

THIS DEED OF AGREEMENT is made the Second day of September 2003
BETWEEN

(1) THE OWNER

(2) THE COUNCIL

1. In this Agreement:

1.1 "the Act" means the Town and Country Planning Act 1990 as amended

1.2 "Application" means the application for planning permission in respect of the Land given a reference number which is set out in paragraph Five of the Schedule which Application to carry out the Development has been made to the Council as appropriate local planning authority.

1.3 "the Council" means the Council of the Borough of Havant being the local planning authority by whom the within written Obligations are enforceable

1.4 "the Development" means the development described in paragraph Six of the Schedule

1.5 "the Land" means the land described at paragraph One of the Schedule and any buildings structures or erections at any time thereon

1.6 "the Mortgage" means the mortgage or charge (if any) described at paragraph Four of the Schedule and all of them if more than one

1.7 "the Mortgagee" means the mortgagee or chargee (if any) and in the case of more than one all of them described at paragraph Three of the Schedule

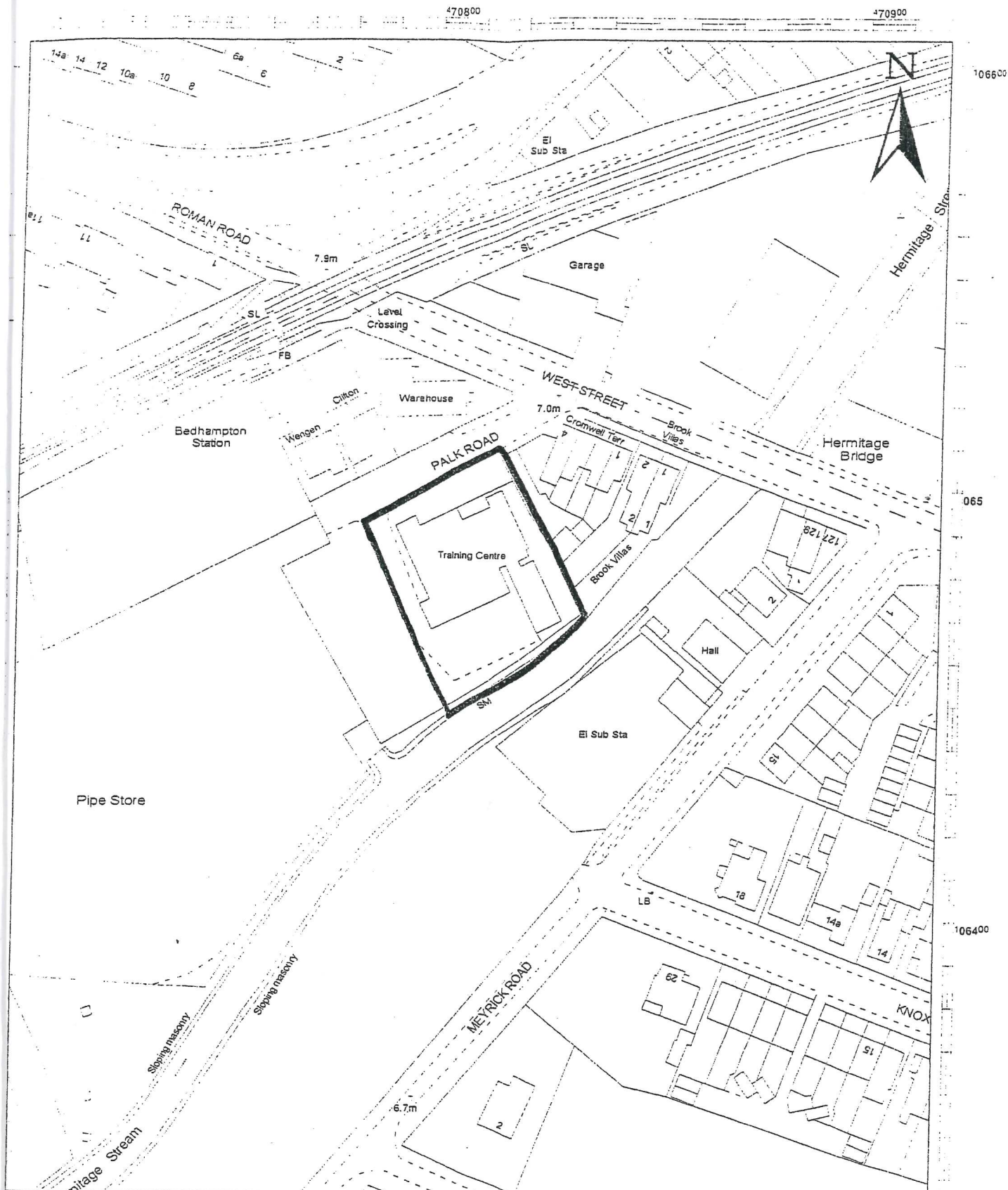
1.8 "Obligations" and "OBLIGATIONS" means those planning obligations (being restrictions requirements covenants agreements obligations or any of the foregoing) enforceable at law and in particular (but without prejudice to the availability to any enforcing authority of any power which may be available to it for the purposes of the enforcement of this Agreement) under the authority of those statutory provisions referred to in clause 5 of this Agreement and which are set out in paragraph Eight of the Schedule

1.9 "the Owner" means the owner and in the case of two or more owners each or all of them as owners of any or all parts of the Land and as parties to this Deed of Agreement acting and being obliged by this Agreement jointly and severally who is (or are) described at paragraph Two of the Schedule being a person or persons identified in accordance with Section 106(9)(c) of the Act

1.10 "the Permission" means the grant of planning permission made in response to the Application including where appropriate any grant of approval in respect of matters reserved by the said grant of planning permission or any subsequent grant of planning permission for the Development or for such other development on the Land as is not materially different from the Development (the determination of materiality being solely at the discretion of the Council)

- 1.11 "the Plan" means the plan attached to this Agreement
- 1.12 "the Schedule" means the Schedule to this Agreement being an integral part of this Agreement
- 1.13 "the Solicitor" means the solicitor giving the certificate at paragraph Seven of the Schedule
- 2.1 With the intention and so as permanently to bind the Land and all parts thereof so far as lawfully may be effected and into whomsoever hands the same may come and so that Obligations hereby imposed shall be enforceable against the Owner and its successors the Owner HEREBY COVENANTS AND AGREES with the Council AS A PLANNING OBLIGATION TO COMPLY FULLY WITH THE OBLIGATIONS PROVIDED THAT IT IS HEREBY AGREED THAT the liabilities of those persons together identified as "the Owner" hereunder and their successors shall be only in respect of those Obligations created by this agreement (which may be all of them) as relate to those parts of the Land as are now or may from time to time be in their ownership and/or control
- 2.2 It is hereby declared and agreed that subject to the precondition set out in sub-clause 2.2.1 of this Agreement a mortgagee in possession may sell the land free from the obligations set out in paragraph 8.2 of the Schedule hereto (and the person deriving title from such mortgagee shall also be free of such Obligations)
- 2.2.1 The precondition referred to in clause 2.2 is that the mortgagee is a mortgagee in possession exercising its powers under a charge on the Land consequent upon the failure of a Housing Association to perform its obligations under such charge
3. The Owner (and each of them acting in concert in the case of more than one joint owner) has produced a certificate of the Solicitor upon which Certificate the Council relies that the Owner is immediately entitled to possession and occupation of a freehold estate in the Land subject only to the Mortgage (if any) no other person having an interest therein at law or (to the best of the Owner's knowledge and belief) in equity
4. In the case that the Land is subject to any mortgage the Mortgage (or in the case of more than one each of them) is described at item Four of the Schedule and the Owner (and each of them severally if more than one) state and the Solicitor certifies with the intent that the Council shall rely upon the statement and certificate respectively that no other mortgage or charge has been concluded which affect the Land other than the





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Frank R Campbell BA (Hons) MRTPI,
Director of Environmental Services.

Civic Offices, Civic Centre Rd,
Havant, Hants. PO9 2AX.
Havant Havant. (023) 9247 4174.



Title:

**Town & Country Planning Act 1990
Section 106 Obligation
The Training Centre, Palk Road
02/54528/008**

Drawn By:

Penny Ware

Scale:

1:1250

Drawing No.:

PC44/158

Date:

30/04/03

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Mortgage and in the event that none is so described that there is no such mortgage or charge AND THAT no person other than the Owner or Mortgagee (if any is identified in the Schedule) has an interest either vested or contingent in the Land

5. This Agreement is entered into pursuant to Section 111 of the Local Government Act 1972 and Section 106 of the Act and all other appropriate statutory authority with the intent that it shall bind the Owner and Mortgagee (if any) and be enforceable against them and the persons deriving title under them and shall be a planning obligation for the purposes of the Act
6. The restrictions requirements covenants agreement and obligations contained within this Agreement shall have effect indefinitely from the time the Permission is granted
7. In the event of any difference between the description of the Development in this Agreement and the terms of the grant of permission issued by the Council in response to the Application the text of the grant of planning permission only shall be deemed to express the permission granted by the Council in response to the Application
8. The obtaining under this Agreement of expressions of acceptance or satisfaction on the part of the Council with things done in discharge of Obligations or determinations of materiality for the purposes of clause 1.10 shall be ineffective and not relied upon by any person unless in writing by the Council's Head of Planning and Development for the time being or such other officer who may be identified in writing by the Council for this purpose
9. In the event that any provision of this Agreement is held to be invalid or unenforceable the remaining provisions of this Agreement shall remain in full force and effect
10. The parties hereby agree and declare that no application for the modification or discharge of any obligation herein contained shall be made in respect of this Agreement
11. The Owner agrees to reimburse upon completion of this Deed the costs of the Council in settling and preparing the text of this Deed and in effecting its registration according to law
12. The underlined paragraph headings in the Schedule do not form part of this Agreement and shall not be construed as such

13. This instrument or document hereby expresses itself as executed as a Deed

THE SCHEDULE

1. (See clause 1.5) the Land
Land at the Training Centre Palk Road Havant in Hampshire shown edged with a heavy black line on the plan annexed hereto
2. (See clause 1.9) the Owner(s):
Portsmouth Housing Association Limited of 247 Fratton Road Portsmouth PO1 5PA
3. (See clause 1.7) the Mortgagee(s) (if any):
None
4. (See clause 1.6) the Mortgage(s) (if any):
None
5. (See clause 1.2) the Council's planning application reference number:
02/54528/008
6. (See clause 1.4) the Development
Construction of 20 flats together with associated car parking on the Land and access onto and improvements to Palk Road Havant
7. (See clauses 1.13, 2 and 4) Solicitors' Certificate

Certificate of Title

As Solicitor for the Owner we hereby certify that on the date of this Agreement what is set out in clauses 3 and 4 and paragraph 2, 3 and 4 of the Schedule to this Agreement is true.



Coffin Mew and Clover

8. (See clause 1.8) the Obligations

8.1 In this clause

- (a) "Affordable Housing" means Units of Accommodation controlled and

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managed by a Registered Social Landlord ("RSL") and made available by the RSL for the housing of persons and/or households in the locality whose incomes at the time they are so housed do not enable them to afford adequate housing locally on the open market

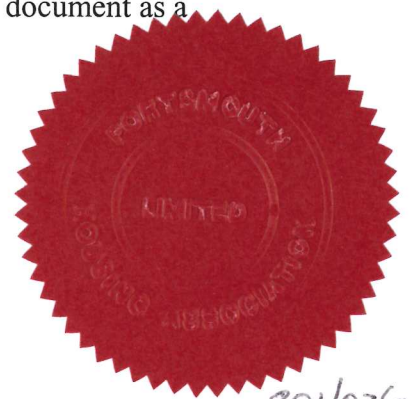
- (b) "RSL" means a Registered Social Landlord registered under the Housing Act 1996 (as amended)
- (c) "Unit of Accommodation" means a house or flat built in full compliance with all relevant Statutes and Orders or decisions made thereunder capable of and fit to provide permanent residential accommodation for at least two persons

8.2 To ensure at all times (insofar as permitted by law) that at least five of the Units of Accommodation provided on the Land are made available as Affordable Housing and occupied as such and not to occupy or cause permit or suffer their occupation otherwise than for that purpose PROVIDED ALWAYS that this covenant shall :-

- (i) cease to have effect in respect of any Unit of Accommodation on the Land which is transferred to the tenant thereof under the right to buy provisions of the Housing Act 1985 or the right to acquire provisions of the Housing Act 1996 (or any legislation amending or replacing the same)
- (ii) cease to have effect in respect of a Unit of Accommodation held under a shared ownership lease where the tenant or its mortgagee has staircased to 100%
- (iii) cease to have effect in respect of a Unit of Accommodation where a mortgagee of that said unit exercises a power of sale

IN WITNESS whereof the parties hereto have executed this instrument or document as a Deed

THE COMMON SEAL of PORTSMOUTH)
HOUSING ASSOCIATION LIMITED)
was hereunto affixed in the presence of:)



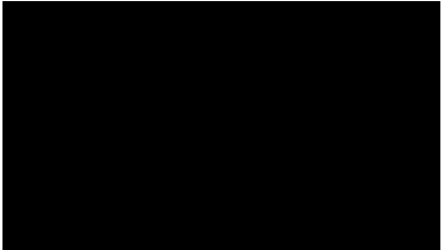
Director

Director/Secretary

801/03(a)

THE COMMON SEAL of
THE COUNCIL OF THE BOROUGH
OF HAVANT was hereunto affixed
in the presence of:

)
)
)
)



DATED 2nd September 2003

PORTSMOUTH HOUSING ASSOCIATION LIMITED

and

THE COUNCIL OF THE BOROUGH OF HAVANT

AGREEMENT

relating to land at the Training Centre Palk Road
Havant in Hampshire

C P Duggan
Director of Legal and Administration Services
Havant Borough Council
Civic Offices
Civic Centre Road
Havant, Hampshire
PO9 2AX

AGREEMENT

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