

Dated

2021

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PMPS 2 LTD

(1)

AND

TAYLOR WIMPEY DEVELOPMENTS LIMITED

(2)

**DRAFT**

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**DEED OF COVENANT**

**relating to Allocation of SANG and contribution  
to SANG maintenance costs in respect of the  
property known as Land at [ ]**

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**PARTICULARS**

**DATE** : 2021

**PARTIES**

(1) **Covenantor** : **PMPS2 LTD** of [ ]

(2) **Covenantee** : **TAYLOR WIMPEY DEVELOPMENTS LIMITED**  
incorporated in England and Wales with company  
number 00643420 and registered office at Gate  
House, Turnpike Road, High Wycombe,  
Buckinghamshire HP12 3NR

**PROPERTY** : Land at [ ] (the subject of the Planning Application)  
(and shown edged red on the plan annexed hereto)  
and registered with other land under title number [ ]

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**THIS DEED OF COVENANT** is made on the date and between the parties stated in the Particulars.

**1 DEFINITIONS AND INTERPRETATION**

The following definitions and rules of interpretation apply in this deed.

**1.1 Definitions**

**Allocable SANG Land** that part of the SANG Land which may be allocated by the Covenantee to developments not comprising that currently on part of the Covenantee's Land, on terms as mentioned and set out in the S106 Agreements;

**Covenantee** as stated in the Particulars and includes it successors in title;

**Covenantee's Land** the SANG Land (and other land) owned by the Covenantee at Queen Elizabeth Barracks, Sandy Lane, Church Crookham, Fleet, Hampshire GU13 0BF and registered at the Land Registry under title numbers HP619722 and HP649214;

**Covenantor** as stated in the Particulars and includes it successors in title;

**Covenantor's SANG Land** [ ] hectares of the Allocable SANG Land

**Dispose** the completion of the transfer of the freehold of the Property or the grant of a lease of the Property for a term exceeding 21 years of the relevant land and "**Dispose**" "**Disposal**" and "**Disposed of**" shall be construed accordingly;

**Exempt Disposition** any transfer, lease or disposition:  
  
(a) to a local authority or other statutory body pursuant to a planning obligation within the meaning of Section 106 of the Town and Country Planning Act 1990 or

otherwise;

- (b) to a buyer or lessee or mortgagee of a Unit(s);
- (c) to a statutory body or service supply company of an electricity substation, gas governor, pumping station, water pumping station or other statutory services which have been or are to be constructed or installed in or on the Property;
- (d) to a highway authority for the purpose of adoption of the roads and footpaths and cycle ways to be constructed on the Property;
- (e) a grant of a legal charge mortgage or other form of security over any of the above (a) to (d);

**Interest**

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interest at 4% per annum above the base rate of National Westminster Bank plc from time to time in force or should such base rate cease to exist such other comparable rate of interest as shall be decided by the Covenantee and communicated in writing to the Covenantor;

**Planning Appeal**

any appeal to the Secretary of State against the refusal of Planning Permission (or failure to determine the Planning Application) for the Proposed Development or an appeal against the imposition of one or more planning conditions within the Planning Permission

**Planning Application**

the application for planning permission for the Proposed Development to be submitted to Hart District Council after the date hereof for the erection of [ ]

**Planning Permission**

a planning permission issued pursuant to the Planning Application or any Planning Appeal

**Proposed Development**

development of the Property consisting of not more than [ ]Units resulting in an occupancy of not more than [ ]

persons

**S106 Agreements**

the two S106 Agreements dated 17 November 2011 and 9 January 2014 respectively and each made between the Covenantee (1) Secretary of State for Defence (2) Hart District Council (3) Church Crookham Parish Council;

**SANG Land**

means the land owned by the Covenantee and (together with other land) subject to the S106 Agreements and forming part of the Covenantee's Land and shown on the relevant plan(s) comprised within the S106 Agreements;

**Today**

the date of this Deed;

**Unit**

a single dwelling to be constructed on the Property and "Units" shall be constructed accordingly;

**VAT**

value added tax payable by virtue of the Value Added Tax Act 1994 or any similar tax levied in addition to or by way of replacement for VAT;

**Working Day**

any day other than Saturday or Sunday or a bank or public holiday and "Working Day" means only one of them as the context permits but shall not include any days between 22 December and 5 January following in any year.

- 1.2 References to a **person** include a corporate or unincorporated body.
- 1.3 Words importing one gender include any other gender and words importing the singular include the plural (and vice versa).
- 1.4 Headings do not affect interpretation.
- 1.5 The Covenantor and Covenantee include their respective successors in title from time to time
- 1.6 the words 'include', 'includes' and 'including' are deemed to be followed by the words 'without limitation';

## 2 BACKGROUND

- 2.1 The Property is owned freehold by the Covenantor, and who has made, will make, or caused to be made on its behalf the Planning Application
- 2.2 The Covenantee is the owner of the Covenantee's Land.
- 2.3 The S106 Agreements contain provisions that part of the SANG Land may be allocated by the Covenantee to developments not comprising that currently on part of the Covenantee's Land, on terms as mentioned and set out therein.
- 2.4 The Covenantor has requested that the Covenantee allocate the Covenantor's SANG Land to provide mitigation for the impact on the Thames Basin Heath Special Protection Area of the Units to be developed at the Property.
- 2.5 The Covenantee has agreed to such allocation in return for a single one-off capital payment of £ [ ] plus VAT; and compliance by the Covenantor with the other terms of this Deed.
- 2.6 It is hereby agreed and declared that once the Covenantor has paid and released to the Covenantee the sums set out in schedule 1 paragraphs 1, and 2 , those sums shall not under any circumstances be refundable.

## 3 DIRECT COVENANT

The Parties covenant with each other to comply with their respective obligations contained in Schedule 1 and Schedule 2 of this Deed.

## 4 PLANNING

- 4.1 The payments made under paragraph 1 of Schedule 1 shall be held by the Covenantee's Solicitor as stakeholder and shall only be released to the Covenantee on the later of:
- (a) The date being the expiry of 6 weeks and 10 days from the date of grant of a Planning Permission without third party legal challenge proceedings being brought in the High Court to the grant of such consent; and

- (b) If any such third party legal challenge proceedings are brought, the date of their final determination and the expiry of any related challenge period leaving the Planning Permission in place and beyond further challenge.

4.2 In the event that:

- (a) third party legal challenge proceedings are brought and the grant of Planning Permission is quashed; or
- (b) the requirements of 4.1(b) are not satisfied; or
- (c) no Planning Permission is granted

before 12 months from Today this Deed shall automatically terminate and the sums held (referenced in 4.1) shall be returned to the Covenantor or its solicitors as soon as practicable together with any interest actually accrued.

4.3 The Covenantor shall provide a copy of the Planning Permission to the Covenantee or its solicitors as soon as reasonably practicable after its grant and at the same time confirm to the Covenantee by notice in writing the date it calculates as being 6 weeks and 10 days from the date of the Planning Permission provided that this requirement shall cease once the payment referred to in clause 4.1 shall have been released to the Covenantee.

4.4 The Covenantor shall notify the Covenantee in writing as soon as reasonably practicable following the Covenantor become aware of any third party legal challenge proceedings being brought in respect of the Planning Permission.

## 5 COVENANTOR RELEASE

Any person or entity who shall be a Covenantor from time to time shall be automatically fully and effectively released from all of its covenants, obligations, requirements and all other liability arising from this Deed with immediate effect on the disposal of its freehold interest in the Property or relevant part of parts thereof

## 6 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Unless the Contracts (Rights of Third Parties) Act 1999 is expressly stated to apply, no term of this deed is enforceable by a person who is not a party to it under that Act.



**THIS DOCUMENT** has been executed by the Parties as a deed but is not delivered until the date stated at the head of the Particulars.

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## SCHEDULE 1

### Covenantor's Obligations

#### 1 SANG ALLOCATION FEE

- 1.1 The Covenantor shall Today pay to the Covenantee the sum of £[ ] plus VAT (receipt of which is hereby acknowledged by the Covenantee) being the agreed sum due and payable in respect of the allocation of part of the SANG Land in respect of the Planning Permission at the Property.
- 1.2 The Covenantee shall provide a properly addressed VAT invoice in respect of the sum in paragraph 1.1 above to the Covenantor within 15 Working Days of the date on which the said sum are released to the Covenantor pursuant to clause 4.1 of this Deed.

#### 2 COSTS CONTRIBUTION

The Covenantor has paid the sum of £5,000 plus VAT (receipt of which is hereby acknowledged by the Covenantee) being the agreed sum due and payable in respect of the contribution to be made by the Covenantor to the legal costs incurred by the Covenantee in respect of this Deed.

#### 3 PLANNING PERMISSION

The Covenantor shall not treat nor use the allocation of the SANG Land agreed to by this Deed in any respect for other property or planning permission other than for the Planning Permission at the Property

#### 4 INDEMNITY

To indemnify and keep indemnified the Covenantee against all damages costs and any other liabilities resulting from any non-observance or non-performance by the Covenantor of its obligations and other matters contained or referred to in this Deed

## SCHEDULE 2

### Covenantee's ObligationsCoventor Release

#### 1 SANG ALLOCATION

- 1.1 The Covenantee agrees to unconditionally and permanently allocate the Covenantor's SANG Land to the Covenantor in respect of the Planning Permission at the Property, but not further or otherwise
- 1.2 The Covenantee covenants not to allocate more of Allocable SANG Land to more developments (including that permitted by the Planning Permissions) than is permitted by the S106 Agreements or agreed as is allocable ,by Hart District Council.

#### 2 S106 AGREEMENTS SANG MAINTENANCE OBLIGATIONS

The Covenantee shall observe and perform or procure the observance and performance of its obligations under the terms of the S106 Agreements in relation to the maintenance of the SANG Land.

#### 3 SANG LAND SALE NOTIFICATION

- 3.1 If the Covenantee transfers the SANG Land, in whole or part, to a third party it shall:
  - (a) procure a deed of covenant from its successor in title in favour of the Covenantor to be bound by the provisions of this deed; and
  - (b) notify the Covenantor and (if required by the S106 Agreements) Hart District Council in writing as soon as practicable following completion of such transfer and supply the new contact details from the incoming transferee to the Covenantee.

**EXECUTED** as a **DEED** by

[ ]

Witness

Signature

Name

Address

**EXECUTED** as a **DEED** by **TAYLOR**

**WIMPEY DEVELOPMENTS LIMITED** acting

by [ ] and [ ] its attorneys pursuant

to a power of attorney dated [ ]

in the presence of:

Witness Signature:

Witness Name

Address c/o

