

DATED

30 JANUARY

2019

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

**(2) JOSEPH AUGUSTINE WILCOX, RODERICK SAXON SNELL, JILL ELISABETH MANSON and
HARTLEY SAS LIMITED as trustees of the Snell and Wilcox Limited Pension Plan**

AGREEMENT

Under Section 106 Town and Country Planning Act 1990
relating to land at Southleigh Park House, Eastleigh Road, Havant PO9 2PE

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**)
2. **JOSEPH AUGUSTINE WILCOX** of 37 Beach Road, Emsworth, Hampshire PO10 7HR and **RODERICK SAXON SNELL** of Island House, Steep, Petersfield Hampshire GU32 1AE and **JILL ELISABETH MANSON** of Island West, Steep, Petersfield, Hampshire GU32 1AE and **HARTLEY SAS LIMITED** incorporated and registered in England and Wales with company number 6037774 whose registered office is at 26 Grosvenor Street, London W1K 4QW as the trustees of the Snell and Wilcox Limited Pension Plan (**Owner**)

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 Owner has submitted the Application to the Council for permission to develop the Land in accordance with the Planning Permission.
- (D) The Owner enter into this Agreement in anticipation of the grant of Planning Permission being 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.
- (E) 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 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 2 of Schedule 1

"Agreement"	this deed of Agreement
"Application"	the application submitted by the Owner to the Council for planning permission to carry out the Development and given the Council's reference number APP/17/00863
"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 annexed at Appendix 4 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 5 of Schedule 1
"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 5 of Schedule 1
"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
"Common Parts"	the parts of the Land which do not comprise a Dwelling or the curtilage of a Dwelling and 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 unadopted roads, communal parking areas, footways, footpaths, landscaped areas, street lighting, amenity spaces and drainage ditches
"County Council"	Hampshire County Council

"Development"

the development of the Land comprising:

- a) the change of use, alterations to and extensions of the existing buildings on the Land for the provision of 20 Dwellings (comprising 13 Dwellings within the Main House and 7 Dwellings in the other Listed Buildings), with associated landscaping parking and amenity space; and
- b) the construction of up to 70 Dwellings on the Land, together with associated landscaping, parking and infrastructure works, following the demolition of the 1983 office building (including demolition of the brick and glass corridor link).

"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

"Highway Works"

means the highway works comprised of:

- a) Existing central island at junction of Bartons Road and Eastleigh Road to be widened to 2.4m and crossing point moved south to retain existing light column.
- b) Two surface mounted traffic islands on Bartons Road with 'keep left' sign facing east and west

- c) Existing light column to be moved to the back of the proposed footway on south side of Bartons Road.
- d) New 3m wide access into the site on the north west corner from Eastleigh Road for pedestrians and cyclists
- e) Existing 40mph speed limit sign to be relocated to back of footway on Bartons Road and junction with Horndean Road.
- f) New 3m wide shared cycle way and footpath along the south side of Bartons Road.
- g) New 3.5m wide footway along Horndean Road to provide 0.5 buffer to carriageway edge, existing kerb to realigned into carriageway to retain flint wall.
- h) New 3m wide access into the site from Horndean Road for pedestrians and cyclists
- i) New regulatory signage along Bartons Road, Eastleigh Road and Horndean Road to direct pedestrians and cyclists.
- j) Existing central island width at crossing on Horndean Road to be a minimum width of 2.4m.

as shown in principle on drawing number 160720-200 Rev E and annexed at Appendix 3 to this Agreement

“Highways Agreement”

an agreement made under section 278 and/or 38 of the Highways Act 1980 to secure the Highway Works

“Index Linked”

Increased in accordance with the following formula:

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

A= the last figure published for the Consumer Prices Index that applied immediately preceding the date that payment was due

B= the last figure published for the Consumer Prices 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 Southleigh Park House, Eastleigh Road, Havant PO9 2PE and registered at the Land Registry with title numbers HP220538 and HP493510

“Leaseholder”

Grass Valley Limited (formerly known as Snell Advanced Media Limited) (Company Number 01160119)

“Management Agreement”

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"	a company limited by guarantee or by shares and established in accordance with the provisions of Schedule 1 to be charged with the management of the Common Parts and SuDs;
"Management Plan"	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 Council in accordance with the provisions of Schedule 1
"Monitoring Fee"	the sum of £6298.60 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.
"Occupational Lease"	The lease dated 11 October 2007 and which is registered at the Land Registry under title number SH25404 or any renewal or replacement of that lease
"PPG Viability"	Planning Practice Guidance on Viability dated 24 July 2018.
"Plan"	the site location plan attached at Appendix 1 to this Agreement with drawing number 245001/1000A TOR-HTP-001
"Planning Permission"	the conditional planning permission that may be granted in pursuance of the Application
"Previous Agreements"	means: a) the Planning Agreement dated 9 July 1992 made between Siemens Plessey Electronic Systems Limited (1) and the Council of the Borough of Havant (2); and b) the Planning Agreement dated 5 January 1999 made between J.A. Wilcox and R.S. Snell and D.A. Youlton and Hartley Pensions Administration

Limited (1) and Snell and Wilcox Limited (2) and the Council of the Borough of Havant (3)

"Residual Land Value"	the amounts described as such in the Viability Appraisal
"Solent Recreation Mitigation Project Contribution"	the sum calculated by the Council in accordance with Schedule 2 to this Agreement as a contribution towards measures to mitigate the impacts of the Development on the Solent Special Protection Areas in accordance with the Solent Recreation Mitigation Strategy dated 1 April 2018
"Specialist"	means an independent and suitable person holding appropriate professional qualifications and of at least 10 years' post qualification with expertise of development viability and finance
"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 other financial institution as may be nominated by the Owner and approved by the Council for the Bond
"Travel Plan"	a travel plan aimed at reducing the reliance on the use of the private car by occupants of the Dwellings and that encourages the use by those occupants of alternative means of transport
"Travel Plan Approval Fee"	means the sum of £600 payable to the Council towards the costs incurred in reviewing and approving the Travel Plan
"Travel Plan Co-ordinator"	the person appointed by the Owner to be responsible for monitoring, implementation and performance of the Travel Plan and generally to perform the duties ascribed to the Travel Plan Co-Ordinator in accordance with paragraph 5.8 of Schedule 1
"Travel Plan Monitoring Fee"	means the sum of £900 payable by the Owner to the Council after the approval of the Travel Plan in accordance with the provisions of paragraph 5 of Schedule 1 towards the costs to be incurred by the Council in monitoring the Travel Plan
"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;
"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 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 sections 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 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

- 4.1 This Agreement shall have effect from the date hereof.

5 OBLIGATIONS OF THE PARTIES

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

6 REGISTRATION

- 6.1 This Agreement shall be registered by the Council as a Local Land Charge in the Register of Local Land Charges maintained by the 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 obligations contained in this Agreement shall be binding on any freehold or leasehold owners or occupiers of individual Dwellings constructed or converted pursuant to the Planning Permission (or their respective mortgagees) or land held by any of the statutory utilities for their operational purposes.

8 NOTICES

- 8.1 The Owner agrees with the Council to give the Council immediate written notice 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 Council and 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 Owner shall pay to the Council their reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement.

10 DETERMINATION OF DISPUTES

10.1 If any dispute arises out of this Agreement the dispute shall be referred to an arbitrator appointed jointly by the parties if the parties cannot agree on the arbitrator's identity the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors.

10.2 The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction then equally).

11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

11.1 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 financial contributions (except for the Solent Recreation Mitigation Project Contribution) payable to the Council shall be Index Linked.

12.2 The Solent Recreation Mitigation Project Contribution shall be index linked in accordance with the figures supplied to the Council by the Solent Recreation Mitigation Partnership.

12.3 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 deed) 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.

13 INTEREST

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

14 TERMINATION

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

14.1.1 expires;

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

14.1.3 is quashed following a successful legal challenge.

15 FUTURE PERMISSIONS

- 15.1 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, but 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 14.1.2 arise.

16 JURISDICTION

- 16.1 This Agreement shall be governed by and interpreted in accordance with the laws of England.
- 16.2 The Courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

17. LIMITATION OF LIABILITY

The liability of the Owner as at the date of this Agreement shall at all times be limited to the assets and the proceeds of any insurance policies to which the Owner shall be entitled for the time being of the Snell and Wilcox Limited Pension Plan.

18. PREVIOUS AGREEMENTS

On Commencement of Development the parties agree and acknowledge that the provisions of the Previous Agreements shall cease to be of effect.

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:



Authorised Signatory

SIGNED AS A DEED by the said
JOSEPH AUGUSTINE WILCOX
in the presence of:-

Witness signature

Witness name

Address

Occupation

SIGNED AS A DEED by the said
RODERICK SAXON SNELL
in the presence of:-

Witness signature

Witness name

Address

Occupation

SIGNED AS A DEED by the said
JILL ELISABETH MANSON
in the presence of:-

Witness signature

Witness name

Address

Occupation

Executed as a Deed by
HARTLEY SAS LIMITED
acting by Andrew Leighton
(a Director) in the presence of:

Witness signature

Witness name

Address

Occupation

SCHEDULE 1

Owner's covenants

The Owner and the Council (where relevant) covenant:

1. Commencement

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

2. Contribution and Viability Appraisal

- 2.1 not later than Commencement of Development to pay to the Council the Monitoring Fee
- 2.2 to undertake a Viability Appraisal for the Development, such Viability Appraisal shall be undertaken in accordance with the PPG Viability
- 2.3 to submit the Viability Appraisal carried out in accordance with paragraph 2.2 to the Council on submission of the Reserved Matters Application which deals with the intended form and quantum of the Development, together with a solicitor's undertaking that the Council's reasonable costs incurred in verifying the Viability Appraisal shall be met in full
- 2.4 the Council shall submit the Viability Appraisal for independent verification by a Specialist following receipt of the costs referred to at paragraph 2.3
- 2.5 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 2.6 and shall be an amount equal to the difference between the two said values
- 2.6 if the Affordable Housing Contribution becomes payable in accordance with paragraph 2.5 of Schedule 1 the Affordable Housing Contribution shall be paid to the Council before the Disposal of not more than 50 Dwellings

3. Management and Maintenance of the Common Parts

- 3.1 not to Commence Development until the Council has approved in writing the Owner's 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.
- 3.2 when submitting documents or details to the Council pursuant to Schedule 1 to include a reference to the Planning Permission, the date and parties to this Agreement, and the paragraph under which approval is sought, together with a statement of the date by which a decision must be given by the Council
- 3.3 the Council covenants that it will notify the Owner that it either approves or rejects the proposal referred to in paragraph 3.1 above within one month of receipt. If notification is not received within that time, the proposal/s will be deemed to be approved. If notification of a refusal is received by the Owner within the aforementioned time period, the Council shall set out its reasons for the refusal and the Owner shall continue to comply with the obligation at paragraph 3.1 above until such time as the Council approves the proposal or deemed approved applies (the Council acting reasonably).
- 3.4 not later than three months following Commencement of Development to submit to the Council in writing the Owner's proposal for the Management Plan.

- 3.5 not to allow or permit Occupation of any Dwelling until:
- 3.5.1 the Management Company has been formed in accordance with the approved proposal; and
 - 3.5.2 the Management Plan has been approved in writing by the Council (such approval not to be unreasonably withheld or delayed).
- 4. Management Company**
- 4.1 not later than six months from Commencement of Development the Owner shall 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 the Council) and to notify the Council accordingly within fourteen days of the completion of the registration of the Company
 - 4.2 to secure the proper maintenance of the Common Parts and SuDs to the reasonable satisfaction of the Council until such time as:
 - 4.2.1 the Management Company is registered and the Management Plan has been approved by the Council; and
 - 4.2.2 the maintenance arrangements for the Common Parts and SuDs in accordance with the Management Plan have been fully implemented; and
 - 4.2.3 the transfer or the granting of a long leasehold interest of the Common Parts and SuDs to the Management Company is completed; or
 - 4.2.4 the transfer or the granting of a long leasehold interest of the Common Parts to the Management Company is completed and the SuDs is adopted by a statutory undertaker
 - 4.3 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 Owner 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
- 5. SuDs**
- 5.1 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.
 - 5.2 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.
 - 5.3 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.
 - 5.4 on or before Commencement of Development to:

- 5.4.1 provide to the Council a Bond for the Bond Amount; or
- 5.4.2 pay the Cash Deposit.
- 5.5 the Bond shall endure, or the Cash Deposit shall be retained by the Council until the earlier of:
 - 5.5.1 the SuDS is adopted by a statutory undertaker; or
 - 5.5.2 the SuDs is transferred to a Management Company; or
 - 5.5.3 the date of completion of construction of the SuDS to the reasonable satisfaction of the Council.

5.6 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.

6. Travel Plan

- 6.1 within three months of Commencement of Development to submit to the Council for its approval a draft Travel Plan and to pay the Travel Plan Approval Fee
- 6.2 within two months after submission of the draft Travel Plan the Council shall review the draft Travel Plan and shall either propose such reasonable amendments as are considered necessary or shall approve the draft Travel Plan as submitted
- 6.3 if reasonable amendments to the Travel Plan are proposed by the Council, the Owner shall, not more than fourteen days after receiving the Council's proposed amendments, revise the draft Travel Plan in accordance with the proposed amendments
- 6.4 if the Council has not approved the draft Travel Plan within four months of its first submission and the Travel Plan Approval Fee has been paid, the draft Travel Plan shall be deemed to have been approved
- 6.5 not to amend the Travel Plan without the prior written approval of the Council (such approval not to be unreasonably withheld or delayed)

- 6.6 not to Occupy or permit Occupation of any Dwelling otherwise than in accordance with the approved Travel Plan (including amendments to such Travel Plan if any)
- 6.7 to use reasonable endeavours to achieve the aims objectives and targets from time to time set out in the approved Travel Plan
- 6.8 prior to Occupation of any Dwelling to appoint a Travel Plan Co-Ordinator in accordance with the following:
 - 6.8.1 within 2 weeks of the appointment of the Travel Plan Co-Ordinator the Owner must notify the Council in writing the details of the appointed Travel Plan Co-Ordinator
 - 6.8.2 the post of Travel Plan Co-ordinator shall be retained at no cost to the Council for not less than 4 years following final approval of the Travel Plan in accordance with paragraph 6.2.
- 6.2 the Travel Plan Co-ordinator shall be responsible for monitoring the performance of the Owner in accordance with the Travel Plan and the introduction implementation and performance of the Travel Plan.
- 6.3 the Travel Plan Co-ordinator shall provide a progress report as to the performance of the Travel Plan to the Owner and to the Council not less than once every year beginning with the first occupation of the 40th Dwelling and thereafter for a period of 3 years.
- 6.9 not to Occupy, or permit Occupation of any Dwelling until the Travel Plan Approval Fee and the Travel Plan Monitoring Fee has been paid.
- 6.10 not to Occupy, or permit Occupation of any Dwelling until the Travel Plan Co-Ordinator has been appointed.
- 7 Highways Works**
 - 7.1 to enter into a Highways Agreement with the County Council for the Highway Works before Commencement of Development
 - 7.2 not to Commence or permit Commencement of Development until the Owner has entered into the Highways Agreement with the County Council for the Highway Works
 - 7.3 that it shall at its own expense carry out and complete the Highway Works in a good and workmanlike manner in accordance with the Highways Agreement
 - 7.4 not to Occupy, or permit Occupation of any Dwelling until the Highway Works have been completed to the reasonable satisfaction of the County Council.
- 8. Occupational Lease**
 - 8.1 not to Commence or permit Commencement of Development until the Occupational Lease has been surrendered and the Owner has submitted to the Council a certified copy of the deed of surrender relating to the Occupational Lease or other evidence that the Occupational Lease has determined 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 of the Occupational Lease has been closed at the Land Registry .

SCHEDULE 2

Solent Recreation Mitigation Project Contribution

1. Definitions

1.1 In this Agreement and Schedule, the following definitions shall apply:

"First SRMP Instalment"	the sum of £9,590.00
"Reserved Matters Application"	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 Permission as matters for further approval by the Council
"Second SRMP Instalment"	the sum of £41,134.00, or such other revised sum calculated in accordance with paragraph 2.1 of this Schedule
"SRMP Contribution"	means the First SRMP Instalment and Second SRMP Instalment together

2. SRMP Calculation

2.1 The SRMP Contribution shall be calculated in accordance with the following formula:

$$\text{SRMP Contribution} = (A \times B) + C$$

Where:

- A = the number of dwellings at the applicable bedroom rate given in the table below
- B = the applicable bedroom rate given in the table below determined in accordance with the number of bedrooms per dwelling
- C = the monitoring fee calculated at 5% of the total of A x B

Solent Mitigation Contribution Rates (index linked)	
No of Bedrooms	Amount
1	£337
2	£487

3	£637
4	£749
5+	£880

A worked example is as follows:

A development with 4 dwellings comprising 2 dwellings with 2 bedrooms and 2 dwellings with 3 bedrooms dwellings have a contribution of:

	A	B	
	Number of dwellings	Applicable Rate	
	2 x	£487	£974
	2 x	£637	£1274
subtotal			<u>£2248</u>
C	5% of (A x B)		<u>£112.40</u>
Total Contribution due			<u>£2360.40</u>

3. SRMP Payment

- 3.1 The Owner covenants 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 First SRMP Instalment.
- 3.2 Within one month of the date that all Reserved Matters Applications are approved by the Council, the Council shall recalculate the Second SRMP Instalment in accordance with the formula set out at paragraph 2.1 to this Schedule and shall notify the Owner in writing of the Second SRMP Instalment (whether revised or not).
- 3.3 Subject to paragraph 3.2, the Owner covenants not to construct or permit construction of more than 20 Dwellings on the Land as part of the Development until it has paid or caused to be paid to the Council the Second SRMP Instalment.
- 3.4 The Owner covenants to pay to the Council the Second SRMP Instalment on Commencing construction of the twenty first Dwelling on the Land as part of the Development.

SCHEDULE 3

Phasing Schedule

1. Definitions

1.1 In this Agreement and Schedule, the following definitions shall apply:

"Coach House"	means the building shown edged brown on the Phasing Plan
"Completion"	practically completed, save for any minor snagging issues but otherwise ready for use and/or occupation to Council's the reasonable satisfaction
"Conversion Works"	means the physical alterations required to convert the existing Listed Buildings from the existing use to a residential use as approved
"GIA"	means the Gross Internal Area as defined by the RICS 6 th Edition Code of Measuring Practice
"Listed Buildings"	means the West Wing, the Main House, the Lodge, the Coach House and the Stable Block together, or any part of them
"Lodge"	means the building shown edged green on the Phasing Plan
"Main House"	means the building shown edged blue on the Phasing Plan
"New Build"	means the construction of any new build Dwellings as part of the Development (excluding for the avoidance of doubt any Dwellings constructed as part of the Conversion Works of the Listed Buildings) with a total GIA of 6035 square metres
"Phase"	any one of the following: Phase One Works, Phase Two Works and Phase Three Works and "Phases" shall be construed accordingly
"Phase One Works"	means the implementation and Completion of the Conversion Works to the West Wing (following site preparatory works, such as demolition or enabling works as necessary)
"Phase Two Works"	means the implementation and Completion of the Conversion Works to the Main House (following site preparatory works, such as demolition or enabling works as necessary)
"Phase Three Works"	means the implementation and Completion of the Conversion Works to:

	(a) the Coach House; (b) the Lodge; and (c) the Stable Block (following site preparatory works, such as demolition or enabling works as necessary)
"Phasing Plan"	means the plan annexed at Appendix 2 to this Agreement and marked "Phasing Plan, Listed Buildings, Southleigh Park House"
"Phasing Schedule"	means this Schedule 3 of the Agreement setting out the Phases of the Development
"Stable Block"	means the building shown edged yellow on the Phasing Plan
"West Wing"	means the building shown edged pink on the Phasing Plan

2. Prioritisation of Listed Building Conversion Works

- 2.1 The Owner covenants to carry out the Development in accordance with the Phasing Plan as set out in this Schedule 3.
- 2.2 Subject to paragraph 2.3 of Schedule 3, the Owner covenants to carry out the Conversion Works to the Listed Buildings in the following order of prioritisation:
 - 2.2.1 the West Wing;
 - 2.2.2 the Main House; and
 - 2.2.3 the Coach House, the Lodge and the Stable Block (which can be carried out in any order of prioritisation but not before the Conversion Works to the West Wing or the Main House)
- 2.3 Paragraph 2.2 of Schedule 3 shall not apply where the Conversion Works are carried out concurrently.

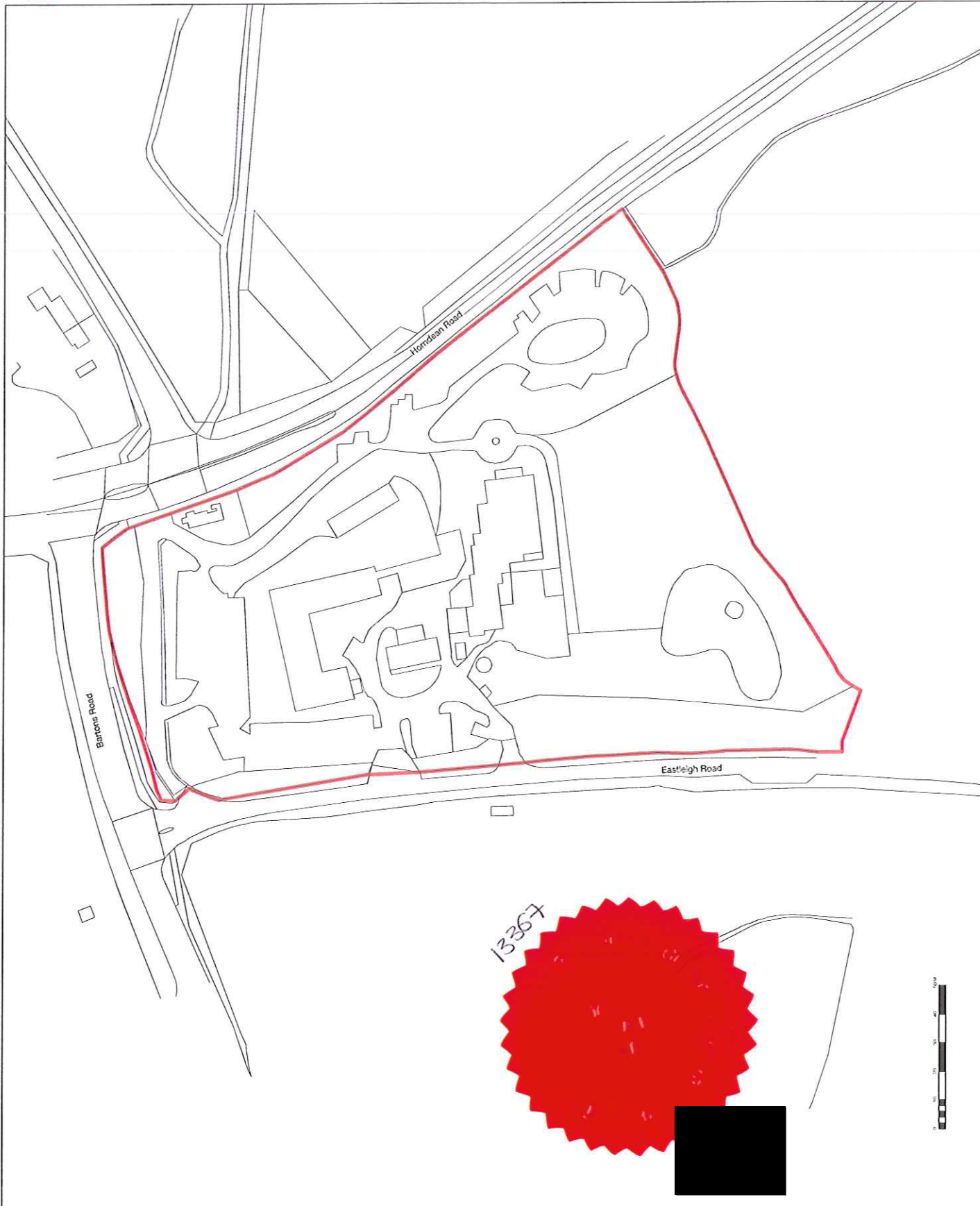
3. Phasing of the Development

- 3.1 The Owner may carry out the New Build works during each Phase of the Development but subject to this paragraph 3 which restricts the total GIA of the New Build that is permitted to be built during each Phase of the Development.
- 3.2 During Phase One Works the permitted GIA of the New Build must not exceed 1485 square metres.
- 3.3 During Phase Two Works the permitted GIA of the New Build must not exceed 2493 square metres.
- 3.4 During Phase Three Works the permitted GIA of the New Build must not exceed 2057 square metres.
- 3.5 The Owner may combine the Phases of the Development (for example Phase One Works and Phase Two Works are carried out together) but under the following conditions:

- 3.5.1 the order of prioritisation of the Conversion Works set out at paragraph 2 above is met; and
 - 3.5.2 the GIA of the New Build does not exceed the combined limits of the permitted GIA of the New Build that is relevant to each Phase.
- 3.6 The Owner covenants not to amend the Phasing Schedule without the prior written consent of the Council (such approval not to be unreasonably withheld or delayed).

APPENDIX 1

Location Plan



Site boundary

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For Identification Purposes Only

Southleigh Park House
Snell & Wilcox Self-Administered
Pension Scheme



Sale Heads of Terms Indicative Plan

Status:	FOR INFORMATION	Disposed by:	JC	Checked by:	DF
Project Number:	245001	Date:	Scala@A3; 1:1250	Chain creation:	12/2018
Tracking Number:	TOR-HTP-001				

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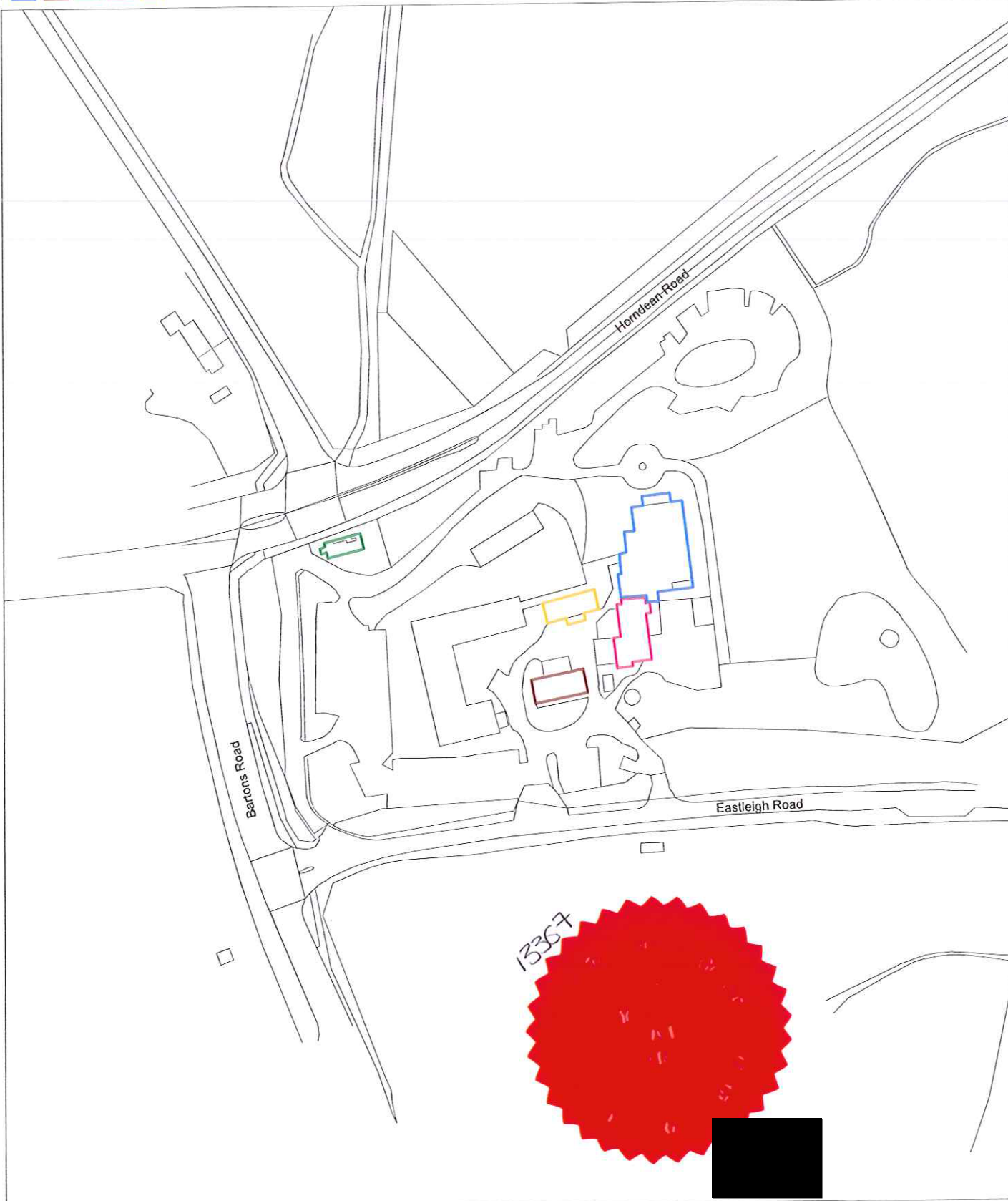


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APPENDIX 2

Phasing Plan

- Main House
- Coach House
- Lodge
- West Wing
- Stable Block



Southleigh Park House
Shrell Wilcox Pension Fund



Phasing plan
Listed buildings, Southleigh Park House

Dwg no/	Revision
Status	01 August 2018
Scale: 1:1,250 @A3	Drawn by: JC Checked by: AE

Based upon the 2018 Ordnance Survey Mastermap
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LONDON
7 HESLOP STREET
W1T 4ED
DOVRING MOUTH
Lyons Arms House
Dartmouth Road
Dartmouth
PL4 7SL

TERENCE O'ROURKE
TELEPHONE
020 3596 6722
www.torltd.co.uk

APPENDIX 3

Highway Works Plan



THIS DRAWING IS TO BE READ IN CONJUNCTION WITH THE RELEVANT SPECIFICATION AND ALL OTHER RELATED DRAWINGS ISSUED BY THE ENGINEER.
DO NOT SCALE FROM THIS DRAWING. WORK FROM FIGURED DIMENSIONS ONLY.

ALL DIMENSIONS SHOWN ON THIS DRAWING ARE IN MILLIMETERS UNLESS OTHERWISE STATED.

UNLESS OTHERWISE SPECIFIED, JOINTS SHALL BE COMPLETED WHERE POSSIBLE USING TYPICAL JOINTS APPROVED BY JOBBET AND SUBMITTED IN AUGUST 2015.

DRAWING NUMBER: 09-011-01-01, THIS DRAWING IS THEREFORE INDICATIVE ONLY UNTIL THE ENTIRE WORK HAS BEEN SUBJECT TO A MEASURED SURVEY.

EACH LAYOUT IS DERIVED FROM TOPOGRAHY.

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	EXISTING LIGHTING COLUMN TO BE RETAINED

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DATE	BY	REVISION

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Order by	35C	Contracted by	35C
		Agreement by	35C
Order Number	160770-200		
Order	E		

APPENDIX 4

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 xxxxxxxxxxxx)
BANK)
in the presence of:-)

Director

Director/Secretary