

DATED 3 FEBRUARY 2021

(1) EAST HAMPSHIRE DISTRICT COUNCIL

and

(2) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(3) HAMPSHIRE COUNTY COUCIL

and

(4) THE ENGLISH PROVINCE OF THE CONGREGATION OF OUR LADY OF CHARITY OF THE
GOOD SHEPHERD CIO

and

(5) BARGATE HOMES LIMITED

SECTION 106 AGREEMENT

Under Section 106 Town and Country Planning Act 1990
relating to land at Cottage Farm, 149 Lovedean Lane, Horndean

THIS AGREEMENT is made on

3 FEBRUARY

2021

BETWEEN:

1. **EAST HAMPSHIRE DISTRICT COUNCIL** of Penns Place, Petersfield, Hampshire GU31 4EX ("the District Council");
2. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX ("the Borough Council");
3. **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester SO23 8UJ ("the County Council");
4. **THE ENGLISH PROVINCE OF THE CONGREGATION OF OUR LADY OF CHARITY OF THE GOOD SHEPHERD CIO** a charitable registered organisation registered with the Charity Commission with registered number 1163502 and whose registered office is The Brentano Suite 915 High Road, London, N12 8GJ ("the Owner"); and
5. **BARGATE HOMES LIMITED** (company registration number 5626135) whose registered address is at Peninsular House, Wharf Road, Portsmouth, England, PO2 8HB ("the Developer").

BACKGROUND

- (A) For the purposes of the Act, the District Council the Borough Council and the County Council are the local planning authorities for the area within which the Land is situated.
- (B) The County Council is the Highway Authority for the County of Hampshire County Council (save for trunk roads and special roads)
- (C) The Owner is the freehold owner of the whole of the Land.
- (D) The Owner and the Developer have submitted the Applications to the District Council and the Borough Council for permission to develop the Land in accordance with the Planning Permissions.
- (E) The Owner enters into this Agreement in anticipation that the grant of the Planning Permissions is made subject to the Owner entering into this Agreement which makes provision for regulating the Development and securing the matters referred to in this Agreement.
- (F) The Developer has the benefit of a restriction registered against the Land
- (G) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the District Council and the Borough Council and the County Council as set out in this Agreement against the Owner and its successors in title.

The parties agree as follows:

1 DEFINITIONS

From the date of this Agreement unless the context otherwise requires, the following definitions apply:

"Act"	means the Town and Country Planning Act 1990.
"Affordable Housing"	means Dwellings that: (a) meet the needs of Eligible Persons including availability at a cost low enough for them to afford determined with regard to the local incomes local house prices and local rents; and (b) includes provisions for the housing to remain at an affordable cost for future Eligible Persons.
"Affordable Housing Contribution"	means the sum calculated in accordance with the methodology set out in the District Council's Planning Contributions and Community Infrastructure Levy Supplementary Planning Document dated April 2016 (or any future document which replaces or supplements it) as follows: Affordable Housing Contribution = Average Dwelling Size x £270 x the proportion of an Affordable Dwelling that cannot be provided as a whole Affordable Dwelling (being a number between 0.1 and 0.9).
"Affordable Dwellings"	means 40% of the Dwellings constructed on the Land to be provided as units of Affordable Housing as part of the Development and in accordance with the Affordable Housing Mix.
"Affordable Housing Mix"	means the mix of Affordable Dwellings, in terms of quantum, size and tenure and set out at paragraph 2 of Schedule 1 or such other quantum, size and tenure as agreed in writing with the District Council.
"Affordable Housing Provider"	means either one or a combination of: (a) a body registered as a provider of social housing with the Regulator of Social Housing under Part 2 of the Housing and Regeneration Act 2008 or such other class of body approved by the Council as may be constituted under any legislation replacing that provision; or (b) such other body eligible to receive grant monies from the District Council or Homes England and able lawfully to own or manage housing for Eligible Persons and approved by the District Council; or (c) any company or organisation specialising in the delivery of Affordable Housing and approved by the District Council. -
"Affordable Rent"	means rent inclusive of service charge which does not exceed: (a) 80% of the local gross open market rent; and (b) the local housing allowance rates, unless otherwise agreed in writing with the District Council;

	and shall only be increased annually in accordance with arrangements made for such rent increases established by Homes England.
"Affordable Rented Dwellings"	means any Affordable Dwellings let on a fixed term tenancy agreement at an Affordable Rent.
"Agreement"	this deed of agreement.
"Application"	means the EHDC Planning Application and the HBC Planning Application together.
"Average Dwelling Size"	means the sum of the Gross Internal Area divided by the number of Dwellings (rounded up to the nearest sqm where applicable).
"BCIS All-In TPI"	means the Building Cost Information Service All in Tender Price Index published by the Royal Institute of Chartered Surveyors.
"Bond"	means a bond issued by a Surety in the form annexed at Appendix1 to this Agreement (or such other form as the District Council shall approve) for the Bond Amount.
"Bond Amount"	means 10% of the open book construction costs for the SuDs as approved in accordance with Schedule 2.
"Cash Deposit"	means a lump sum payment in cash of a sum being 10% of the open book construction costs for the SuDs as approved in accordance with Schedule 2.
"Commencement of Development"	means 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, and "Commence" and similar expressions shall be construed accordingly.
"Common Parts"	means those parts of the Land which are intended to benefit the Occupiers of the Dwellings as a whole or to enhance their Occupation and shall without prejudice to the generality thereof include the Open Space, communal parking areas, any landscaped areas, amenity spaces, street lighting, street furniture, boundary treatments, any unadopted road, footpath, footway or other means of access and the SuDs but not including: (a) a Dwelling or the curtilage of a Dwelling; or (b) communal areas forming part of any residential block of flats, such as stairwells, lifts, lighting etc; or (c) any other buildings or structure or area to be transferred with a Dwelling; or

- (d) any communal parking areas, street lighting, street furniture and boundary treatments or other areas that are adopted by agreement made pursuant to the Highways Act 1980; or
- (e) any SuDs adopted by a statutory undertaker.

“Community Worker Contribution”

means the sum calculated as £250 multiplied by the number of Dwellings constructed as part of the Development and payable to the District Council as a contribution towards the provision of a suitably qualified and experienced person employed by the District Council to assist in the establishment of a successful and cohesive local community within the Development and to promote integration with existing communities in the vicinity of the Development.

“Completion Certificate Standard”

means in the case of the Highway Works completion to the full satisfaction of the County Council as evidenced by the issue of a certificate of completion by the County Council pursuant to a related Section 278 Agreement.

“CPI”

means the Consumer Prices Index published by the Office of National Statistics.

“Development”

means the demolition of 149 Lovedean Lane and the construction of up to 56 Dwellings together with the provision of Open Space, landscaping and access and associated works in accordance with the Planning Permissions.

“Disposal”

in relation to each Dwelling means:

- (a) the first Occupation by anyone permitted or suffered to Occupy the Dwelling whether by:
 - I. a person who has acquired or has contracted to acquire any of the estates further defined in this definition at (b) (c) and (d) below in the Dwelling; or
 - II. who otherwise Occupies the Dwelling;
- (b) the creation of a legal term of years in respect of the Dwelling; or
- (c) the transfer of a freehold interest in respect of the Dwelling; or
- (d) the creation of a freehold interest in the Dwelling by constituting the Dwelling as commonhold land for the purposes of the Commonhold and Leasehold Reform Act 2002.

and “Dispose” and “Disposed of” shall be construed accordingly.

“Dwelling”

means a self-contained unit of residential accommodation (including houses, flats and maisonettes) constructed on the

	Land pursuant to the Planning Permissions and "Dwellings" shall be construed accordingly.
"EHDC Planning Application"	means the application submitted by the Owner to the District Council with reference number 54139/001 for the Development.
"EHDC Planning Permission"	means the outline planning permission that may be granted by the District Council in pursuance of the EHDC Planning Application.
"Eligible Persons"	means persons in Housing Need and who have a Local Connection and the expression "Eligible Person" shall be construed accordingly.
"Expert"	means an independent and suitable person holding appropriate professional qualifications and of at least 10 years' post qualification experience in the area of expertise relevant to the dispute and appointed in accordance with the provisions of clause 10 to determine a dispute.
"Gross Internal Area"	means the gross internal area of the Development in metres squared calculated in accordance with the appropriate Royal Institution of Chartered Surveyors Code of Measuring Practice as from time to time in force.
"HBC Planning Application"	means the application submitted by the Owner to the Borough Council with reference number APP/20/00455 for the Development.
"HBC Planning Permission"	means the outline planning permission that may be granted by the Borough Council in pursuance of the HBC Planning Application.
"Help to Buy Agent"	means the body nominated by the Homes England to be responsible for Low Cost Home Ownership Dwelling nominations within the administrative area of the Council or in the event that nobody has been nominated such other body or organisation as the District Council shall first approve in writing.
"Highway Works"	means the provision of a vehicle access to the Land from Lovedean Lane as shown in principle on the drawing marked Section 278 Agreement General Arrangement Plan (drawing number 32 Rev A) attached as Appendix 2 to this Agreement.
"Highways Contribution"	means the sum of twenty seven thousand seven hundred and forty pounds (£27,740.00) Index Linked payable by the Owner to the County Council in accordance with the provisions of Schedule 5 and to be used toward the cost of improvements to the existing pedestrian facilities to accommodate increased pedestrian demand in the vicinity including the provision of tactile paving and dropped kerbs

"Homes England"	means the body corporate charged under the Housing and Regeneration Act 2008 with the functions of regulating the provision of Affordable Housing within the District Council's administrative area by any registered provider or if such body ceases to exist or is superseded or any such successor body or organisation and including the Regulator of Social Housing where the context so requires.
"Housing Need"	means where a person having regard to local incomes and local house prices is unable to afford housing accommodation on the open market (whether by renting or purchasing) within the administrative area of the District Council.
"Index"	means: a) CPI in respect of all contributions payable to the District Council except for the Affordable Housing Contribution where BCIS All-In TPI shall apply; and b) RPI in respect of the Highways Contribution.
"Index Linked"	means increased in accordance with the following formula: Amount payable = the payment specified in this Agreement x (A/B) where: A = the last figure published for the Index that applied immediately preceding the date that payment was due B = the last figure published for the Index that applied immediately prior to the date of this Agreement.
"Interest"	means interest at 4% above the base lending rate of the Barclays Bank PLC from time to time.
"Intermediate Housing"	means Affordable Housing that provides a route to home ownership for Eligible Persons and includes Shared Equity Dwellings, Shared Ownership Dwellings and such other Affordable Housing products that the District Council may agree in writing.
"Land"	means the land shown edged red on the Plan (but excluding the land that is adopted highway) to the extent that it comprises: • the freehold property and land known as 149 Lovedean Lane, Horndean registered at the Land Registry with title number SH34029; and • part of the land known as Cottage Farm, Lovedean Lane, Horndean registered at the Land Registry with title number SH34322.
"Local Connection"	means a person who falls within any one of the categories in the order of precedence set out below:

- (a) persons who live or work in the Parish of Horndean and have done so for at least five years;
- (b) persons who live or work in the Parish of Horndean and have done so for at least twelve months;
- (c) persons who live or work in East Hampshire district and have done so for at least three years;
- (d) persons who live or work in East Hampshire district and have done so for at least twelve months;
- (e) persons in proven Housing Need.

"Low Cost Home Ownership Dwellings"

means Help to Buy products as defined by Homes England including Shared Ownership Dwellings.

"Management Agreement"

means an agreement made between the Owner and the Management Company setting out the terms of appointment of the Management Company with respect to the Development, including the Management Company's responsibilities in implementing and performing the obligations as contained within the Management Plan.

"Management Company"

means a company limited by guarantee or by shares and established in accordance with the provisions of Schedule 2 to be charged with the management of the Common Parts and SuDs

"Management Plan"

means a plan for the maintenance and management of the Common Parts and SuDs for the lifetime of the Development including details of how the costs of maintenance and management shall be met by owner-occupiers of the Dwellings to be proposed by the Owner and approved by the District Council in accordance with the provisions of Schedule 2.

"Monitoring Fee"

means the sum of £2,700 as a contribution towards the costs incurred by the District Council in the provision of a suitably qualified and experienced person whose function is to monitor, coordinate and enforce the obligations contained within this Agreement.

"Occupation"

means occupation for the purposes permitted by the Planning Permissions but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" shall be similarly construed.

"Open Market Dwellings"

means Dwellings which are not Affordable Dwellings.

"Open Market Value"

means the best price at which the sale of 100% of the freehold or long leasehold interest (as the case may be) in the relevant Affordable Dwelling would have been

completed unconditionally for cash consideration on the date of valuation assuming:

- (a) a willing buyer and a willing seller;
- (b) that, before the date of valuation, there had been a reasonable period (having regard to the nature of the property and the state of the market) for the proper marketing of the interest for the agreement of the price and terms and for the completion of the sale;
- (c) that the state of the market level of values and other circumstances were on any earlier assumed date of exchange of contracts the same as on the date of valuation;
- (d) that the seller will provide the buyer with vacant possession upon the completion of the transaction;
- (e) that both parties to the transaction had acted knowledgeably prudently and without compulsion; and
- (f) that no account is taken of any additional bid by a prospective purchaser with a special interest.

"Open Space"

means that part of the Land to be provided as public open space and calculated as a minimum of 3.45ha of public open space per 1,000 population.

"Plan"

means the plan annexed to this Agreement with drawing number P1638.08 Rev. B.

"Planning Permissions"

means the HBC Planning Permission and the EHDC Planning Permission together.

"Reserved Matters Application"

means the application or applications submitted by the Owner or on behalf of the Owner for reserved matters approval with respect to details that have been reserved by the Planning Permissions as matters for further approval by the District Council or the Borough Council (as appropriate).

"Reserved Matters Approval"

means the approval or approvals given by the District Council or the Borough Council (as appropriate) for a Reserved Matters Application.

"RPI"

means the "All Items" index of Retail Prices published by the Office of National Statistics.

"Section 278 Agreement"

means an agreement under (inter alia) section 278 Highways Act 1980.

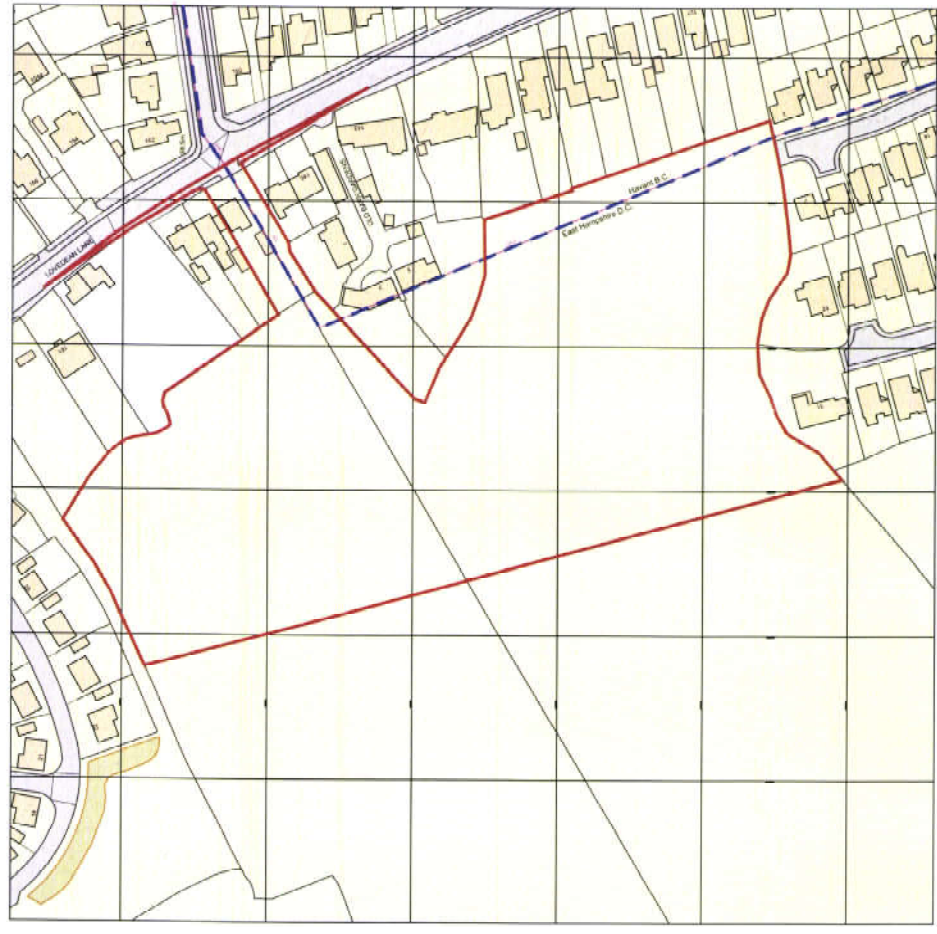
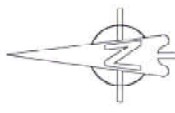
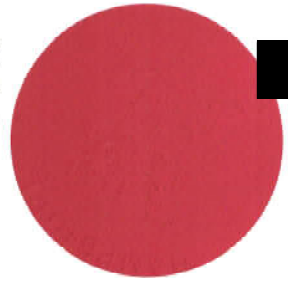
"SuDs"

means a sustainable drainage system for the Development in accordance with the specification agreed in writing by the District Council.

"Shared Equity Dwellings"

means Affordable Housing sold to Eligible Persons for consideration of no more than 75% of Open Market Value with the balance of the equity held by the Affordable

37/6296



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LOCATION PLAN 1:1250



13596

KEY

- SITE BOUNDARY
- LOCAL AUTHORITY BOUNDARY

11-02-20	Key added.	DGP	Checked
24-01-20	Red line amended at site entrance.	DGP	Checked
14-01-20	Site Description	DGP	Checked

BARGATE
HOMES

Project:
Cottage Farm, Lovedean Lane,
Waterlooville PO8 9RW

Drawing Title:
Location Plan

Scale	1:1250 @ A2	Drawn	DGP	Checked	DGP
Date	December 2019	File	P1638 Location	Drawing Status	
Dwg No	P1638.08	Rev	B	PLANNING	

AAP Architecture Ltd
Unit A, Monument Business Centre, Monument Way East, Woking, Surrey GU24 0JG
T 01483 727345 E projects@aap-arch.co.uk W aap-arch.co.uk
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Housing Provider and/or the District Council by way of a legal charge or legal charges.

"Shared Ownership Dwellings"

means Affordable Housing leased to Eligible Persons who purchase a percentage of the equity of the Affordable Dwelling and pay a rent in relation to the share of the equity retained by the Affordable Housing Provider.

"Surety"

means a bank or other financial institution as may be nominated by the Owner and approved by the District Council for the Bond.

"Working Day"

a day other than a Saturday, Sunday or public holiday in England.

2 INTERPRETATION

- 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 and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Land include any part of it.
- 2.8 References to any party to this Agreement include the successors in title of that party and any references to the District Council and Borough Council include any successor local planning authority exercising planning powers under the Act.
- 2.9 References to "including" mean "including, without limitation".
- 2.10 Any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 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 the Agreement shall be unaffected.

- 2.13 Whenever this Agreement requires the agreement approval confirmation or consent of the parties such approval or consent is not to be unreasonably withheld or delayed and the parties shall take a reasonable approach.

3 STATUTORY PROVISIONS

- 3.1 This Agreement is made by deed pursuant to section 106 of the Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.
- 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 those sections of the Act
- 3.3 The covenants restrictions and requirements imposed upon the Owner in this Agreement and the planning obligations set out in Schedule 1 Schedule 2 Schedule 3 and Schedule 4 of this Agreement shall be enforceable by the District Council
- 3.4 The covenants restrictions and requirements imposed upon the Owner in this Agreement and the planning obligations set out in Schedule 2 Schedule 3 Schedule 4 Paragraph 1 and Schedule 4 Paragraph 4 and Schedule 5 of this Agreement shall be enforceable by the Borough Council
- 3.5 The covenants restrictions and requirements imposed upon the Owner in this Agreement and the planning obligations set out in the Schedules shall be enforceable by the County Council
- 3.6 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.
- 3.7 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the District Council or the Borough Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.

4 COMMENCEMENT OF AGREEMENT

This Agreement shall have effect from the date hereof.

5 OWNER COVENANTS

The Owner covenants with the District Council and the Borough Council and the County Council to comply, observe and perform the obligations as set out in this Agreement.

6 REGISTRATION

This Agreement shall be registered by the District Council and the Borough Council as a local land charge in the Register of Local Land Charges maintained by the District Council and Borough Council.

7 RELEASE

- 7.1 No party shall be liable for any breach of a covenant, restriction or obligation contained in this Agreement after parting with all of its interest in the Land except in respect of any breach subsisting prior to parting with such interest.
- 7.2 No planning obligation contained in this Agreement shall be binding on any land held by any of the statutory utilities for their statutory functions.

8 NOTICES

8.1 The Owner agrees to give the District Council, the Borough Council and the County Council written notice within 10 Working Days of any change in ownership of any of its interests in the Land occurring before all the obligations under this Agreement have been discharged and such notice shall give details of the transferee's full name and

8.1.1 registered office where the transferee Owner is a company

8.1.2 usual address where the transferee is not a company

together with details of the area of the Land or unit of occupation transferred by reference to a plan.

8.2 Any notice, demand or any other communication to be given under or in connection with this Agreement shall be in writing and will be effective only if delivered by hand or sent by recorded delivery to the party due to receive the notice, demand or communication.

8.3 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 Borough Council, the District Council or the County Council shall be marked for the attention of the Head of Legal.

8.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:

8.4.1 if delivered by hand, at the time of delivery; or

8.4.2 if sent by recorded delivery, at the time delivery was signed for.

8.5 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served on the next Working Day.

8.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

9 COSTS OF THIS AGREEMENT

Upon completion of this Agreement the Developer shall pay to the District Council and the County Council their reasonable and proper legal costs and in the case of the County Council its technical costs incurred in connection with the preparation, negotiation and completion of this Agreement.

10 DETERMINATION OF DISPUTES

10.1 Subject to clause 10.6, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other not less than 10 Working Days written notice requiring the dispute to be determined under this clause 10. The notice shall propose an appropriate Expert and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

10.2 Any dispute over the appointment of the Expert appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of

the Law Society of England and Wales who will have the power, with the right to take such further advice as he may require, to determine the appropriate Expert and to arrange his nomination.

10.3 The Expert shall act as an independent expert and:

- 10.3.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;
- 10.3.2 each party shall have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;
- 10.3.3 the Expert shall be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
- 10.3.4 the Expert shall not take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;
- 10.3.5 the Expert shall have regard to all representations and evidence before him when making his decision, which shall be in writing, and shall give reasons for his decision; and
- 10.3.6 the Expert shall use all reasonable endeavours to publish his decision within 30 Working Days of his appointment.

10.4 Responsibility for the costs of referring a dispute to an Expert under this clause 10, including costs connected with the appointment of the Expert and the Expert's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Expert.

10.5 This clause 10 does not apply to disputes touching or concerning the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

10.6 The provisions of this clause 10 shall not affect the ability of the Borough Council, District Council or the County Council to apply for and be granted declaratory relief injunction specific performance payment of any sum damages or any other means of enforcing this Agreement and consequential and interim orders and relief.

11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not made for the benefit of nor shall any of its provisions be enforceable by any person other than the parties to his Agreement and their successors in title.

12 INDEXATION

12.1 All sums payable to the District Council, the Borough Council or the County Council shall be Index Linked.

12.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the District Council, Borough Council or the County Council (as appropriate) shall advise the Owner in writing.

13 INTEREST

If any sum due under this Agreement is paid late Interest will be payable from the date payment is due until the date of payment.

14 VAT

The parties to this Agreement acknowledge and agree that the sums due under this Agreement are not subject to VAT and no VAT should be charged or recoverable in addition to the amount of the sums specified in this Agreement.

15 WAIVER

No failure or delay by the District Council, the Borough Council or the County Council to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver (whether express or implied) for any breach or default by the Owner in performing or observing any of the covenants, restrictions or obligation contained in this Agreement. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16 SPEND IN ADVANCE

If prior to the receipt of the contributions payable pursuant to the terms of this Agreement the County Council incurs any expenditure in providing additional facilities to which it was intended to apply any such contribution (or in consequence of arranging for the provision thereof) by the letting of a contract or otherwise including any design costs whether in anticipation of or as a result of the Development then the County Council may immediately following receipt of such contribution deduct there from a sum equivalent to such expenditure incurred and for the avoidance of doubt it is hereby further agreed that such proportion of any such contribution shall not be the subject of any requirement to repay or account for it or any interest accrued thereon pursuant to the terms of this Agreement and that such monies shall be and remain the property of the County Council and shall not be bound by the terms of this Agreement

17 TERMINATION

17.1 The obligations in this Agreement (with the exception of clause 9) shall cease to have effect if before the Commencement of Development, the Planning Permissions:

17.1.1 expires;

17.1.2 is revoked; or

17.1.3 is quashed following a successful legal challenge.

18 FUTURE PERMISSIONS

18.1 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permissions) granted (whether or not on appeal) after the date of this Agreement.

18.2 This Agreement shall apply to any planning permission subsequently granted under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permissions or any other planning permission granted under such powers (a "Subsequent Permission") and the Planning Permissions shall be construed to include the development as stated in the Subsequent Permission unless otherwise required by the District Council, the Borough Council and/or the County Council as appropriate.

19 DEVELOPER ACKNOWLEDGEMENT

19.1 The Developer acknowledges that it will be bound by the terms of this Agreement following the acquisition of the Land notwithstanding that the Developer has the benefit of an option to acquire the Land that predates this Agreement.

20 JURISDICTION

20.1 This Agreement shall be governed by and interpreted in accordance with the laws of England.

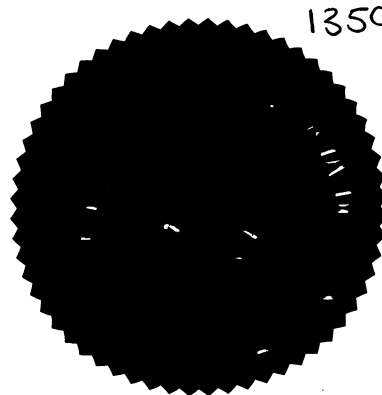
20.2 The Courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

IN WITNESS of which this document has been duly executed as a deed and delivered on the date stated at the beginning of this document.

EXECUTED as a DEED by affixing

**THE COMMON SEAL of the COUNCIL OF THE
BOROUGH OF HAVANT**

in the presence of:



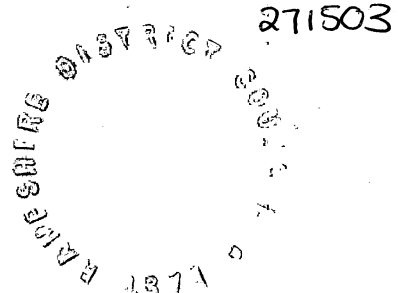
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Authorised Signatory

EXECUTED as a DEED by affixing

**THE COMMON SEAL of
EAST HAMPSHIRE DISTRICT COUNCIL**

in the presence of



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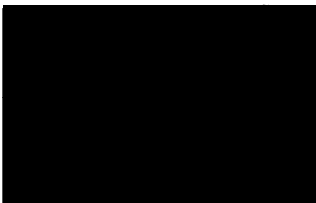
Authorised Signatory

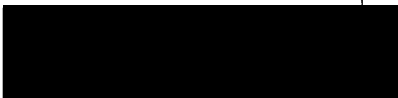
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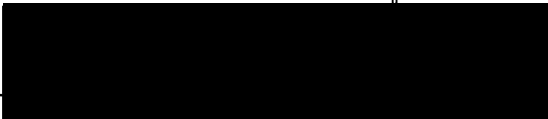
EXECUTED as a DEED by affixing the)

COMMON SEAL of HAMPSHIRE)

COUNTY COUNCIL in the presence of:-)


Authorised Signatory


Name (capitals)


Position (capitals)

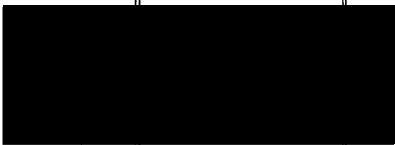
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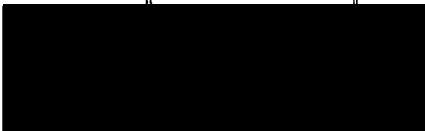
PROVINCE OF THE CONGREGATION OF

OUR LADY OF CHARITY OF THE GOOD

SHEPHERD CIO acting by two

Authorised Officers


Authorised Officer


Authorised Officer

EXECUTED as a DEED by BARGATE
HOMES LIMITED acting by a Director
in the presence of:

Direc

Witness

Witness Name

Address:

Occupation: LAND + PLANNING MANAGER

SCHEDULE 1

Affordable Housing

The Owner covenants with the District Council:

1. AFFORDABLE HOUSING CONTRIBUTION

- 1.1 that if the provision of 40% of the Dwellings as Affordable Dwellings results in a fraction of a house, the Affordable Housing Contribution shall fall due.
- 1.2 where paragraph 1.1 applies, to pay the Affordable Housing Contribution to the District Council prior to the Disposal of any Dwelling

2. AFFORDABLE HOUSING MIX

- 2.1 that the Affordable Housing Mix shall consist of:
 - 2.1.1 70% Affordable Rented Dwellings (with fractions rounded up to the nearest whole number); and
 - 2.1.2 30% Shared Ownership Dwellings (with fractions rounded down to the nearest whole number); or
 - 2.1.3 such other mix of type, tenure and quantum as may be agreed in writing with the District Council at its absolute discretion.

3. PROVISION OF AFFORDABLE DWELLINGS

- 3.1 to provide the Affordable Dwellings as part of the Development in accordance with the Affordable Housing Mix and the relevant Reserved Matters Approval relating to the design, siting and layout of the Affordable Dwellings.
- 3.2 to ensure that the Affordable Dwellings within the Development will be compatible with the design of the Open Market Dwellings.
- 3.4 not to Occupy nor permit Occupation of more than 85% of the Open Market Dwellings until all the Affordable Dwellings:
 - 3.4.1 are completed and are ready for Occupation; and
 - 3.4.2 have been transferred to an Affordable Housing Provider;by either a transfer or transfers of the freehold interest or the creation of long leasehold interests with a term of not less than 125 years.
- 3.5 subject to paragraphs 4 and 5 below, not to allow or permit Occupation of any Affordable Dwellings for any purpose other than as Affordable Housing for Occupation by Eligible Persons.
- 3.6 subject to paragraphs 4 and 5 below, not to let or transfer any Low Cost Home Ownership Dwellings to persons other than persons nominated by the Help to Buy Agent

- 3.7 not to let any Affordable Rented Dwellings to persons other than persons nominated by the District Council.
- 3.8 that the deed of transfer or lease (as applicable) to the Affordable Housing Provider of the Affordable Dwellings shall contain the following (or such other alternative provisions as the District Council may agree in writing):
- 3.8.1 a covenant not to use the Affordable Dwellings otherwise than for the provision of Affordable Housing; and
 - 3.8.2 a covenant not to Dispose of any of the Affordable Dwellings other than for the purpose of providing Affordable Housing to Eligible Persons; and
 - 3.8.3 a covenant requiring the Affordable Housing Provider to enter into an agreement with the District Council granting the District Council the right to nominate 100% of the Occupiers of the Affordable Rented Dwellings when initially let and all subsequent true voids.

4. 100% EQUITY SHARE

The provisions in paragraph 3 of Schedule 1 shall cease to have effect in respect of any Affordable Dwelling where a leaseholder of an Affordable Dwelling (or its mortgagee) held as a Low Cost Home Ownership Dwelling has purchased 100% of the equity in the Dwelling or in respect of any Dwelling where the Occupier has exercised a statutory right to buy or a right to acquire in respect of such Dwelling.

5. CHARGE IN POSSESSION

- 5.1 For the purpose of this paragraph "Chargee" means:

- 5.1.1 any mortgagee or chargee;
- 5.1.2 any receiver, administrative receiver or administrator appointed under the Law of Property Act 1925;
- 5.1.3 any housing administrator appointed under the Housing and Planning Act 2016; or
- 5.1.4 any other person appointed under any security document to enable a chargee or mortgagee to realise its security;

of the Affordable Housing Provider and the whole or any one or more of the Affordable Dwellings.

- 5.2 The provisions of this Agreement relating to Affordable Dwellings shall not be binding on a Chargee (or any person or bodies deriving title through such Chargee) PROVIDED THAT the Chargee will have first:

- 5.2.1 given written notice to the District Council of its intention to exercise its powers of sale to Dispose of any of the Affordable Dwellings ("Notice"); and
- 5.2.2 used reasonable endeavours over a period of three months from the date the Notice is served to complete a Disposal of the relevant Affordable Dwelling(s) to either:
 - (a) another Affordable Housing Provider; or
 - (b) to the District Council.

- 5.3 Any Disposal referred to in paragraph 5.2.2 shall be for a consideration not less than the amount properly due and outstanding under the terms of the Chargee's relevant security documentation. This sum shall include all accrued principal monies, interest and the Chargee's reasonable costs and expenses.
- 5.4 In the event that a Disposal referred to in paragraph 5.2 shall not have been completed within the period of three months referred to in paragraph 5.2.2, the Chargee will be entitled to Dispose of the relevant Affordable Dwelling(s) free from the provisions of this Schedule 1 relating to Affordable Housing which shall determine absolutely in respect of the relevant Affordable Dwelling(s).
- 5.5 For the avoidance of doubt in respect of the relevant Affordable Dwelling(s) Disposed of in accordance with paragraph 5.2 above the purchaser shall not be subject to the obligations of this Schedule 1 to this Agreement.

SCHEDULE 2

MANAGEMENT OF THE DEVELOPMENT

The Owner (and the Borough Council and the District Council where relevant) covenant:

1. MANAGEMENT COMPANY AND MANAGEMENT PLAN

- 1.1 Not later than three months following Commencement of Development the Owners shall submit for approval to the Borough Council and the District Council the Owners' proposal for the formation of the Management Company and such proposal shall include full details of the proposed structure and voting rights of the Management Company.
- 1.2 The Borough Council and the District Council each covenant that it will notify the Owner that it either approves or rejects the proposal referred to in paragraph 1.1 of this Schedule 2 (or any resubmission) within two months of receipt. If notification of a refusal is received by the Owner from either the Borough Council or the District Council within the aforementioned time period, the Owner shall continue to comply with the obligation at paragraph 1.1 of this Schedule 2 and submit a further proposal or proposals until such time as the Borough Council and the District Council approves the Owners' proposals for the Management Company.
- 1.3 In the event that either the Borough Council and/or the District Council fails to notify the Owner in accordance with paragraph 1.2 of this Schedule 2, the proposal for the formation of the Management Company as submitted in accordance with paragraph 1.1 of this Schedule 2 (or as resubmitted) will be deemed approved by that council for the purposes of paragraph 1.1.
- 1.4 Not later than six months following Commencement of the Development to submit to the Borough Council and the District Council in writing the Management Plan.
- 1.5 The Borough Council and the District Council each covenant that it will notify the Owner that it either approves or rejects the proposal referred to in paragraph 1.4 of this Schedule 2 (or any resubmission) within one month of receipt. If notification of a refusal is received by the Owner from either the Borough Council or the District Council within the aforementioned time period, the Owner shall revise the Management Plan and submit such revisions until such time as the Borough Council and the District Council approves the Management Plan.
- 1.6 In the event that either the Borough Council and/or the District Council fails to notify the Owner in accordance with paragraph 1.5 of this Schedule 2, the Management Plan as submitted in accordance with paragraph 1.4 of this Schedule 2 (or as resubmitted) will be deemed to be approved by that council.
- 1.7 Following approval of the Management Plan in accordance with this Schedule 2 the Owner shall within six months of such approval take all necessary steps to secure the formation and registration of the Management Company at Companies House (taking into account any modifications reasonably required by either the Borough Council or District Council) and to notify the District Council and the Borough Council accordingly within fourteen days of the completion of the registration of the Management Company.
- 1.8 Not to Dispose or permit Disposal of any Dwelling until:
 - 1.8.1 the Management Company has been formed in accordance with the approved or deemed approved proposals; and
 - 1.8.2 the Management Plan has been approved or deemed approved in writing by the Borough Council and District Council.
- 1.9 Following completion of the relevant areas to secure the proper maintenance of the Common Parts and the SuDs to the reasonable satisfaction of the Borough Council and the District Council until such time as:

- 1.9.1 the Management Company is registered and the Management Plan has been approved or deemed approved; and
- 1.9.2 in respect of the Common Parts:
 - (a) the maintenance arrangements in accordance with the Management Plan have been implemented; and
 - (b) the transfer or the granting of a long leasehold interest of the Common Parts to the Management Company is completed; and
- 1.9.3 in respect of the SuDs, such SuDs are transferred to the Management Company or adopted by a statutory undertaker.
- 1.10 That if the Management Company ceases to exist as a company or if the Management Company at any time defaults in the performance of any of its covenants or obligations on its part as contained in the Management Plan and/or Management Agreement then the Owner shall (without prejudice to any other right or remedy of the Owners against the Management Company or any other person) perform the said covenants and obligations until the appointment by the Owner of a successor to the Management Company.
- 2. SuDs**
 - 2.1 Not to Commence or permit Commencement of Development until a bill of quantities detailing the open book construction costs for the SuDs has been submitted to the District Council for its approval.
 - 2.2 The District Council covenants that it shall within ten Working Days notify the Owner that it either approve the open book construction costs as submitted or proposes such reasonable amendments as are considered necessary. In the event that the District Council fails to respond to the open book construction costs within ten Working Days of receipt, the open book construction costs as submitted are to be deemed approved.
 - 2.3 Where reasonable amendments to the bill of quantities are proposed by the District Council, the Owner shall not more than ten Working Days after receiving the Council's proposed amendments revise the bill of quantities in accordance with the proposed amendments. In the event that the Council fails to respond to the revised bill of quantities for the SuDs within ten Working Days of receipt, the bill of quantities as submitted are to be deemed approved.
 - 2.4 On or before Commencement of Development to:
 - 2.4.1 provide to the District Council a Bond for the Bond Amount; or
 - 2.4.2 pay the Cash Deposit.
 - 2.5 The Bond shall endure, or the Cash Deposit shall be retained by the District Council until the earlier of:
 - 2.5.1 the SuDS is adopted by a statutory undertaker; or
 - 2.5.2 the date of completion of construction of the SuDS to the reasonable satisfaction of the District Council.
 - 2.6 The District Council shall within ten Working Days of the event in paragraph 2.5 occurring either:
 - 2.6.1 release the Owner and the Surety from the Bond; or

2.6.2 repay the Cash Deposit (or if the District Council has realised part of the Cash Deposit in accordance with paragraph 2.7 the unexpended amount) to the party that paid the same, together with accrued interest (if any).

2.7 If:

- i) the Owner fails to construct the SuDs in accordance with the details as approved by the District Council in writing; or
- ii) prior to completion of the SuDs the Owner is adjudicated bankrupt or goes into liquidation voluntarily or otherwise; or
- iii) has executed a deed of assignment for the benefit of or otherwise compound with its creditors (except for the purpose of reconstruction or amalgamation)

the District Council may (without prejudice to the District Council's other rights remedies and powers against the Owner):

- by written notice require the Surety to pay for; or
- the Cash Deposit may be applied to:

any reasonable and proper expenditure (including legal costs) which the District Council may incur in carrying out the construction of the SuDs to its own design or the Owner's design to return the Land to the level of hydrological response as existed before the Commencement of Development.

SCHEDULE 3

OPEN SPACE

The Owner covenants:

1 OPEN SPACE

Not to Dispose or permit the Disposal of more than 80% of the Dwellings until the Open Space has been laid out and is available for use in accordance with the relevant Reserved Matters Approval.

SCHEDULE 4

OWNER'S MISCELLANEOUS COVENANTS

The Owner covenants:

1 NOTICE

To give to the District Council, the Borough Council and the County Council:

- 1.1 not less than ten (10) Working Days written notice of their intention to Commence Development; and
- 1.2 not less than ten (10) Working Days written notice before Occupation

2 MONITORING FEE

Not to Commence or permit Commencement of Development until the Monitoring Fee has been paid to the District Council.

3 COMMUNITY WORKER CONTRIBUTION

Not to Occupy or permit Occupation of any Dwellings until the Community Worker Contribution has been paid to the District Council.

4 SUBMISSION OF DOCUMENTS

To provide when submitting documents or details to the District Council and/or the Borough Council and/or the County Council pursuant to the Schedules of this Agreement a reference to the Planning Permissions, the date and parties to this Agreement, and the paragraph and Schedule under which approval is sought, together with a statement of the date by which a decision must be given by the District Council and/or the Borough Council and/or the County Council.

SCHEDULE 5

HIGHWAY WORKS AND HIGHWAY CONTRIBUTION

The Owner covenants with the County Council:

1 HIGHWAY WORKS

- 1.1 Not to Commence nor permit Commencement of Development unless and until a Section 278 Agreement has been entered into with the County Council in respect of the Highway Works.
- 1.2 Not to Occupy nor permit Occupation of any Dwellings unless and until the Owner has constructed the Highway Works to Completion Certificate Standard SAVE in the event the County Council has granted written consent in advance of any such Occupation and specified the Dwelling(s) in the Development which may be so Occupied.

2 HIGHWAYS CONTRIBUTION

- 2.1 Not to Commence nor permit Commencement of Development unless and until the Highways Contribution has been paid to the County Council.

SCHEDULE 6

COVENANTS BY THE DISTRICT COUNCIL AND THE COUNTY COUNCIL

1 DISTRICT COUNCIL AND COUNTY COUNCIL COVENANTS

- 1.1 The District Council and the County Council covenant to use the contributions received under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid or for such other purposes for the benefit of the Development as the Owners and the District Council or County Council shall agree in writing.
- 1.2 The District Council and the County Council covenant that in the event that the District Council or County Council has not expended or committed for expenditure the contributions received in accordance with the provisions of this Agreement (and money shall be deemed to be expended if the District Council or County Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within ten (10) years of the date of receipt by the District Council or by the County Council of such payment the District Council or the County Council as the case may be shall upon written demand refund any unspent or unexpended contribution to the payer of the same promptly together with any accrued interest.
- 1.3 Upon written request from the Owner the District Council and/or the County Council shall provide to the Owner such evidence as it considers is reasonable to confirm the expenditure of the contributions.
- 1.4 At the written request of the Owner the District Council and/or the County Council shall provide written confirmation of the discharge of the obligations contained in this Agreement (other than any ongoing obligations which are not capable of being discharged) when satisfied that such obligations have been performed.

APPENDIX 1

Form of Bond

The Guarantee Bond is made as a deed **between** the following parties whose names and addresses are set out in the Schedule to this Bond (the 'Schedule'):-

- (1) The 'Contractor' as principal
- (2) The 'Guarantor' as guarantor, and
- (3) The 'Employer'

Whereas

- (1) By a contract (the 'Contract') entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works (the 'Works') upon and subject to the terms and conditions therein set out.
- (2) The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in clause 2.

Now this deed witnesses as follows:-

- 1 The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor the Guarantor shall subject to the provisions of this Guarantee Bond satisfy and discharge any damages sustained by the Employer ("the Damages") which relate to the obligation to carry out the works.
- 2 The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the sum set out in the Schedule (the 'Bond Amount') but subject to such limitation and to clause 4 the liability of the Guarantor to pay the Bond Amount shall be co-extensive with the liability of the Contractor to pay the Damages under the Contract.
- 3 The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Guarantee Bond.
- 4 Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach and stating that the amount being demanded has been established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and takes into account all sums due or to become due to the Contractor has been made upon and received by the Guarantor before Expiry.
- 5 The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the

6 The Guarantee Bond and the benefit thereof shall not be transferred or assigned without the prior written consent of the Guarantor and the Contractor.

7 The parties to this Guarantee Bond do not intend that any of its terms will be enforceable, by virtue of The Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it.

8 This Guarantee Bond shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.

The Contractor:	Developer's details
The Guarantor:	Bank's details
The Employer:	EAST HAMPSHIRE DISTRICT COUNCIL of Penns Place, Petersfield, Hampshire GU31 4EX
The Contract:	*insert details of the S106 Agreement*
The Works	the construction of a Sustainable Drainage system in accordance with paragraphs xxx of Schedule xxxxx to the Contract
The Bond Amount:	The sum of (£xxxxxxx) xxxxxxxx pounds sterling only
The Expiry Date:	This Bond will expire for receipt of demands upon the Issue of a certificate of Practical Completion by the Council upon presentation to the Guarantor, by the Contractor of a certified true and correct copy of the Practical Completion Certificate purporting to have been signed under the Contract which shall be conclusive for the purposes of this Guarantee Bond

EXECUTED as a DEED by **DEVELOPER**)
in the presence of:-)

29

EXECUTED as a DEED by affixing the)
COMMON SEAL of xxxxxxxxxx)
BANK)
in the presence of:-)

Director

Director/Secretary

APPENDIX 2

Section 278 Agreement General Arrangement Plan (drawing number 32 Rev A)

