

THIS DEED is made under section 106 of the Town and Country Planning Act 1990 Section 111 of the Local Government Act 1972 and all other enabling powers.

Date:

Parties:

- (1) **SOUTH HAMS DISTRICT COUNCIL** of Follaton House, Plymouth Road, Totnes, Devon, TQ9 5NE (“the Council”);
- (2) *(“the Owner*s”);
- (3) * (“the Bank”).
- (4) ***DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter, Devon, EX2 4QD (“the County Council”).

1. Definitions

In this Deed:-

“**the Act**” means the Town and Country Planning Act 1990;

“**the Affordable Housing Contribution**” means the sum of £ ;

“**the Application**” means an application for *full/outline planning permission, registered by the Council on * with the reference number *, to develop the Land by *

*“**the Bank**” means

“**the BCIS Index**” means the All In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors;

“**Commencement of Development**” means the carrying out of a material operation pursuant to the Permission as defined in Section 56 of the Act and

“**commences development**” shall be construed accordingly;

“**the Council**” means South Hams District Council in its capacity as Local Planning Authority for the area in which the Land is situated;

*“**the County Council**” means Devon County Council in its capacity as a Local Planning Authority, *and as Highway Authority;* and as Local Education Authority;

“**the Development**” means development pursuant to the Permission;

“**the Education Contribution**” means the sum of £

“**the Indexation Formula**” means the Formula set out at Schedule 2 to this Deed;

“**the Land**” means land in the parish of * shown *edged red/shaded grey on the Plan,

namely *

“the Obligations” means the planning obligations contained in Schedule 1;

“the Open Space Sport and Recreation Contribution” means the sum of £

“the Owner*s” means

“the Permission” means such conditional planning permission as may be granted by the Council in respect of the Application;

“the Plan” means the plan attached to this Deed;

2. Interpretation

In this Deed, except where the context requires otherwise:-

- 2.1 The singular includes the plural, the masculine includes the feminine, and vice versa;
- 2.2 References to clauses and schedules are to the clauses in and schedules to this Deed;
- 2.3 Reference to any party having an interest in land affected by this Deed shall include any successor in title of that party to that land or to any part of it;
- 2.4 Reference to any party having a statutory function referred to in this agreement shall include any successor to that statutory function;
- 2.5 Reference to any Act or Statutory Instrument shall include any subsequent amendment or re-enactment of it;
- 2.6 Where an Obligation applies to more than one person, their liabilities shall be joint and several.

3. Land to be subject to Planning Obligations

- 3.1 The Owner*s own*s the freehold estate in the Land absolutely, *free from any charge or mortgage. *subject only to a legal charge to the Bank dated *.
- 3.2 The Council is minded to grant the Permission for the Development, provided that all persons with an interest in the Land enter into this Deed.
- 3.3 Subject to clause 4, the Owner*s covenant*s to observe and perform the Obligations contained in Schedule 1, which shall bind the Land (and every part of it) as planning obligations under section 106 of the Act.
- 3.4 *Subject to clause 4, the Bank consents to the Owners entering into this Deed,

and agrees that the Obligations shall bind the Land. The Bank covenants that in the event of its exercising any of its remedies under its charge including the power of sale, the right to foreclose, the right to take possession, or the right to appoint a Receiver, or if it otherwise takes possession or control of the Land, it will be fully bound by the Obligations.

- 3.5 The Council and the County Council covenant to observe and perform the Obligations contained in Schedule 3 insofar as each Obligation relates to the Council and County Council respectively
- 3.6 The Obligations shall be enforceable by the Council *and also *in the case of those contained in paragraph * of Schedule 1 *by the County Council.
- 3.7 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 the Obligations shall not be enforceable by anyone not a party to this Deed.
- 3.8 The Obligations are Land Charges and shall be registered as such.
- 3.9 Nothing in this Deed is or amounts to or shall be construed as a planning permission within the meaning of Section 336 of the Act
- 3.10 For the avoidance of doubt save as lawfully permitted nothing herein contained or implied shall prejudice or affect the Council's or the County Council's rights powers duties or obligations in relation to its functions pursuant to all public and private statutes bye-laws orders and regulations which may be as fully and effectively exercised in relation to the Land as if this Deed had not been exercised.

4. **Scope of the Obligations**

- 4.1 The Obligations shall take effect upon Commencement of Development.
- 4.2 No person shall be liable for any breach of an Obligation occurring after he has parted with all interest in the Land.

5. **Financial matters**

- 5.1 The Owner*s shall not seek from the Council *or the County Council any payment of compensation under the Act in respect of the Land except in the event of the acquisition of the Land or any part of it under Part IX or Part X of the Act.
- 5.2 The Owner*s agree*s to pay upon completion of this Deed the reasonable legal

costs of the Council *and the County Council in respect of the preparation and execution of this Deed.

6. Monitoring Fees

6.1 The Owners acknowledge that the Council shall be entitled to use up to a five per cent (5%) part of the total payments and contributions payable pursuant to the provisions of this Agreement hereto towards the costs to be reasonably and properly incurred by the Council in monitoring compliance with this Agreement and in assessing the details submitted to the Council for approval pursuant to this Agreement

IN WITNESS of which the Council *and the County Council *and the Owner *and the Bank *has/have affixed *its/their *respective Common Seal*s *and the Owner *and a duly authorised official of the Bank as Attorney for the Bank *has/have set *his/their *respective hand*s to this Deed on the above date.

**Schedule 1
The Obligations**

The Owner hereby covenants with the Council and the County Council as follows:

1. Prior to the Commencement of Development the Owner shall pay to the Council the Open Space Sport and Recreation Contribution towards the provision of public open space required as a result of the Development **PROVIDED THAT** in the event that aforementioned Contribution is not paid on the date of this Agreement then at the date that it is paid in accordance with the terms of this Agreement it shall be calculated in accordance with the Indexation Formula.

2. The Public Open Space Contribution shall be spent on Open Space, Sport and Recreation within, or directly related to, the Parish of

3. Prior to the Commencement of Development the Owner shall pay to the Council the Affordable Housing Contribution towards the provision of affordable housing required as a result of the Development **PROVIDED THAT** in the event the aforementioned Contribution is not paid on the date of this Agreement then at the date that it is paid in accordance with the terms of this Agreement it shall be calculated in accordance with the Indexation Formula.

4. Prior to the Commencement of Development the Owner shall pay to the County Council the Education Contribution towards the provision of education facilities required as a result of the Development **PROVIDED THAT** in the event that the aforementioned Contribution is not paid on the date of this Agreement then at the date that it is paid in accordance with the terms of this Agreement it shall be calculated in accordance with the Indexation Formula.

Schedule 2

The Indexation Formula

1. In the event that the Affordable Housing Contribution the Education Contribution and/or the Open Space Sport and Recreation Contribution is not paid on the date of this Agreement then at the date that it is paid in accordance with the terms of this Agreement it shall be calculated in accordance with the following formula:-

$$C = \text{£}Y \times \frac{B}{A}$$

where:

A is the value of the the BCIS Index last published before the date hereof and

B is the value of the BCIS Index last published before the said contribution has been paid

C is the contribution to be paid

£Y is the amount of the Affordable Housing Contribution Education Contribution Open Space Sport and Recreation Contribution as the case may be

Schedule 3

Covenants on Behalf of The Council and The County Council

1. The Council and County Council hereby covenant with the Owners that should any of the Affordable Housing Contribution Education Contribution and/or the Open Space Sport and Recreation Contribution or any part thereof remain unspent at the end of 25 years from the date of payment the council to which the contribution was paid shall repay the unspent contribution or part thereof to the Owner.

THE COMMON SEAL of **SOUTH HAMS**)
)
DISTRICT COUNCIL was affixed to)
)
this Deed in the presence of:-)

Solicitor

SIGNED AS A DEED by the said)
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*)
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in the presence of:-)

SIGNED AS A DEED by the said)
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in the presence of:-)
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SIGNED AS A DEED by)
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as Attorney for * Bank)
)
)
in the presence of:-)

THE COMMON SEAL of **DEVON**)
)
COUNTY COUNCIL was affixed to)
)
this Deed in the presence of:-)

Assistant County Solicitor

DATED

2001

SOUTH HAMS DISTRICT COUNCIL

and

*

and

*

Draft/

DEED

Under Section 106 of the Town and Country Planning Act 1990

- relating to -

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