

Dated

11 January 2019

**(1) THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE**

-and-

**(2) HD HOMES LIMITED**

-and-

**(3) AIB GROUP (UK) PLC**

-and-

**(4) CLYDESDALE BANK PLC, TRADING AS YORKSHIRE BANK**

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Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990 relating to land and buildings on the South West Side of Egerton Road, South Shields (Former Associated Creameries Site, Egerton Road, South Shields)

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Mike Harding  
Head of Legal Services  
South Tyneside Council  
Town Hall and Civic Offices Westoe Road  
South Shields NE33 2RL

THIS DEED dated

11<sup>th</sup>

day of

January

2018<sup>9</sup>

**BETWEEN:-**

- (1) **THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE** of Town Hall and Civic Offices, Westoe Road, South Shields NE33 2RL (the "**Council**")
- (2) **HD HOMES LIMITED** (Company Registration Number 05657404) (the "**Owner**") whose registered office is at Unit 2 Blaydon Park, Chainbridge Road, Blaydon, Tyne & Wear, NE21 5ST
- (3) **AIB GROUP (UK) PLC** (Company Registration Number NI018800) (the "**First Mortgagee**") whose registered office is at 92 Ann Street, Belfast, BT1 3HH
- (4) **CLYDESDALE BANK PLC, TRADING AS YORKSHIRE BANK** (Company Registration Number SC001111) whose registered office is at 30 St Vincent Place, Glasgow, G1 2HL (the "**Second Mortgagee**")

**RECITALS**

- A. The Council is the Local Planning Authority for the purposes of this Deed for the area within which the Site is situated and is the authority by whom the obligations contained in this Deed are enforceable.
- B. The Owner is the tenant under a lease of 999 years dated 21 September 1987 of that part of the Site registered at the Land Registry with title absolute under the title number TY197703 subject only to the interest of the Mortgagees but otherwise free from encumbrances that would prevent it from entering into this Deed.
- C. The Council is the owner of part of the Site registered under title number TY41088.
- D. The First Mortgagee has the benefit of a legal charge affecting part of the Site dated 19 April 2010 and noted at entry no. 5 of the Charges Register of Title Number TY197703. The Second Mortgagee has the benefit of a charge affecting part of the Site dated 21 August 2015 and noted at entry no. 7 of the Charges Register of Title Number TY197703. The Mortgagees have entered into this Agreement in the terms set out below.
- E. The Owner has submitted the Planning Application to the Council. The Parties have agreed to enter into this Deed in order to secure the planning obligations herein, without which Planning Permission could not be granted.



Not shown  
Other rights and interests  
The information shown on this plan is for information only and does not constitute a contract.



REVISION A, 17 NOVEMBER 2017.  
SITE BOUNDARY AMENDED TO INCLUDE NEW GARDEN AREAS & TREES TO BE REMOVED TO WESTERN BOUNDARY.

L.E.

	PROPOSED DEVELOPMENT SITE, EGERTON ROAD, SOUTH SHIELDS, NE34 ORD. For MR HANOVER.		Dixon Dawson Chartered Architects The Old Rectory Mains Park Road Chester-le-street County Durham DH3 3PU	
	SITE LOCATION PLAN		1:12500A4	
	Date: 11/07/16	Drawn: L.E.	Checked: S.R.R.	T 0191 388 3277 T 0191 388 6245 W www.dixondawson.co.uk E durham@dixondawson.co.uk

**8455c/01A**

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. DEFINITIONS**

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

“Act”	the Town and Country Planning Act 1990;
“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” and similar expressions shall be construed accordingly;
“Completion”	the date of issue of a certificate of practical completion by the Owner’s architect or other professional or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s architect or other professional;
“Development”	Demolition of existing milk depot and erection of 30 no. residential apartments (two bedroom flats within a two storey development) including associated parking areas, vehicle access and landscaping
“Dwelling”	a self-contained unit of residential accommodation comprised within the Development (and for the

avoidance of doubt this definition shall include houses flats and apartments as appropriate comprised within the Development);

"Habitats' Mitigation Contribution"	the sum of £ 12,090.00 (twelve thousand and ninety pounds) paid by the Owner to the Council pursuant to the Council's Interim Supplementary Planning Document 23: Mitigation Strategy for European Sites (Recreational Pressure from Residential Development), as a contribution towards measures to mitigate the impacts of the Development on the Durham Coast Special Area of Conservation and Northumbria Coast Special Protection Area;
"Index"	the All Items Index of Retail Prices issued by the Office for National Statistics;
"Interest Rate"	interest at 4% above the base lending rate of the Bank of England from time to time;
"Mortgagees"	together the First Mortgagee and the Second Mortgagee;
"Plan"	the plan annexed to this Agreement and carrying reference 845c/02B;
Planning Application	the application for planning permission dated 10 May 2017 for the Development and allocated reference number ST/0417/17/FUL by the Council;
"Planning Permission"	the Planning Permission which may be granted by the Council pursuant to the Planning Application;
"Site"	the freehold property at Former Associated Creameries Egerton Road South Shields NE33 4TB as shown edged in red on the Plan and comprising part of the land registered at the Land Registry under Title Numbers TY197703 and TY41088;

## 2. INTERPRETATION AND CONSTRUCTION

- 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, policies and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7. References to the Site 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" means "including, without limitation" and where appropriate in context shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.10. Words imposing an obligation on a party to do any act whatsoever include an obligation to procure that act and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of that obligation.



- 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 this Agreement shall be unaffected.

### **3. LEGAL BASIS**

- 3.1. This Agreement is made by Deed pursuant to section 106 of the Act
- 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 section 106 of the Act and are enforceable by the Council against the Owner.
- 3.3. To the extent any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act, they are entered into pursuant to powers contained in section 111 Local Government Act 1972, section 1 Localism Act 2011 and all other enabling powers.
- 3.4. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

### **4. CONDITIONALITY**

- 4.1. This Deed is conditional upon:
- 4.1.1. the grant of the Planning Permission; and
  - 4.1.2. the Commencement of Development,
- save for the provisions of Clauses 4.2, 4.3, 8, 9, 10, 11, 12, 13, 14, 16, 17 and 18 which shall come into effect immediately upon completion of this Deed.
- 4.2. The Owner shall give to the Council not less than seven days written notice of intention to Commence Development on the Site and shall confirm in writing within seven days following Commencement of Development that it has Commenced PROVIDED THAT failure to provide either of the said notifications shall not render this Agreement inoperative.

4.3. The Owner shall be deemed to have Commenced the Development whether or not:

4.3.1. The Owner has satisfied all conditions precedent to Commencement set out in the Planning Permission; or

4.3.2. Those works are in accordance with the Planning Permission.

## **5. OBLIGATIONS OF THE OWNER**

5.1. The Owner hereby COVENANTS with the Council as owner of that part of the Site registered at the Land Registry with title absolute under the title number TY197703 and so as to bind its interest in the Site to comply with its obligations as set out in this Agreement and Schedule 1 in relation to the Development.

5.2. Where any payment is made in accordance with this Agreement it shall be provided with notice in writing giving the date of this Agreement and to the effect that it is paid in accordance with this Agreement and including reference to the Planning Application reference number assigned by the Council to the Planning Application.

## **6. OBLIGATIONS OF THE COUNCIL**

The Council COVENANTS with the Owner as set out in Schedule 2.

## **7. MORTGAGEES' PROVISIONS**

7.1. The Mortgagees acknowledge and declare that Agreement has been entered into by the Owner with their consent and that the relevant part of the Site subject to the charge shall be bound by the obligations contained in this Agreement and that the security of each respective Mortgagee over the relevant part of the Site shall take effect subject to this Agreement.

7.2. Each Mortgagee shall have no liability for breaches of the obligations made under this Agreement except for a breach of the Agreement that each respectively has itself caused whilst in possession of the Site in which case it shall also be bound by the obligations as if it were a person deriving title from the Owner.



**8. REGISTRATION**

The Owner acknowledges that this Agreement is registrable as a Local Land Charge and shall be registered as such by the Council in its Register of Local Land Charges.

**9. NOTIFICATION**

9.1. Any notice, demand or any other communication served under this Agreement will be delivered by hand or sent by first or second class post, pre-paid or recorded delivery.

9.2. 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 Council's Head of Legal Services at the address for the Council stated above.

9.3. The Owner and the Mortgagees agree to give the Council immediate written notice of any change in ownership of any of their respective interests in the Site occurring before all the obligations under this Agreement 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 details of the area of the Site transferred to the transferee by reference to a plan.

**10. TERMINATION**

10.1. In so far only as it has not already been complied with this Agreement shall lapse and be of no further effect if:

10.2. the Planning Permission is quashed, revoked or otherwise withdrawn at any time so as to render this Agreement or any part of it irrelevant, impractical or unviable; or

10.3. the Planning Permission expires before the Commencement of Development without having been implemented.

**11. COSTS**

The Owner shall pay to the Council on completion of this Agreement £350.00 towards the Council's costs in assisting with the drafting, negotiating and completing this Agreement.

**12. MISCELLANEOUS**

- 12.1. Insofar as any clause or clauses of this Agreement 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 Agreement.
- 12.2. Nothing in this Agreement 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 Agreement.
- 12.3. Nothing contained or implied in this Agreement 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.
- 12.4. In the event that a condition or conditions to the Planning Permission is or are varied pursuant to Section 96A of the Act this Deed shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.
- 12.5. No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

### **13. LIABILITY**

- 13.1. No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site without prejudice to liability for any subsisting breach arising prior to parting with such interest.

### **14. WAIVER**

- 14.1. 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.

### **15. VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

## **16. JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

## **17. 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.

## **18. DISPUTE PROVISIONS**

- 18.1. In the event of any dispute or difference arising between the parties to this Agreement in respect of any matter contained in this Agreement such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares
- 18.2. In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 18.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 18.3. Any expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

18.4. The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before written.

## SCHEDULE 1

### HABITATS' MITIGATION CONTRIBUTION

The Owner covenants as follows:

- 1 On or prior to Commencement of Development to pay the Council fifty per cent of the Habitats' Mitigation Contribution, increased to reflect any increase in the Index occurring in the period from and including the date of this Agreement to and including the date the payment is due.
- 2 On or prior to Completion of the fifteenth Dwelling to pay the Council the remaining fifty per cent of the Habitats' Mitigation Contribution, increased to reflect any increase in the Index occurring in the period from and including the date of this Agreement to and including the date the payment is due.
- 3 If any sum due under Paragraphs 1 or 2 of this Schedule is paid late, to pay Interest in respect of that sum from the date the payment is due to the date of final payment.
- 4 Not to Commence the Development until the amount due under Paragraph 1 of this Schedule is paid in full to the Council.
- 5 Not to construct the sixteenth Dwelling comprised in the Development until the amount due under Paragraph 2 of this Schedule is paid in full to the Council.

**SCHEDULE 2**  
**Council's Covenants**

**Use and repayment of Contributions**

1. The Council covenants with the Owner to use all sums received from the Owner towards measures to mitigate the impacts of the Development on the Durham Coast Special Area of Conservation and Northumbria Coast Special Protection Area (the "European Sites") PROVIDED THAT monies shall be deemed to have been expended for these purposes where they are used to defray the salary and associated employment costs of any officer employed by the Council, another local authority or another appropriate conservation body, and where the functions and responsibilities of any such employee principally comprise tasks in connection one or more of the following objectives:
  - a. The protection and enhancement of the European Sites as such pursuant to their designation under Directives 2009/147/E and 92/43/EEC.
  - b. The monitoring of interest features as well as recreational activities taking place near and on the European Sites;
  - c. The delivery of an interpretation and education strategy raising awareness of the sensitivity of the European Sites;
  - d. The implementation of Strategic Access Management Measures and management of Suitable Alternative Natural Greenspaces.
2. The Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of paragraph 1 of this Schedule within 18 months of the date of receipt by the Council of such payment together with interest at the base rate of Lloyds Bank PLC from time to time for the period from the date of payment to the date of refund.
3. The Council shall upon written request from the Owner provide such evidence as shall reasonably be required in order to confirm the sums expended or the costs defrayed under Paragraph 1 of this Schedule.

**EXECUTED** as a **DEED** by  
affixing the **COMMON SEAL** of  
the **COUNCIL OF THE BOROUGH**  
**OF SOUTH TYNESIDE** in the  
presence of:

)  
)  
)  
)  
)



[Redacted signature]

Mayor/Authorised Signatory

[Redacted signature]

Head of Legal Services/Authorised signatory

Signed as a deed by **CLYDESDALE** )  
**BANK PLC TRADING AS YORKSHIRE** )  
**BANK** by and its )  
duly authorised Attorneys:

Signature

[Redacted signature]

Name and Position  
(block capitals)

[Redacted name and position]

Signature

[Redacted signature and name/position]

Name and Position  
(block capital)



Signed as a deed by **AIB GROUP (UK) PLC** by its attorney in the presence of a witness:

) Signature

) .....  
) Name (block capitals)

) .....  
) As attorney for **AIB GROUP (UK) PLC**

Witness Signature

.....  
Witness name (block capitals)

.....  
Witness address

.....  
.....  
.....

Executed as a deed by AIB Group (UK) p.l.c.  
Acting by its lawful Attorneys



Signed as a deed by **HD HOMES LIMITED**

Acting by a director

In the presence of:

) Signature

) .....  
) Name (block capitals)

) .....  
) Director HD Homes Limited

Witness Signature

.....  
Witness name (block capitals)

.....  
Witness address

.....  
.....  
.....

