

DATED 10th December 2018

- (1) DAVID HENRY STILL
- (2) WILSON HOUSE LIMITED
- (3) HAVANT BOROUGH COUNCIL

A G R E E M E N T

pursuant to Section 106 of the Town and Country Planning Act 1990

relating to

Dolphin Quay Queens Street Emsworth

Solicitor to the Council
Havant Borough Council
Public Service Plaza
Civic Centre
Havant
PO9 2AX

THIS DEED is made the 10 day of December two thousand and eighteen

BETWEEN

- (1) DAVID HENRY STILL of The Treehouse, Paradise Lane, Westbourne, Emsworth, Hampshire PO10 8ST ("the Owner")
- (2) WILSON HOUSE LIMITED (Company registration number 05439198) whose registered office is at Unit 11 Basepoint Business Centre, Waterberry Drive, Waterlooville, Hampshire, England, PO7 7TH ("the Developer")
- (4) THE COUNCIL OF THE BOROUGH OF HAVANT of Public Service Plaza, Civic Centre, Havant, Hampshire PO9 2AX ("the Council")

jointly referred to as "the Parties"

DEFINITIONS

1. In this Deed the following words and phrases (arranged in alphabetical order) shall have the following meanings unless the context otherwise requires

"the Act"	The Town and Country Planning Act 1990
"Affordable Housing"	Housing provided to eligible households whose needs are not met by the market in accordance with the definition of Annex 2 of the National Planning Policy Framework (or successive amendments thereto in respect of the definition there given of "affordable housing")
"the Affordable Housing Contribution"	The sum of THREE HUNDRED AND TEN THOUSAND FIVE HUNDRED AND SEVENTY FIVE POUNDS AND SEVENTY FIVE PENCE (£310,575.75) Index Linked payable by the Owner to the Council and to be spent on the provision of off-site Affordable Housing
"Commencement of Development"	(for the Purposes of this Deed and for no other purpose) the date on which any material operation (as defined in Section 56(4) of the Act) begins to be carried out on any part of the Land

PROVIDED ALWAYS THAT the following operations shall not be treated as material operations for the purposes of this Deed:

- (i) archaeological investigations,
- (ii) investigations for the purpose of assessing ground conditions,
- (iii) remedial work in respect of any contamination or other adverse ground conditions,
- (iv) the temporary display of site notices or advertisements
- (v) site clearance and demolition
- (vi) works relating to ground stabilisation, reengineering, regrading and levelling
- (vii) ecological investigation and mitigation works
- (viii) the erection of fencing or other means of enclosure
- (ix) the diversion or laying of services

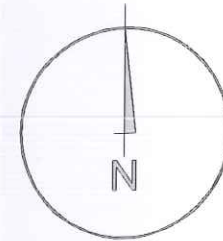
and "Commence Development" shall be construed accordingly

"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 (that is not the responsibility of the relevant utility company), amenity spaces and drainage ditches (if any)

"the Development"

Demolition of single storey shop, two-storey office building and associated outbuildings. Erection of 4No. houses (3x 3No. bedrooms and 1x 2No. bedrooms)



notes

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all dimensions to be checked on site prior to commencement of construction works and the architect notified of any discrepancy.

figured dimensions are to be used in preference to scaled dimensions.

no deviation from this drawing will be permitted without prior consent of the architect.

all drawings are prepared subject to a full measured and structural survey of the buildings and site.

all structural work is subject to the appointment of a structural engineer to confirm and agree the structural proposals.

os promap licence no. 100020449.

health & safety:
exceptional risks involving specific methods of construction or exceptional maintenance issues.

NO SIGNIFICANT RISK

scale width: 50 mm @ a1 - 25 mm @ a3

revision	notes	date	drawn	checked

client

PLANNING



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project	Proposed Development Dolphin Quay Emsworth		
detail	Existing Site plan		
drawn	HM	checked	MBW
date	March 2013	status	Planning
a1 scale	1:250	a3 scale	1:500
			27958-PD101

fronting onto Queen Street and associated parking and erection of 2No. dwellings (4No. bedrooms) fronting onto the Mill Pond with associated parking and access from Queen Street being the development described in the Planning Application

" Dwelling" A dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission

"Index Linked" Means increased in accordance with the following formula such indexation shall only be applied in circumstances where the Consumer Price Index ("CPI") at the date of payment stands at a higher level than it did at the date of the Planning Permission for the Development:

$$A \times \frac{C}{B}$$

B

Where: A = the contribution amount

B = the last CPI figure published prior to the grant of Planning Permission

C = the last CPI figure published prior to the Commencement of Development

"the Land" All that land shown edged red on Plan 1

"the Monitoring Fee" Means the sum of £10,000 being a fee (and to be applied at such time and in such manner as the Council shall in its absolute discretion determine) used toward the costs to be incurred by the Council in the provision of suitably qualified and experienced persons whose function is inter alia to monitor co-ordinate and enforce planning obligations

"Occupation" means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out,

maintenance or decoration or occupation for marketing or display or occupation in relation to security operations

"the Owner"	The freehold owner of the Land registered at HM Land Registry under title numbers SH37434 and HP191786
"Plan 1"	The Plan No. 1 (Location Plan) attached hereto
"Plan 2"	The Plan No. 2 attached hereto
"the Planning Application"	The application submitted to the Council under reference APP/16/00921 for permission to develop the land in the manner and for the uses set out in the application and in the plans specifications and particulars deposited with the Council
"the Planning Permission"	The full planning permission subject to conditions to be granted by the Council pursuant to the Planning Application or any new planning permission granted subsequently pursuant to an application under section 73 of the Act where the obligations contained herein are considered necessary to make the development under the new permission acceptable in planning terms
"the Solent Recreation Mitigation Contribution"	The sum of FOUR THOUSAND TWO HUNDRED AND TEN POUNDS 80 pence (£4210.80) Index Linked payable by the Owner that will be spent on Special Protection Area avoidance and mitigation measures delivered through the Solent Recreation Mitigation Strategy

INTRODUCTION

- 2.1 The Council is the local planning authority for the purposes of the Act for the area in which the Land is situate
- 2.2 The Owner is the freehold owner of the Land registered under title numbers HP191786 and SH37434

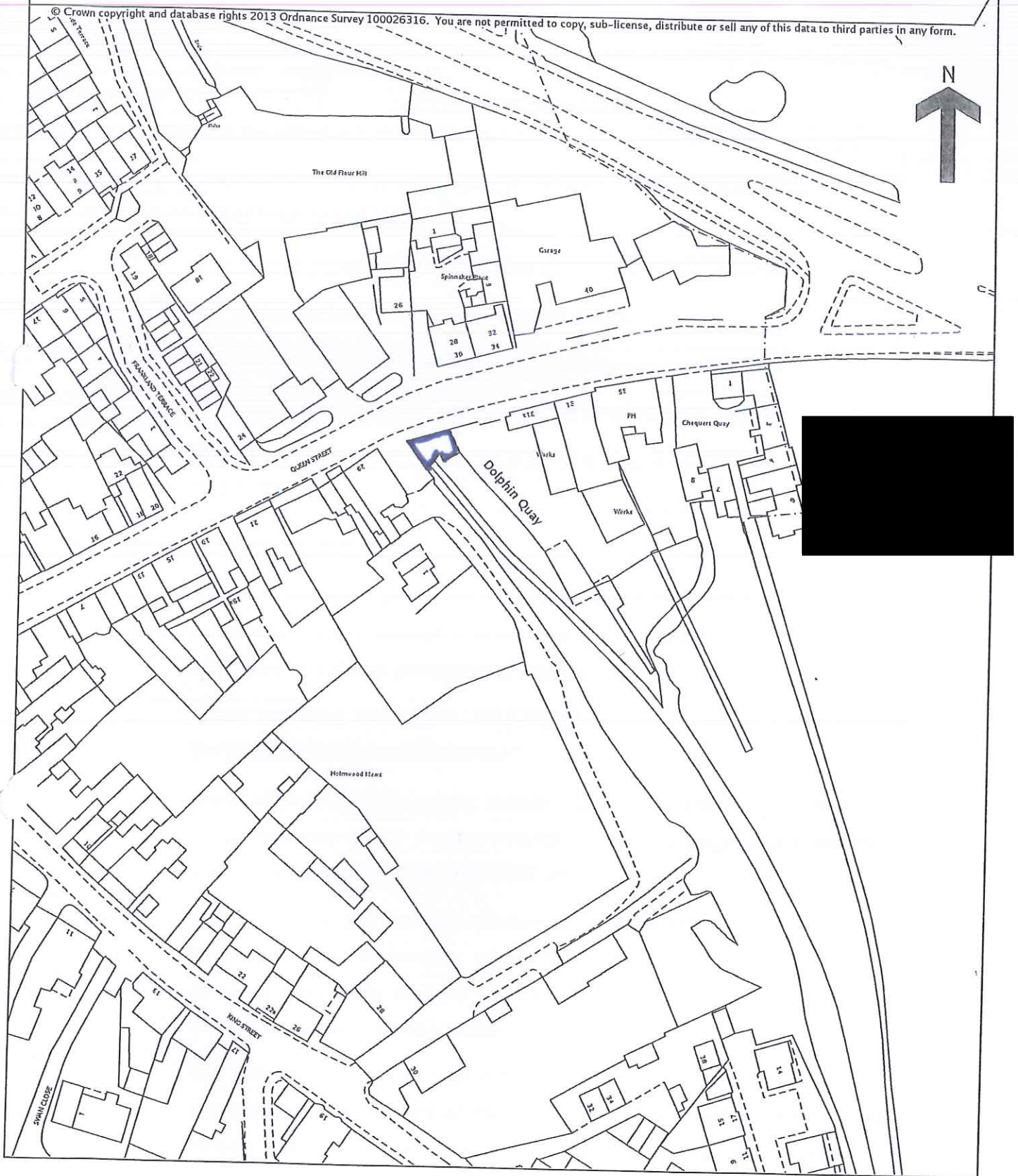
Land Registry
Official copy of
title plan

Title number SH37434
Ordnance Survey map reference SU7505NW
Scale 1:1250 enlarged from 1:2500
Administrative area Hampshire : Havant

PLAN 2



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7 December 2018

- 2.3 The Developer has an interest in the Land by virtue of a Contract dated ~~19th August 2013~~ and made between the Owner (1) and the Developer (2) ^{as} ~~varied by Variation Contracts dated respectively the 18th November 2014 and the 3rd November 2014 and both made between the Owner (1) and the Developer (2)~~
- 2.4 The Developer has submitted the Application to the Council.
- 2.5 The Council is minded to grant the Planning Permission subject to the completion of this Deed
- 2.6 The parties consider that the matters contained in this deed are
- a) necessary to make the development acceptable,
 - b) directly related to the Development and
 - c) fairly related in scale and kind to the Development
- and therefore meet the three tests for planning obligations as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010

CONSTRUCTION OF THIS DEED

- 3.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in this Deed.
- 3.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 3.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeable in that manner
- 3.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
- 3.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it

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

LEGAL BASIS

- 4.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011
- 4.2 The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act which bind the Land and are enforceable by the Council against the Owner and his successors in title and assigns

CONDITIONALITY AND CESSATION OF EFFECT

- 5.1 This Deed is conditional upon the grant of the Planning Permission and the Commencement of Development save for the provisions of Clauses 7 and 13 to 23 inclusive which shall come into effect immediately upon completion of this Deed
- 5.2 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or expires prior to the Commencement of Development

THE OWNER COVENANTS

6. The Owner covenants with the Council as set out in the Schedule of this agreement

LEGAL COSTS

7. The Developer shall pay to the Council on completion of this Deed the Council's reasonable legal costs incurred in the negotiation preparation and execution of this Deed

APPROVALS

8. Where the agreement approval consent or expression of satisfaction is required by any party from any other party under the terms of this Deed such agreement approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed

ENFORCEMENT

- 9.1 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 9.2 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them
- 9.3 This Deed shall not be enforceable against service companies or statutory undertakers who purchase (including by way of lease) or otherwise become proprietor of any land or obtain the benefit of any right wayleave covenant or easement in on over under or across the Land for the construction or installation of any structure or apparatus required to provide services in connection with the Development of the Land
- 9.4 Nothing in this Deed 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 Deed
- 9.5.1 In the event that the Inspector, Secretary of State or Court determines that any obligations contained within this Deed ('Planning Obligation') is not:-
- (a) necessary to make the Development acceptable in planning terms
 - (b) directly related to the Development; and
 - (c) fairly and reasonably related in scale and kind to the Development
- Then such planning obligation shall immediately cease and determine (without any further act by the Owner the Developer and the Council)
- 9.5.2 The release set out in sub-clause 9.5.1 shall not affect the remaining planning obligations within this Deed which shall continue to have full force and effect

WAIVER

10. No waiver (whether expressed or implied) by the Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or Owner from enforcing any of the

relevant terms or conditions or for acting upon any subsequent breach or default

INTEREST ON LATE PAYMENTS

11. Where any sum or amount has not been paid to the Council by the date on which it is due the Owner shall pay to the Council interest at the rate of 4% above the base lending rate from time to time of National Westminster Bank plc (calculated on a daily basis from the date on which it fell due) on that amount for the period from the due date up to and including the date of payment

USE OF CONTRIBUTIONS

12. If prior to the receipt of any contributions payable under the term of this Deed the Council incurs any expenditure in providing facilities or services to which this Deed authorises contributions to be applied then the Council may immediately following receipt of such contributions deduct therefrom sums equivalent to such expenditure, and it is hereby agreed and acknowledged that the Council shall not subsequently be required to repay any contributions set against such expenditure

CHANGE IN OWNERSHIP

13. 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 Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan, SAVE THAT this clause shall not apply to the sale of individual plots within the Development

LOCAL LAND CHARGE

14. This Deed shall be registerable as a Local Land Charge by the Council

NOTICES

- 15 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party

CONTRACTS RIGHTS OF THIRD PARTIES ACT

- 16 No person other than a party to this Deed shall have any rights under the Contracts (Rights of Third Parties) Act 1999

SEVERANCE

- 17.1 If any court or competent authority finds that any provision of this deed (or part of any provision) is invalid illegal or unenforceable that provision or part-provision shall to the extent required be deemed to be deleted and the validity and enforceability of the other provisions of this deed shall not be affected
- 17.2 If any invalid unenforceable or illegal provision of this deed would be valid enforceable and legal if some part of it were deleted the parties shall amend such provision so that (as amended) it is legal valid and enforceable and to the greatest extent possible achieves the parties' original intention

PAYMENTS

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

JURISDICTION

19. This Deed is governed by and interpreted in accordance with the law of England

DELIVERY

20. The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated

VARIATION

21. The terms and conditions of this Deed shall be capable of being varied by a Supplemental Deed executed by the Parties or their successors in title

DISPUTES

22. Any dispute or disagreement as to the interpretation of the terms of this Deed shall be referred to a single arbitrator to be appointed on the agreement of the Parties concerned or appointed on the application of any of the Parties concerned by the President or other proper officer of the

Royal Institute of Chartered Surveyors who shall act as an arbitrator and his decision shall be binding and final upon the Parties concerned

INDEMNITY

23. The Developer agrees to be bound by the terms of this undertaking and hereby covenants to indemnify the Owner in respect of any liabilities actions demands proceedings costs and expenses arising directly or indirectly as a result of having entered into this Deed PROVIDED THAT if the contract referred to in sub-clause 2.3 of this Deed does not become unconditional the indemnity hereby given by the Developer shall not extend to payment of the Affordable Housing contribution or the Solent Recreation Mitigation Contribution referred to in this Deed in the event that any Planning Permission issued pursuant to the Application is implemented

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

THE FIRST SCHEDULE

The Owner's Covenants with the Council

The Owner hereby covenants with the Council:

Notice of Commencement of Development

1. To give to the Council's Head of Planning at least ten (10) working days prior to Commencement of Development written notice confirming the date of Commencement of Development such notice to include the proposed date for such Commencement of Development together with details of the person or body who or which shall constitute the Owner at the time of such Commencement of Development and quoting the Planning Application reference number APP/16/00921

Contributions

- 2.1 To pay or cause to be paid to the Council prior to Commencement of Development the Solent Recreation Mitigation Contribution on behalf of the Solent Recreation Mitigation Partnership
- 2.2 To pay or cause to be paid to the Council prior to Commencement of Development the Monitoring Fee
- 2.3 To pay or cause to be paid to the Council the Affordable Housing Contribution in the following proportions: -
 - 2.2.1 as to 25% thereof upon commencement of the construction of foundations (after piling) in respect of the Development;
 - 2.2.2 as to 25% upon the date falling six months after the payment made pursuant to sub-clause 2.2.1 above; and
 - 2.2.3 as to the balance of 50% upon the Occupation of 50% of the Dwellings

Management and Maintenance of the Common Parts

- 3.1 Within six months of the date of Commencement of Development to submit to the Council for approval proposals for arrangements to secure the future management and maintenance of the Common Parts including details of how the costs of managing and maintaining the Common Parts shall be met (by residents of the Dwellings or otherwise)

- 3.2 To maintain (which shall include any necessary repairs to) the Common Parts to the reasonable satisfaction of the Council until such time as the steps necessary to effect the approved proposals for the management and maintenance of the Common Parts have been completed
- 3.3 Not to permit Occupation of any Dwelling unless the proposals for the management of the Common Parts approved under paragraph 3.1 above have been implemented

Public Access and Right of Way

- 4.1 Within six months of the date of Commencement of Development details and proposals of all of the permissive paths and unadopted rights of way to be provided across that part of the Land edged blue on Plan 2 shall be submitted to the Council and the Council's approval obtained thereto provided that if the Council fails to give Notice of approval within one month of such submission the details and proposals as submitted shall (provided that the Owner has submitted all the details as required under this clause) be deemed to have been approved
- 4.2 To ensure that all such permissive paths and unadopted rights of way approved under paragraph 4.1 above are provided prior to first Occupation of any Dwelling and remain open and accessible to the public in perpetuity unless adopted by Hampshire County Council as highway authority.

SIGNED as a deed by DAVID HENRY STILL
acting by his Attorney ALASTAIR JOHNSTONE
in the presence of:

Witness signature

Witness Name

Address

Occupation

EXECUTED as a DEED by
WILSON HOUSE LIMITED
acting by a director in the presence of:

Witness s

Witness N

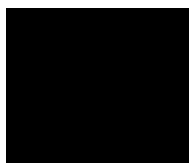
Address

.....Malcolm Purdue
Solicitor
.....Verisona Law
Wellesley House, 202 London Road
.....Waterlooville, Hampshire, PO7 7AN

Occupation

.....

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



Authorised Signatory

