respect of the Dwelling; or

(c) the transfer of a freehold interest in respect of the Dwelling; or

(d) the creation of a freehold interest in the Dwelling by constituting the Dwelling as commonhold land for the purposes of the Commonhold and Leasehold Reform Act 2002; and/or whichever shall first occur;

and "Dispose" and similar expressions shall be construed accordingly

"Dwelling"

means a self-contained unit of residential accommodation (and for the avoidance of doubt this definition shall include houses flats and sheltered apartments as appropriate) comprised within the Development and "Dwellings" shall

	be construed accordingly
"Index Linked"	Amount payable = the payment specified in this deed x (A/B) where: A= the last figure published for the CPI that applied immediately prior to the grant of Planning Permission B= the last figure published for the CPI that applied immediately prior to Implementation of the Development.
"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 known as 188-190 Sea Front, Hayling Island PO11 9HT, shown edged red on the Plan and registered at the Land Registry with title number HP447508 and SH11601
"Management Plan"	a plan for the maintenance and management of the Common Parts for the lifetime of the Development to be proposed by the Owner and approved by the Council in accordance with the provisions of the Schedule 1
"Monitoring Fee"	the sum of £837.90 (eight hundred and thirty seven pounds and ninety pence) as contribution towards the costs incurred by the Council in the provision of a suitably qualified and experienced person(s) whose function is to monitor, coordinate, manage and enforce the obligations contained within this Agreement
"Plan "	the location plan attached to this Agreement with drawing number A117
"Planning Permission"	the conditional planning permission that may be granted in pursuance of the Application
"Solent Recreation Mitigation Project Contribution"	the sum of £2896 (two thousand, eight hundred and ninety six pounds) (subject to indexation in accordance with the figures supplied to the Council by the Solent Recreation Mitigation Partnership) in respect of the Special Protection Area mitigation measures delivered through the Interim Solent Recreation Strategy.
"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.



location Plan 188 -190 Seafront

1 : 1250

1

I J Murray
Associates

www.ijma.co.uk

Mr Stoneman

188 -190
Seafront H I

Location Plan

Project number	Project Number
Date	Issue Date
Drawn by	Author
Checked by	Checker

A117

Scale 1 : 1250

- 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 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 OBLIGATIONS OF THE PARTIES

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

6 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.

7 NOTICES

7.1 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

7.1.1 registered office where the transferee Owner is a company

7.1.2 usual address where the transferee is not a company

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

7.2 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.

7.3 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.

7.4 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:

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

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

7.5 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.

7.6 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.

8 COSTS OF THIS AGREEMENT

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

9 DETERMINATION OF DISPUTES

9.1 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.

- 9.2 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).

10 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

11 INDEXATION

- 11.1 All financial contributions payable to the Council shall be Index Linked.
- 11.2 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.

12 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.

13 TERMINATION

- 13.1 The obligations in this Agreement (with the exception of clause 8) shall cease to have effect if before the Commencement of Development, the Planning Permission:
- 13.1.1 expires;
 - 13.1.2 is varied or revoked other than at the request of the Owner; or
 - 13.1.3 is quashed following a successful legal challenge.

14 FUTURE PERMISSIONS

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 but 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 13.1.2 arise.

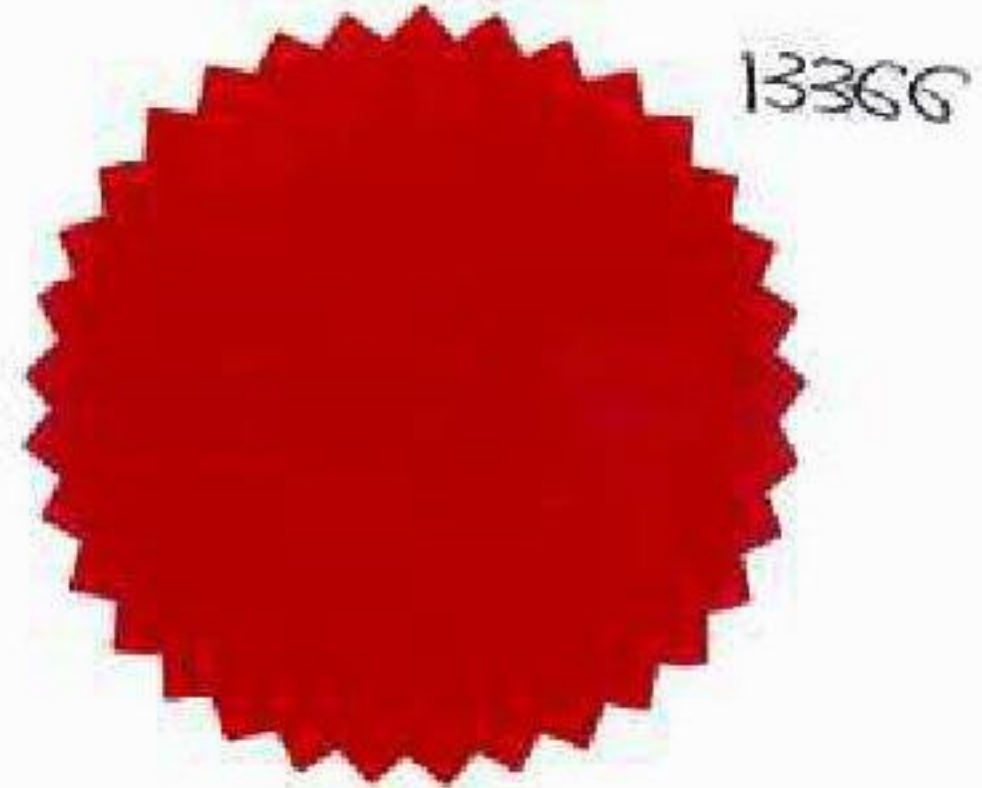
15 JURISDICTION

- 15.1 This Agreement shall be governed by and interpreted in accordance with the law of England and Wales.
- 15.2 The Courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement and this clause operates for the benefit of the

Council which retains the right to sue the Owner and enforce any judgment against the Owner in the courts of any competent jurisdiction.

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:

A solid black rectangular box redacting the signature of the authorised signatory.

Authorised Signatory

Executed as a Deed by **THFESO**
LIMITED in the presence of:

A solid black rectangular box redacting the signature of the director.

Director

Name A solid black rectangular box redacting the name of the witness.

Address

Occupation

DAVID EBERT LLP
44 HIGH STREET
WEST END
SOUTHAMPTON
SO30 3DR

Witness

SCHEDULE 1

Owner's covenants

The Owner covenants as follows:

Commencement

1. to give to the Council not less than 14 days written notice of their intention to Commence Development

Contributions

- 2.1 not to Commence or to cause or permit Commencement of Development until it has paid to the Council the Solent Mitigation Strategy Contribution
- 2.2 not later than Commencement of Development to pay to the Council the Monitoring Fee

Management and Maintenance of the Common Parts

- 3.1 not later than two months from Commencement of Development to supply to the Head of Planning for written approval by the Council proposals for arrangements to secure the satisfactory maintenance of the Common Parts
- 3.2 the Council shall give notice to the Owner of its decision to either approve (with or without modifications) or to refuse to approve the details submitted by the Owner under paragraph 3.1 of this Schedule within one month of receipt of such details and in the absence of such approval then approval shall be deemed to have been given
- 3.3 not to Dispose of any Dwelling until the Management Plan has been approved in writing by the Council and the Monitoring Fee has been paid
- 3.4 to ensure the management and maintenance of the Common Parts is discharged in accordance with the approved Management Plan and to the reasonable satisfaction of the Council