

DATED 19 NOVEMBER 2019

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) TRISTMIRE SUB LIMITED

and

(3) BARCLAYS BANK PLC

AGREEMENT

Under Section 106 Town and Country Planning Act 1990
relating to land at 1-13 North Street Arcade, Havant PO9 1PX

THIS AGREEMENT is made on

19 NOVEMBER

2019

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**);
2. **TRISTMIRE SUB LIMITED** (Co. Regn. No. 10852229) of Unit 7, Horizon Business Park, 1 Brooklands Road, Weybridge KT13 0TJ (**Owner**); and
3. **BARCLAYS BANK PLC** (Co. Regn. No. 01026167) of 1 Churchill Place, London E14 5HP (**Mortgagee**).

BACKGROUND

- (A) For the purposes of the Act, the Council is the local planning authority for the area within which the Land is situated.
- (B) The Owner is the freehold owner of the whole of the Land.
- (C) The Mortgagee is the proprietor of a registered charge dated 9 April 2019 referred to in entry numbers 6 and 7 of the charges register of title number HP30850 and the has agreed to enter into this Agreement to give its consent to the terms of this Agreement.
- (D) The Application has been submitted on behalf of Owner to the Council for permission to develop the Land in accordance with the Planning Permission.
- (E) The Owner and the Mortgagee enter into this Agreement in anticipation of the grant of Planning Permission being subject to the Owner and the Mortgagee entering into this Agreement which makes provision for regulating the Development and securing the matters referred to in this Agreement.
- (F) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner and the Mortgagee and their 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:

"the Act"

the Town and Country Planning Act 1990

"Affordable Housing"

means Dwellings provided for persons whose needs are not met by the local housing market and such Dwellings shall meet the needs of eligible households including availability at a cost low enough for them to afford determined with regard to local incomes and local house prices

"Affordable Housing Contribution"

means the sum that may be payable by the Owner to the Council in lieu of the provision of Affordable Housing in accordance with paragraph 3.5 of the Schedule

"Agreement"

this deed of Agreement

"Application"

the application submitted on behalf of the Owner to the Council for planning permission to carry out the Development and given the Council's reference number APP/18/00530

"Benchmark Land Value"

means the aggregate of:

- a) the Existing Use Value, which is the value of the Land in its existing use together with the right to implement any development for which there are policy compliant extant planning consents, including realistic deemed consents, but without regard to alternative uses; and
- b) the Premium, which is a premium (not exceeding 20% of the gross development value of the Land) for the landowner as seller;

and such Benchmark Land Value shall be determined in accordance with the PPG Viability.

"Bond"

means a bond issued by a Surety in the form appended to this Agreement (or such other form as the Council shall approve) for the Bond Amount

"Bond Amount"

10% of the open book construction costs for the SuDs as approved in accordance with paragraph 4 of the Schedule

"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 paragraph 4 of the Schedule

"Commencement of Development"

the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is begun other than (for the purposes of this Agreement and for no other purpose) operations consisting of, site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, site survey works, temporary access construction works and erection of any temporary fences or hoardings around the Land and "Commence" and similar expressions shall be construed accordingly

"CPI"

the Consumer Price Index as published by the Office of National Statistics

"Development"

the construction of 21 one and two bed Dwellings in a 2-storey extension fronting onto Prince George Street, together with the provision of infill flexible use (Classes

A1/A2/A3) commercial floorspace to North Street frontage, following the demolition of the existing 1 and 2 storey retail development

"Disposal"

in relation to each Dwelling means:

- a) 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;

and for the avoidance of doubt, such Occupation shall not include occupation for the purpose of constructing fitting out decoration or marketing of or display or occupation in relation to security operations for the Development; or

- b) the grant and/or assignment of a leasehold interest 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/or whichever shall first occur;

and "Dispose" and "Disposed of" shall be construed accordingly;

"Dwelling"

means a self-contained unit of residential accommodation (and for the avoidance of doubt this definition shall include houses, flats and maisonettes) comprised within the Development and "Dwellings" 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 12 to determine a dispute

"External Elements"

those parts of the Development which comprise the external faces, walls and roofs of any of the Dwellings comprising the Development

"Index"

means either:

- (a) CPI; or
- (b) as specified in accordance with clause 14;

"Index Linked"

Increased in accordance with the following formula:

Amount payable = the payment specified in this Agreement x (A/B) where:

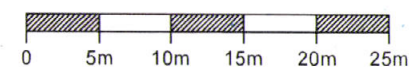
NOTES

GENERAL NOTES

1. THIS DRAWING IS TO BE READ IN CONJUNCTION WITH THE OTHER RELEVANT CONSULTANTS DRAWINGS.
2. ALL FINISHES ARE TO CONFORM TO THE CURRENT BUILDING REGULATIONS.
3. REFER TO A SEPARATE DOCUMENT FOR THE DESIGNER'S RISK ASSESSMENT.
4. ALL WORKS OR MATERIALS INDICATED ON THIS DRAWING ARE TO BE TO THE LATEST RELEVANT BRITISH STANDARDS AND CARRIED OUT IN ACCORDANCE WITH THE BRITISH STANDARDS CODES OF PRACTICE OR RECOGNIZED INSTITUTE OR TRADE ASSOCIATION RECOMMENDATIONS AND PUBLICATIONS.

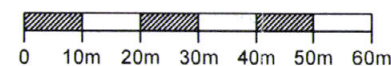


1:500 scale



Ordnance Survey (c) Crown Copyright 2017.
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1:1250 scale



Revision	Date	Description	Drawn	Check
P3	April 2018	Planning Application	TH	

PLC ARCHITECTS
Lansdowne House
25-26 Hampshire Terrace
Portsmouth PO1 2QF
Hampshire England
Tel: (023) 92 755 333
E-Mail: admin@plcarchitects.com
Web: www.plcarchitects.com

Project
North Street Arcade
North Street
Havant

Drawing Title
Location plan
Block plan

Drawn By	Date	Checked By	Date	Approved By	Date
TH	Jan17				
Drawing No		Revision		Scale	
16 - 2199 - 103		P3		As Shown @	

PLC ARCHITECTS © COPYRIGHT RESERVED 2015
NOT TO BE SCALED. DIMENSIONS TO BE CHECKED ON SITE.
SCALING ONLY FOR LOCAL AUTHORITY PURPOSES

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
"Land"	means the freehold property being land known as 1-13 North Street Arcade, Havant PO9 1PX and registered at the Land Registry with title number HP30850 and shown edged red on the Plan
"Leasehold Interests"	means all such leasehold or tenant interests in the Land as are subsisting at the date of this Agreement and for the avoidance of doubt including the leasehold land registered under title numbers SH18393 and SH40408 at the Land Registry
"Monitoring Fee"	the sum of £1,386 as a contribution towards the costs incurred by the Council in the provision of a suitably qualified and experienced person(s) whose function is to monitor, coordinate and enforce the obligations contained within this Agreement
"Occupation"	means occupation for the purposes permitted by the Planning Permission 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.
"PPG Viability"	Planning Practice Guidance on Viability dated 24 July 2018 as amended on 9 May 2019.
"Plan"	the site location plan attached to this Agreement with drawing number 16 _ 2199 _ 103 revision P3
"Planning Permission"	the conditional planning permission that may be granted in pursuance of the Application
"Residual Land Value"	the amounts described as such in the Viability Appraisal
"Solent Recreation Mitigation Partnership"	means the partnership of local planning authorities bordering the Solent formed to develop the Solent Recreation Mitigation Strategy
"Solent Recreation Mitigation Strategy (SRMS)"	means the framework to mitigate potential impacts on the Solent Special Protection Area from increased visitor pressure arising from housebuilding adopted by the Solent Recreation Mitigation Partnership in December 2017

"Solent Special Protection Areas"	means the Special Protection Areas (designated under the Wildlife and Countryside Act 1981) in the Solent covered by the Solent Recreation Mitigation Strategy
"SRMS Contribution"	means the sum of £8,457.80 payable as a contribution towards measures to mitigate against the impact of the Development on the Solent Special Protection Areas in accordance with the Solent Recreation Mitigation Strategy dated 1 April 2018
"SuDs"	means a sustainable drainage system for the Development in accordance with a specification agreed in writing by the Council
"Surety"	means a bank or financial institution as may be nominated by the Owner and approved by the Council for the Bond
"Viability Appraisal"	a viability appraisal to be completed at the expense of the Owner to assess the viability of the Development in accordance with the Planning Permission such Viability Appraisal shall be in accordance with the PPG Viability and otherwise in a format equivalent to the existing viability appraisal dated 27 April 2018 prepared by Simon Corp of S106 Affordable Housing and revised on 3 April 2019
"Working Day"	a day other than a Saturday or 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 in this Agreement include the successors in title of that party and any references to the Council include any successor local planning authority exercising planning powers under the Act.
- 2.9 References to "including" mean "including, without limitation".
- 2.10 Any covenant by the Owner or the Mortgagee 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.

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 that section of the Act and are enforceable by the Council.
- 3.3 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.
- 3.4 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.

4 COMMENCEMENT

This Agreement shall have effect from the date hereof.

5 OBLIGATIONS OF THE PARTIES

The Owner and the Council covenant with each other to comply, observe and perform the obligations as set out in the Schedule to this Agreement.

6 MORTGAGEE'S CONSENT

- 6.1 The Mortgagee consents to the completion of this Agreement and declares that their interest in the Land shall be bound by the terms of this Agreement as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Land.
- 6.2 The Mortgagee shall not be personally liable for any breach of the obligations in this Agreement unless such breach is committed or continuing at a time when the Mortgagee is in possession of all or any part of the Land in which case the Mortgagee shall be bound by the obligations in this Agreement as if Mortgagee had been the Owner at the time that it was executed.

7 LEASEHOLD INTERESTS

Not to Commence or permit Commencement of Development until the Leasehold Interests have been surrendered and the Owner has submitted to the Council a certified copy of the deed of surrenders relating to the each Leasehold Interest and an application is made to the Land Registry immediately thereafter in Form AP1 to close that leasehold title at the Land Registry and subsequently as soon as practicable thereafter provides evidence from the Land Registry that the leasehold title for the Leasehold Interests have been closed at the Land Registry.

8 REGISTRATION

This Agreement shall be registered by the Council as a Local Land Charge in the Register of Local Land Charges maintained by the Council.

9 RELEASE

- 9.1 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.
- 9.2 No planning obligations contained in this Agreement shall be binding on any freehold or leasehold owners or occupiers of individual Dwellings constructed pursuant to the Planning Permission (or their respective mortgagees) or on any part of the Land held by any statutory undertakers for their operational purposes.

10 NOTICES

- 10.1 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of its interest 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
 - 10.1.1 registered office where the transferee is a company
 - 10.1.2 usual address where the transferee is not a companytogether with details of the area of the Land or unit of occupation transferred by reference to a plan
- 10.2 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.
- 10.3 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 Council shall be marked for the attention of the Head of Legal.
- 10.4 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:
 - 10.4.1 if delivered by hand, at the time of delivery; or
 - 10.4.2 if sent by recorded delivery, at the time delivery was signed for.

10.5 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.

10.6 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.

11 COSTS OF THIS AGREEMENT

Upon completion of this Agreement the Owner shall pay to the Council their reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement.

12 DETERMINATION OF DISPUTES

12.1 Subject to clause 12.6, 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 12. 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.

12.2 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.

12.3 The Expert shall act as an independent expert and:

12.3.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;

12.3.2 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;

12.3.3 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;

12.3.4 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;

12.3.5 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

12.3.6 the Expert shall use all reasonable endeavours to publish his decision within 30 Working Days of his appointment.

12.4 Responsibility for the costs of referring a dispute to a Expert under this clause 12, 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.

12.5 This clause 12 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.

12.6 The provisions of this clause 12 shall not affect the ability of the 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.

13 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.

14 INDEXATION

14.1 All financial contributions payable to the Council shall be Index Linked.

14.2 The SRMS Contribution shall be Index Linked in accordance with the Index and figures supplied to the Council by the Solent Recreation Mitigation Partnership.

14.3 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 Agreement) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

15 INTEREST

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

16 TERMINATION

16.1 The obligations in this Agreement (with the exception of clause 11) shall cease to have effect if before the Commencement of Development, the Planning Permission:

16.1.1 expires;

16.1.2 is varied or revoked other than at the request of the Owner; or

16.1.3 is quashed following a successful legal challenge.

17 FUTURE PERMISSIONS

17.1 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 Permission) granted (whether or not on appeal) after the date of this Agreement.

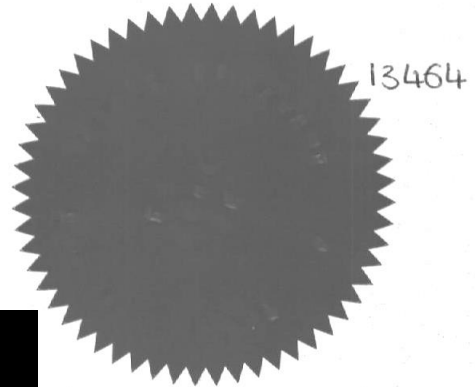
17.2 This Agreement shall apply to any planning permission subsequently granted under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission (a "Subsequent Permission") and the Planning Permission shall be construed to include the development as stated in the Subsequent Permission unless otherwise required by the Council or the circumstances in clause 16.1.2 arise.

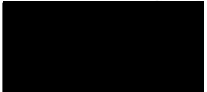
18 JURISDICTION

- 18.1 This Agreement shall be governed by and interpreted in accordance with the laws of England.
- 18.2 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 Agreement has been duly executed as a deed and delivered on the date stated at the beginning of this Agreement.

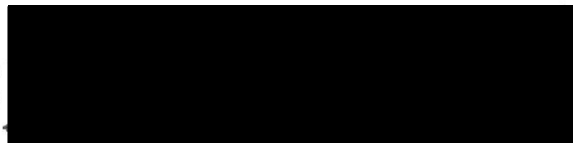
EXECUTED as a DEED by affixing
THE COMMON SEAL of the COUNCIL OF THE
BOROUGH OF HAVANT
in the presence of:





Authorised Signatory

EXECUTED as a DEED by
TRISTMIRE SUB LIMITED
acting by a Director in the
presence of:

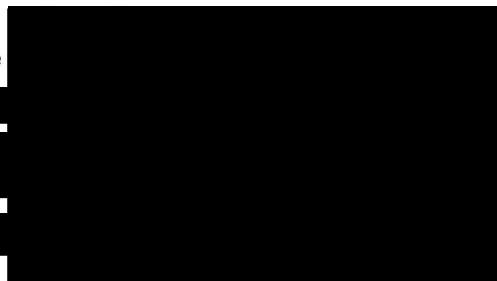


Witness signature

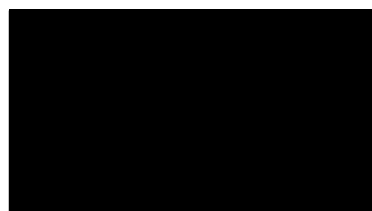
Witness name

Address

Occupation



Executed
~~SIGNED~~ as a DEED by
~~attorney for and on behalf of~~
BARCLAYS BANK PLC
Acting by Trevor Lacey
It's duly authorised attorney

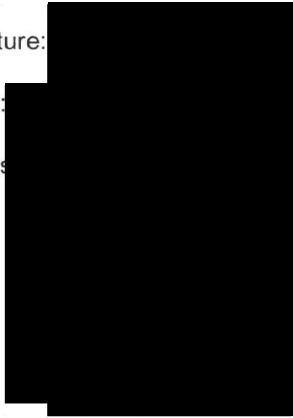


in the presence of:

Witness Signature:

Witness Name:

Witness Address:



THE SCHEDULE

Owner's covenants

The Owner (and the Council where stated) covenants as follows:

1. Commencement

To give to the Council not less than fourteen days written notice of their intention to Commence Development

2. Contributions

2.1 Not to Commence or to cause or permit Commencement of the Development until it has paid or caused to be paid to the Council the Monitoring Fee

2.2 Not to Commence or to cause or permit Commencement of the Development until it has paid or caused to be paid to the Council the SRMS Contribution

2.3 In the event that the Council have not expended or committed for expenditure the SRMS Contribution within a period of ten years from the date of receipt by the Council of such payment, the Council shall refund any unspent or unexpended SRMS Contribution to the payer of the same promptly together with any interest at the base rate for Barclays Bank Plc for the period from the date of payment to the date of the refund.

3. Viability Appraisal

3.1 To complete all External Elements of the Development within 18 months of the date of this Agreement

3.2 In the event that not all External Elements of the Development have been completed within 18 months of the date of this Agreement that they shall undertake a Viability Appraisal for the Development and such Viability Appraisal shall be undertaken in accordance with the PPG Viability

3.3 Where paragraph 3.2 applies, to submit the Viability Appraisal to the Council within 10 Working Days of the expiration of that 18 month period together with a solicitor's undertaking that the Council's costs reasonably and properly incurred in verifying the Viability Appraisal shall be met in full

3.4 The Council shall submit the Viability Appraisal for independent verification by a Specialist following receipt of the costs referred to at paragraph 3.3

3.5 If the Viability Appraisal (as independently verified) demonstrates that the Residual Land Value exceeds the Benchmark Land Value of the Land on the date of the Viability Appraisal then the Affordable Housing Contribution shall fall due as set out in paragraph 3.6 and shall be an amount equal to the difference between the two said values

3.6 If the Affordable Housing Contribution becomes payable in accordance with paragraph 3.5 of this Schedule the Affordable Housing Contribution shall be paid to the Council before the Disposal of not more than 10 Dwellings

3.7 In the event that the Viability Appraisal is required to be undertaken in accordance with paragraph 3.2 and 3.3 above none of the Dwellings shall be disposed of until the Viability Appraisal has been verified by the Specialist and the Affordable Housing Contribution has been assessed or determined in accordance with this Schedule.

- 3.8 In the event that the Council have not expended or committed for expenditure the Affordable Housing Contribution within a period of ten years from the date of receipt by the Council of such payment, the Council shall refund any unspent or unexpended Affordable Housing Contribution to the payer of the same promptly together with any interest at the base rate for Barclays Bank Plc for the period from the date of payment to the date of the refund.

4. SuDs

- 4.1 Not less than two months prior to Commencement of Development to submit to the Council for its approval a bill of quantities detailing the open book construction costs for the SuDs.

- 4.2 The 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 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.

- 4.3 Where reasonable amendments to the bill of quantities are proposed by the 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.

- 4.4 On or before Commencement of Development to:

4.4.1 provide to the Council a Bond for the Bond Amount; or

4.4.2 pay the Cash Deposit.

- 4.5 The Bond shall endure, or the Cash Deposit shall be retained by the Council until the earlier of:

4.5.1 the SuDS is adopted by a statutory undertaker; or

4.5.2 the date of completion of construction of the SuDS to the reasonable satisfaction of the Council.

- 4.6 If:

- i) the Owner fails to construct the SuDs in accordance with the details as approved by the 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 Council may (without prejudice to the 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 expenditure (including legal costs) which the 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.

APPENDIX

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 Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.
- 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 Schedule

The Contractor: **Developer's details**

The Guarantor: **Bank's details**

The Employer: **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service
Plaza Civic Centre Road Havant Hampshire PO9 2AX

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

In witness whereof the Contractor and the Guarantor have executed and delivered this Guarantee Bond as a Deed
this day of 201x

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

Director

Director/Secretary

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

Director

Director/Secretary