

**Planning Obligation by Deed of Agreement
under Section 106 of the Town and Country
Planning Act 1990**

Relating to the development of land
forming part of the
Port of Garston
Liverpool

Dated 2nd DECEMBER

2011

LIVERPOOL CITY COUNCIL (1)

ASSOCIATED BRITISH PORTS (2)

REDROW HOMES LIMITED (3)

Redrow Homes Ltd
Redrow House
St David's Park
Flintshire
CH5 3RX

NR/SJS/W521(q)
Date 23rd November 2011 v3

DATE

2nd DECEMBER

2011

PARTIES

- (1) **LIVERPOOL CITY COUNCIL** of Municipal Buildings Dale street Liverpool L69 2DH ("the Council")
- (2) **ASSOCIATED BRITISH PORTS** whose principal office is at Aldwych House 71-91 Aldwych London WC2B 4HN ("Owner")
- (3) **REDROW HOMES LIMITED** (Company Registration 01990710) whose registered office is at Redrow House, St David's Park Flintshire CH5 3RX ("Developer")

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The Owner is the freehold owner of the Site.
- 3 The Developer is a person interested in the Site pursuant to an Agreement to purchase the Site dated the 27th October 2011 made between the Owner and the Developer

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

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

"Act"	the Town and Country Planning Act 1990
"Application"	the application for full planning permission validated by the Council for the Development and allocated reference number 11F/1861
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed 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" shall be construed accordingly.

"Development"	the Development of the Site for the erection of 48 Dwellings as set out in the Application
"Dwelling"	a dwelling (including a house apartment or maisonette) to be constructed pursuant to the Planning Permission
"Interest"	interest at 4% per cent above the base lending rate of the Barclays Bank Plc from time to time.
"Plan"	the plan attached to this Deed
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application
"Site"	the land against which this Deed may be enforced as shown edged red on Plan 1 and described in the First Schedule

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed as interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.

Revision	Date	Amendment	Initials

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Development: **CRESSINGTON HEATH 2**

Location: **GARSTON**

Subsiding Name: **CONTRACT PLAN 1**

Drawing Title: **CONTRACT PLAN 1**

Drawing Number: **ABP2-11-06-001**

Revision: **Scale @ A3 1:1250**

Drawn By: **AG** Date Started: **01.08.11**

Checked By: Date:



REDROW HOMES

Redrow Homes Ltd - Lancs Division
 Redrow Homes, 14 Eaton Ave, Bucklewaite Village, Chorley, Lancs PR7 7NA
 Tel: 01772 663700 Fax: 01772 663701 Web: www.redrow.co.uk

Legal Disclaimer/T&C
 This report has been prepared after due consideration of our Contract & Conditions Plan



2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successor to its respective statutory functions.

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Site and (subject to clause 7.8) the Owner and any person who derives title from the Owner

4 CONDITIONALITY

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses 7, 12 and 13 respectively and any other relevant provisions hereto which shall come into effect immediately upon completion of this Deed.

5 THE OWNER' COVENANTS

5.1 The Owner covenants with the Council not to commence development until it complies with the covenants as set out in the Second Schedule hereto

6 THE COUNCIL'S COVENANTS

6.1 The Council covenants with the Owner as set out in the Third Schedules hereto

7 MISCELLANEOUS

7.1 The Developer shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed amount to £1000.

7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

7.3 This Deed shall be registerable as a local land charge by the Council.

7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner or the Developer from the Council under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed and any notices shall be deemed to have

been properly served if sent by recorded delivery to in the case of the Council the address contained herein and the principal address or registered office (as appropriate) of any other relevant party.

- 7.5 Following the performance and satisfaction of all the obligations contained in this Deed or this Deed ceasing to have effect pursuant to clause 7.7 the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.6 Insofar as any clause or clauses of this Deed 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 Deed.
- 7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner and the Developer) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.9 Nothing in this Deed 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 Deed.

8 WAIVER

No waiver (whether expressed or implied) by the Council or Owner or the Developer 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 or Owner or the Developer from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

The Developer subject to it acquiring the Site agrees with the Council to give the Council immediate written notice of any change in ownership of any interest in the Site occurring before all the obligations under this Deed 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 the area of the Site or unit of occupation purchased by reference to a plan.

10 INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

11 VAT

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

12 JURISDICTION

This Deed is governed by and Interpreted in accordance with the law of England and Wales.

13 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.

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

FIRST SCHEDULE

The freehold property known as part of the Port of Garston Liverpool being part of the land registered at the Land Registry under the Title Number MS539218 shown edged red on the Plan

SECOND SCHEDULE

The Owner's Covenants with the Council

Part 1 – Open Space Contribution

The Owner covenants with the Council that the Commuted Sum will be paid to the Council in lieu of the provision of open space being provided within the Site and such payment shall be made to the Council prior to Commencement of Development

Part 2 – Public Art Contribution

The Owner covenants with the Council that the Public Art Contribution will be paid to the Council prior to Commencement of Development

Part 1 – S106 Monitoring Fee

The Owner covenants with the Council that the S106 Monitoring Fee will be paid to the Council prior to Commencement of Development

"Commuted Sum" means the amount of £48,000.00 (forty-eight thousand pounds) if paid within one year after the date of this Deed or the amount as calculated in accordance with the following formula:

£48,000.00 multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this Deed

"Index" means the all items index figure of the Index of Retail Prices published by the Office for National Statistics or any successor, Ministry or Department

"Public Art Contribution" means the amount of £2,412.00 (two thousand four hundred and twelve pounds) if paid within one year after the date of this Deed or the amount as calculated in accordance with the following formula:

£2,412.00 multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this Deed

"S106 Monitoring Fee" means the amount of £2,412.00 (two thousand four hundred and twelve pounds) if paid within one year after the date of this Deed or the amount as calculated in accordance with the following formula:

£2,412.00 multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this Deed

THIRD SCHEDULE
Council's Covenants

Repayment of payments

- 1 The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid as follows :
 - 1.1 **Open Space Contribution**
to be used towards the provision or enhancement of public open space or public realm in the locality of the Site
 - 1.2 **Public Art Contribution**
to be used to part fund the Council's costs in relation to the implementation of a strategy/programme for the provision of public art in the locality of the Site
 - 1.3 **S106 Monitoring Fee**
to be used to part fund the Council's costs in relation to the monitoring of the provisions of this Deed
- 2 The Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner pursuant to the Second Schedule of this Deed to the Council which has not been expended in accordance with the provisions of this Deed within five years of the date of receipt by the Council
- 3 The Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.

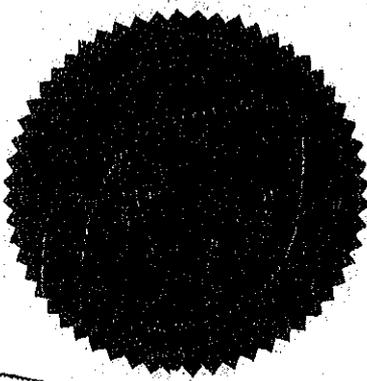
Discharge of obligations

- 4 At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

EXECUTED as a DEED by affixing the
COMMON SEAL of LIVERPOOL CITY COUNCIL

MRK in the presence of:

[Signature]
ASSISTANT CITY SOLICITOR
Authorised Signatory



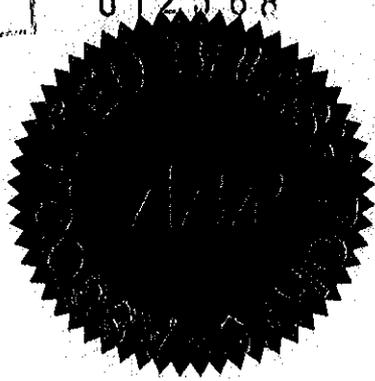
Seal No.
118-11

012368

EXECUTED as a DEED (but not delivered
until the date hereof) by

ASSOCIATED BRITISH PORTS
affixing its Common Seal hereunto
in the presence of

[Signature]
ASSISTANT SECRETARY



Authorised Signatory

SIGNED as a DEED by
Anthony Jervis as attorney for
REDROW HOMES LIMITED
in the presence of:-

[Signature]
.....
as attorney for REDROW HOMES
LIMITED

Signature of witness *[Signature]*
Name (in BLOCK CAPITALS) ... S. WARREN
Address 15 ALBERT TERRACE
..... HIGHER WALTON
..... PRESTON PRS 4DT

SIGNED as a DEED by *STEVEN GREENHATCH*
as attorney for
REDROW HOMES LIMITED
in the presence of:-

[Signature]
.....
as attorney for REDROW HOMES
LIMITED

Signature of witness *[Signature]*
Name (in BLOCK CAPITALS) ... S. WARREN
Address 15 ALBERT TERRACE
..... HIGHER WALTON
..... PRESTON PRS 4DT