

DATED 28th JUNE 2016

THE COUNCIL OF THE BOROUGH OF HAVANT

-and-

BDW TRADING LIMITED

DEED OF VARIATION

of UNILATERAL UNDERTAKING UNDER SECTION 106A of the
Town & County Planning Act 1990

further to the undertaking dated 18 December 2015

under Section 106 of the Town
and Country Planning Act 1990
imposing planning obligations
on land at
Station Road/East of Furniss Way
West Town
Hayling Island
Hampshire

THIS DEED is made on the 28th day of June Two Thousand and Sixteen
BETWEEN:-

- (1) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**"the Council"**)
- (2) **BDW TRADING LIMITED** (company registration number 03018173) of Tollbar House, Tollbar Way, Hedge End, Southampton SO30 2UH X (**"Owner"**)

Background

- 1 The Owner is the registered proprietor of freehold land registered at the Land Registry under Title No SH43779 and Title No SH42121 shown edged and hatched red on the plan annexed hereto (**"Land"**)
- 2 The Council is the local planning authority for the area within which the Land is situated
- 3 The Land forms part of the site benefitting from planning permission given under reference APP/15/00919 (**"Permission"**)
- 4 A Unilateral Undertaking was given by Hayling Island Builders Limited to the Council on 18th December 2015 prior to the grant of the Permission (**"Undertaking"**)
- 5 The Owner wishes to enter into this Deed to vary the terms of the Undertaking as they affect the Land.

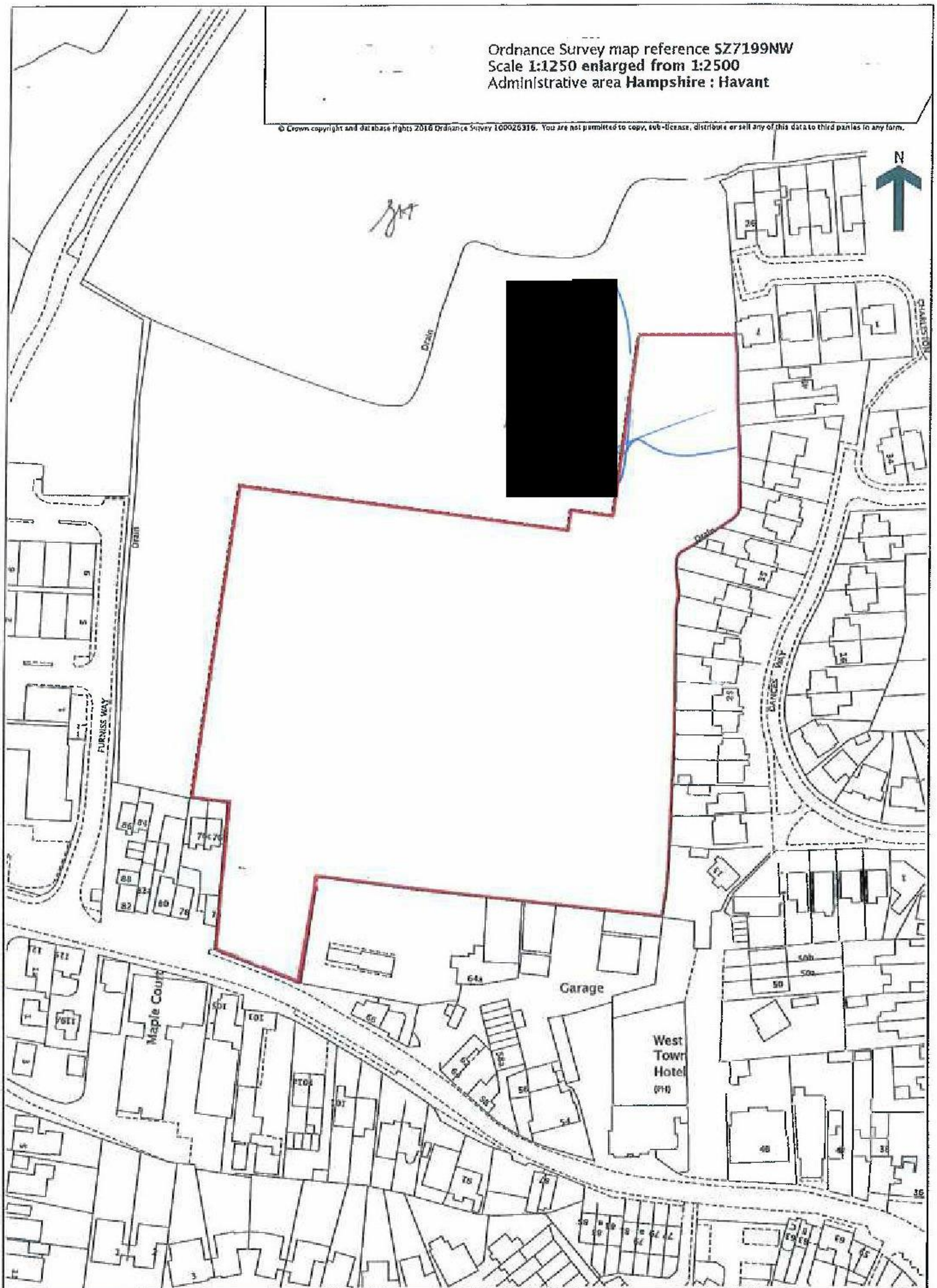
NOW THIS DEED WITNESSES AS FOLLOWS:

1. Interpretation

In this Deed:

Ordnance Survey map reference SZ7199NW
Scale 1:1250 enlarged from 1:2500
Administrative area Hampshire : Havant

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- 1.1 Terms and expressions defined in the Undertaking shall have the same meaning in this Deed unless otherwise provided or the context otherwise requires
- 1.2 Words importing the masculine include the feminine and the neuter and vice versa and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner
- 1.3 Words importing the singular include the plural and vice versa
- 1.4 Unless the context otherwise requires the expressions "the Council" and "the Owner" and substituted words therefor shall include their respective successors in title and assigns
- 1.5 Any reference to an enactment includes any amendment to or modification of it and the version of it for the time being in force shall apply
- 1.6 Headings in this Deed are for convenience only and shall not be taken into account in its construction and interpretation

2. Statutory Provisions

- 2.1 This Deed is made pursuant to Section 106A of the Act and varies the Undertaking as set out in Clause 3 below.

3. Variation to the Undertaking

- 3.1 Clause 6.2.1 shall be amended to read:

"Owner – occupiers or tenants of a Residential Unit or their mortgagees"
- 3.2 After clause 7 there shall be inserted a new clause 8 as follows:

"8 Mortgagee Exclusion Provision

The provisions of this Undertaking shall not be binding on a Chargee of all or any of the Affordable Housing Units or any successors in title to such Chargee or its administrator or receiver PROVIDED THAT such Chargee acting pursuant to any event of default shall first give written notice to the Council of its intention to dispose of any or all of the Affordable Housing Units and shall have used reasonable endeavours over a period of twelve weeks from the date of the written notice to dispose of the Affordable Housing Units for a consideration not less than the amount due and outstanding to the Chargee under the terms of the mortgage or charge including all accrued principal monies interest and costs and expenses incurred by the Chargee in respect of the mortgage or charge AND PROVIDED FURTHER THAT if completion of the transfer has not taken place within the twelve week period the Chargee shall be entitled to dispose of the Affordable Housing Units on the open market free from the provisions of this Undertaking which shall determine absolutely and provided further that at all times the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage.”

- 3.3 Paragraphs 2.10 and 2.11 of the Schedule shall be deleted in their entirety and replaced with the following:

“2.10 The Affordable Housing Units shall not be used otherwise than for the provision of Affordable Housing

2.11 The Affordable Housing Units shall not be transferred or leased to any person other than for the purpose of providing Affordable Housing to Eligible Persons”

3.4 Paragraphs 2.14 and 2.15 of the Schedule shall be deleted in their entirety.

4. Agreement

4.1 The Owner and the Council agree that from the date of this Deed the Undertaking is varied as set out herein and all references to the Undertaking (whether in the Undertaking or otherwise) shall take effect as references to the Undertaking as so varied

4.2 Except as expressly amended by this Deed, the Undertaking shall remain in full force and effect

4.3 The Owner covenants with the Council to observe and perform all the covenants, restrictions, agreements and obligations contained in the Undertaking as varied by this Deed

5. Local Land Charge

5.1 This Deed shall be registered as a local land charge

6. Costs

6.1 The Owner shall on completion of this Deed pay the reasonable legal costs of the Council in connection with the preparation and completion of this Deed

7. Jurisdiction

7.1 This Deed is governed by and interpreted in accordance with the Law of England

IN WITNESS whereof the parties hereto have executed this Deed as a deed the day
and year first before written

The Common Seal of
Havant Borough
East Hampshire District

COUNCIL was hereunto affixed

in the presence of:-



Authorised Officer



EXECUTED as a DEED on behalf of

BDW TRADING LIMITED

by

and *Dan McEneaney Sheldon*



Authorised Signatory

Authorised Signatory

in exercise of the powers conferred on them by a

Power of Attorney dated 12 April 2016