

Dated

12th April

2013

HAMPSHIRE COUNTY COUNCIL

and

BLOOR HOMES LIMITED

to

THE COUNCIL OF THE BOROUGH OF HAVANT

UNILATERAL UNDERTAKING

PURSUANT TO SECTION 106 TOWN AND COUNTRY PLANNING ACT 1990

RELATING TO THE LAND EAST OF NEW LANE AND WEST OF WARBLINGTON SCHOOL, HAVANT, PO9 1AY



Seacourt Tower
West Way
Oxford OX2 0FB
Ref: HGL 000330.1823

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This Undertaking is made the 12th day of April, Two Thousand and Thirteen

And given by:

(1) **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UJ
(hereinafter called 'the Owner')

(2) **BLOOR HOMES LIMITED** (Company Registration No. 021625661) of Ashby Road,
Measham, Swadlincote, Derbyshire, DE12 7JP (hereinafter called 'the Developer')

To:

(3) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza, Civic Centre
Road, Havant, Hampshire, PO9 2AX (hereinafter called 'the Council')

WHEREAS:

A The Council is the local planning authority for the area within which the Site is located for the purposes of the Act and by whom the obligations contained in this Undertaking are enforceable and acts as agent for Hampshire County Council which is the highway authority.

B The Owner is the freehold owner of the Site free from encumbrances save only as mentioned in the Property and Charges Registers of title numbers SH33517 and SH33584

C The Developer has by way of a contract dated 16 March 2012 an option to purchase the Site

D The Developer with the consent of the Owner submitted the Application to the Council on 5th November 2012 to develop the Site in the manner and for the uses set out in the Application and in the plans specifications and particulars deposited therewith.

D The Owner and the Developer are prepared to provide this Undertaking on the terms contained herein in support of the Application with the intent that any objections by the Council to the grant of planning permission are overcome.

E This Undertaking is an obligation for the purposes of Section 106 of the Act.

It is agreed:

1. Statutory Powers

1.1 This deed is made pursuant to;

1.1.1 S106 of the Act and the obligations contained herein are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as local planning authority;

1.1.2 Section 111 of the Local Government Act 1972 Section 2 of the Local Government Act 2000 and any other enabling powers;

to the intent that (save as provided by Clause 6.2 [**Release and Discharge**] and Clause 10 [**Cancellation of Entries**]) it shall bind the Owner and the Developer (in the event the Developer exercises its options pursuant to the Contract referred to in Recital C above or otherwise takes possession of the Site) and the successors in title to each and every part of the Site and its assigns;

1.2 Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights powers discretions and responsibilities;

2. Definitions and Interpretation

2.1 In this Undertaking the following expressions shall unless the context shall otherwise require have the following meanings:

"Act"

means the Town and Country Planning Act 1990

"Affordable Housing"

means housing which is rented or sold (including an equity share in whole or in part) below market levels by means of public or private subsidies such that it can be afforded by those Eligible Persons whose incomes are insufficient for them to afford adequate housing locally on the open market

"Affordable Housing Provider"

means either one or a combination of;

(a) a body registered as a provider of social housing with the Social Housing Regulator under Part 2 of the Housing and Regeneration Act 2008 or such other class of body approved by the Council as may be constituted under any legislation replacing that provision; or

(b) such other body eligible to receive grant monies from the Council or the Homes and Community Agency and able to lawfully own or manage housing for Eligible Persons in housing need and approved by the Council, or

(c) any company or organisation specialising in the delivery of Affordable Housing and approved by the Council

"Affordable Housing Unit"

means that part of the Development comprising 23 residential units (being 29.49% of the total residential units on the Development) of which 17 are to be available as Affordable Rented Units comprising 3 no 1 bed apartments, 6 no 2 bed apartments, 6 no 3 bed houses, 2 no 4 bed houses and 6 available as Shared Ownership Units or any other Low Cost Home Ownership scheme, comprising 2 no 2 bed coach houses, 3 no 2 bed houses and 1 no 3 bed house together with car parking spaces as appropriate either within the curtilage of the unit or separate.

"Affordable Rented Units"

means rented housing as defined in the National Planning Policy Framework (or such other affordable housing rented products available through the Homes and Communities Agency provided that the affordable housing falls within the statutory definition of Affordable Housing) and which is owned and managed by Affordable Housing Providers let on tenancies with a minimum term of not less than six years and eleven months unless otherwise agreed in writing with the Council and the expression "Affordable Housing Unit" shall have a corresponding meaning as the context requires

PROVIDED ALWAYS that rents shall not exceed 80% of the local gross open market rent at the time of each letting

AND that rents shall only be increased annually in accordance with arrangements made for such rent increases established by the Homes and Communities Agency (or its successor)

"Application"

means the full planning application for the Development as set out in the application form and in the plans specifications and particulars submitted to the Council and allocated Council reference number 12/00407

"Chargee"

means any mortgagee or charge or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 of the Affordable Housing Provider or of any occupier under a lease of a Shared Ownership Unit or similar and their respective successors in title

"Commencement of Development"

means implementation of the Planning Permission by the carrying out of a Material Operation on the Site

"Common Parts"

means the parts of the Land which do not comprise a Dwelling or the curtilage of a Dwelling and shall without prejudice to the generality thereof include the roads, communal parking areas, footways, footpaths landscaped areas, amenity/open spaces, SUDS, the Public Right of Way including the cycleway and street furniture.

"Council"

shall mean The Council of the Borough of Havant and shall where the context so admits include any public body in which the functions of the Council at the date hereof may for the time being be vested and any duly appointed servant agent or contractor of the Council or such other body

"Development"

means the 'construction of 78 dwellings consisting of 3 x 2 bed houses, 2 x 2 bed coach houses, 47 x 3 bed houses, 3 x 4 bed houses, 3 x 1 bed flats and 21 x 2 bed flats, with associated parking and landscaping including open space and pumping station. New vehicular access to New Lane, and modifications to existing New Lane highway'

"Dwelling"

means Market Housing Units and Affordable Housing Units and "Dwelling" shall be construed accordingly

"Eligible Persons"

means persons who are unable to afford housing accommodation on the open market (whether by renting or purchasing) within the administrative area of the Council and who are on those registers retained or referred to by the Council from time to time in the discharge of its housing function and the expression 'Eligible Person' shall be construed accordingly

"Employment and Skills Plan"

means a scheme for the improvement and benefit of the local labour market and economy, by raising skills and enabling local people to compete for the jobs generated, in a form as set out in Schedule 5 to the reasonable satisfaction of the Council.

"Highways Agreement"

means an agreement for road alteration and improvement pursuant to (inter alia) Section 278 of the 1980 Act in a form to be agreed to the satisfaction of the highway authority

"Home Buy Agent"

means the body nominated by the Homes and Communities Agency to be responsible for Low Cost Home Ownership nomination within the administrative area of the Council, or in the event that nobody is nominated such other body or organisation as the Council shall first approve in writing.

"Index Linked"

shall mean that the relevant contribution amount shall be increased by the percentage by which the Retail Price Index (RPI) Series has been increased from the last published figure prior to the grant of the Planning Permission to the figure last published prior to the Commencement of Development and subject to the following formulae:

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

Where: A = the contribution amount
B = the last figure published prior to

C = the grant of Planning Permission
the last figure published prior to
The Commencement of
Development

"Low Cost Home Ownership"

means HomeBuy products as defined by the Homes and Communities Agency including Shared Ownership and Low Cost Home Ownership shall be defined accordingly.

"Market Housing Units"

means that part of the Development which is general market housing for sale on the open market and which are not Affordable Housing Units

"Material Operation"

means a material operation in accordance with section 56(4) of the Act provided that for the purposes of this Undertaking the following shall be deemed not to be Material Operations:

- any archaeological works;
- works of excavation demolition or site clearance;
- services diversions
- site or soil investigations
- ground modelling
- noise attenuation works; and/or
- the erection of hoardings and fences for the purposes of construction

"Monitoring fee"

means the sum set out in Schedule 7

"Occupation"

means in relation to the Development permanent use and occupation thereof (but this expression shall not include occupation for the purposes of construction or fitting out) and "Occupy" shall be construed accordingly

"Parking Permit Scheme"

means an independently managed parking scheme to control residents parking within the Development such scheme to be approved by the Council pursuant to paragraph 7.1 of Schedule 1 or as otherwise agreed in writing by the Council

"Plan"

means the plan annexed to this Undertaking showing the Site edged red for identification purposes only

"Planning Permission"

means the planning permission to be granted by the Council for the Development and granted pursuant to the Application

"Public Open Space Contribution"

means the means the sum of One Hundred and Twelve Thousand Five Hundred and Four Pounds (£112,504) to be used by the Council towards providing improving and / or maintaining public open space within the vicinity of the Site to serve the Development

"Public Right of Way"

means a public right of way to be formed across the

Land in accordance with the provisions of Schedule 3 of this agreement which will constitute an agreement under section 25 Highways Act and the Cycle Tracks Act 1984 and which shall incorporate a route or routes from New Road through the Development to Warblington School Playing Fields and from the Hayling Billy Trail to the Site.

"Public Right of Way Scheme"

means the scheme to be approved by the Council pursuant to Schedule 3 for the temporary route of the Public Right of Way to be provided during the construction phase and the permanent Public Right of Way such routes to be within the boundaries of the Site which shall both satisfy the demand for access to and egress from the Development and access within the Development

"Residential Travel Plan"

means a travel plan for any phase of Residential Development pursuant to the Planning Permission in accordance with the framework set out in paragraph 5 of Schedule 1

"Shared Ownership Units"

means dwellings which are owned and managed by or in partnership with an Affordable Housing Provider, constructed and sold to Eligible Persons by way of a shared ownership lease and complying with the general terms of the Homes and Communities Agency and the principal mortgage lending bodies OR intermediate housing in accordance with the definition of Affordable Housing contained at Annex 2 to the National Planning Policy Framework document published 27th March 2012

"Site"

means the land the subject of the Application known as 'Land east of New Lane and west of Warblington School, Havant, PO9 1AY' and shown for identification purposes only edged red on the Plan annexed hereto and the Owner's interest for which is registered under title number SH33517 and part of title SH33584 at HM Land Registry

"SUDS"

means a sustainable urban drainage system for the Development in accordance with a specification agreed in writing by the Council and if statutorily empowered so to do by the County Council in accordance with Schedule 6 hereto

"Traffic Regulation Order Contribution"

means the sum of £6000 to be paid to the Council (to be applied at such time and in such manner as the Council shall in its absolute discretion determine) to the costs incurred by the Council and/or the County Council in the design, promotion, procurement, provision, operation and implementation of any Traffic Regulation Orders to restrict the parking of cars or for the purpose of implementing (which reference shall include all connected administration, supervision and the carrying out of) such traffic management measures

as they consider appropriate to ensure that any overspill parking from the Development does not interfere with the capacity, operation or safety of the adjoining local highway network and which shall include the provision of yellow lines on that part of the access road within the Site which is to be adopted by the highway authority..

"Transport Contribution"

means the sum of Two Hundred and Ninety Three Thousand Seven Hundred and Fourteen Pounds (£293,714) to be used by the Council towards sustainable transport improvements in the locality of the Site

- 2.2 References in this Undertaking to a Clause Schedule Recital or plan shall mean a Clause Schedule Recital or plan to this Undertaking;
- 2.3 The headings appearing in this Undertaking are for ease of reference only and shall not effect the construction or interpretation of any of the provisions of this Undertaking;
- 2.4 In this Undertaking where the context so admits
- 2.4.1 words importing one gender shall include all other genders, and
- 2.4.2 words importing the singular include the plural and vice versa;
- 2.5 Clause headings shall not affect the interpretation of this Deed;
- 2.6 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 2.7 A reference to a company shall include any company corporation or other body corporate wherever and however incorporated or established;
- 2.8 A reference to any party shall include that party's personal representatives successors or permitted assigns and in the case of the Council the successor in title to its respective statutory functions;
- 2.9 A reference to a statute or statutory provision is a reference to it as it is in force at the date of this Deed provided that any amendment extension or re-enactment shall apply to this deed save to the extent that it would impose any new or extended obligation liability or restriction on or otherwise adversely affect the rights of any party;
- 2.10 A reference to a statute or statutory provision shall include any subordinate legislation made thereunder as at the date of this Deed;

THIS DRAWING IS TO BE READ IN CONJUNCTION WITH
SEPARATE GROUP / SITE SPECIFIC CONSTRUCTION
NOTES AND MATERIALS SPECIFICATION.

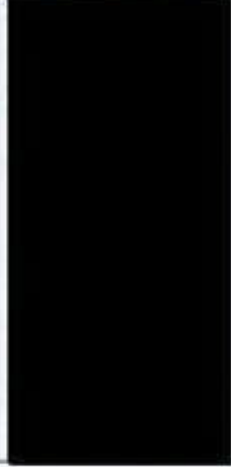
Notes.

HOUSE TYPE SCHEDULE (AFFORDABLE UNITS)

TYPE A	1 BED APARTMENT	3 NO.
TYPE B	2 BED APARTMENT	5 NO.
TYPE B90	2 BED APARTMENT	1 NO.
TYPE C	2 BED COACH HOUSE	3 NO.
TYPE D	2 BED TERRACED HOUSE	3 NO.
TYPE E	3 BED TERRACED HOUSE	7 NO.
TYPE F	4 BED TERRACED HOUSE	2 NO.

HOUSE TYPE SCHEDULE (PRIVATE DWELLINGS)

TYPE G	2 BEDROOM APARTMENT	12 NO.
TYPE J	3 BED SEMI LINK HOUSE	7 NO.
TYPE K	3 BED SEMI DET HOUSE	4 NO.
TYPE L	3 BED SEMI TERR HOUSE	11 NO.
TYPE M	3 BED SEMI LINK HOUSE	16 NO.
TYPE N	3 BED TERRACED HOUSE	5 NO.
TOTAL		74 NO.



Revision.

G	HOUSE TYPE REFERENCES UPDATED IN ORDER ROAD ENFORCEMENT REARDED TO COORDINATE WITH CIVIL ENGINEERS DESIGN. BRALL AMENDED TO SUIT.	11/10/12
F	WATER MAINS AMENDMENT.	18/10/12
E	LAYOUT RE-DRAWN.	24/10/12

JOB.
Proposed Residential Development
Off New Lane, Havant.

TITLE
Site Layout Plan.

Scale.	1:500@A2.	Drawn.	MSS
Date.	24.10.12.	Checked.	

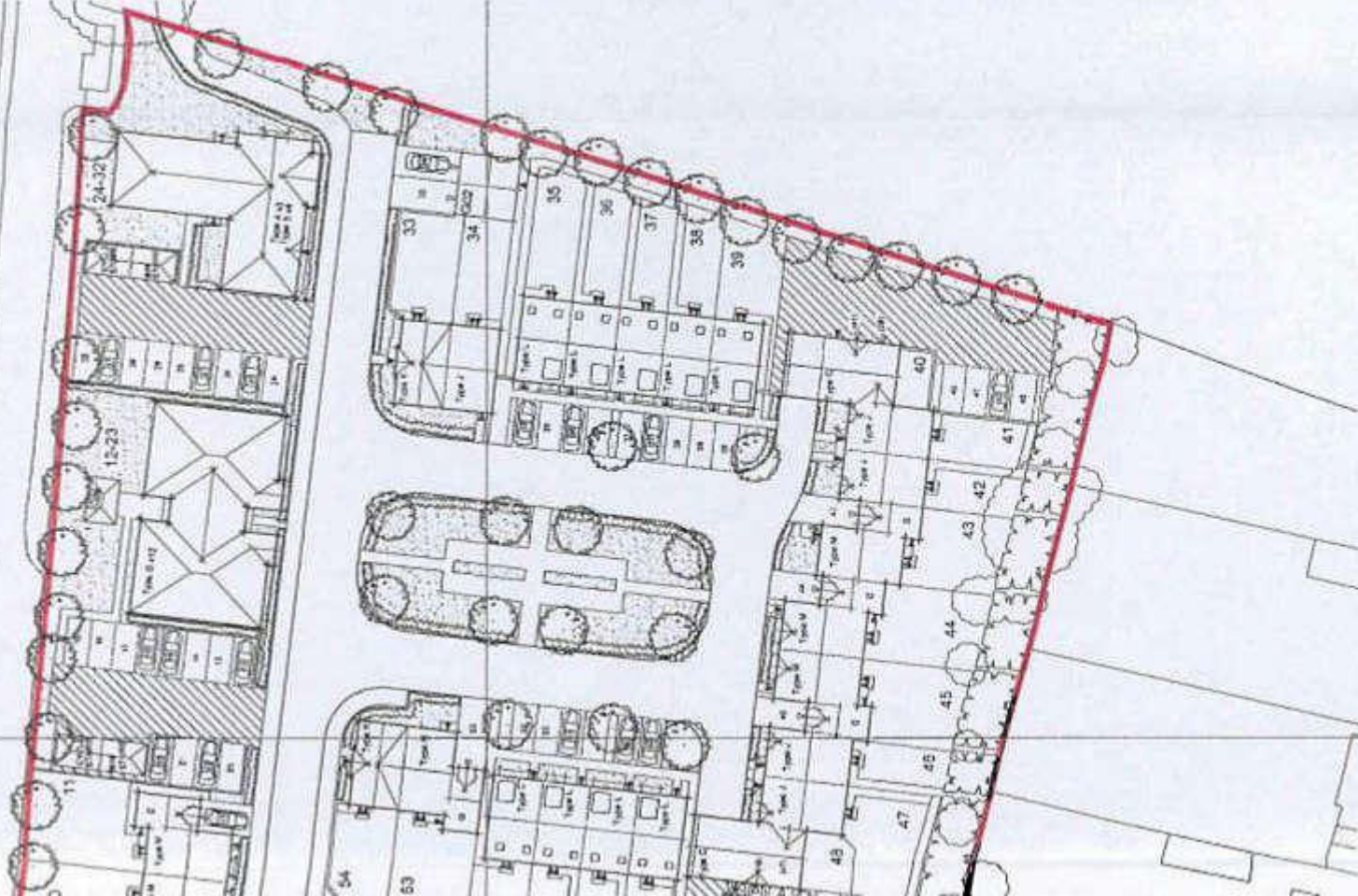
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BLOOR HOMES

J'S BLOOR (SERVICES) LIMITED
ASHBY ROAD, MEASHAM, SWADLINCOTE,
DERBYSHIRE DE12 7JP
TELEPHONE 01530 270100 FACSIMILE 01530 272008

Drawing No.
NW-0002-09-MAS.01G

30/4510





NEW LANE, HAVANT

- 2.11 A reference to writing or written does not include faxes or email;
- 2.12 A reference to 'this Deed' or to any other agreement or document referred to in this Deed is a reference to this Deed or such other document or deed as varied or novated (in each case other than in breach of the provisions of this Deed) from time to time;
- 2.13 An obligation in this Deed on a person not to do something includes an obligation not to agree or allow that thing to be done;
- 2.14 Any phrase introduced by the terms including or include in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding these terms;
- 2.15 Where an obligation falls to be performed by more than one person the obligation can be enforced against every person so bonded jointly and against each of them individually;
- 2.16 If any Court of competent authority finds that any provision of this Deed (or part of any provision) is invalid illegal or unenforceable that provision (or part of provision) shall to the extent required be deemed to be deleted and the validity and enforceability of this Deed shall not be affected with the parties hereto agreeing any necessary amendment or variation to give effect to the validity of the Undertaking or part of the provision as required

3. Conditionality

- 3.1 For the avoidance of doubt the provisions of this Undertaking shall not have any effect until this Undertaking has been dated;
- 3.2 The Clauses of this Deed shall have immediate effect save as specified in Clause 3.3;
- 3.3 The obligation contained in Clause 4 shall not have effect unless the Planning Permission has been granted by the Council and has been implemented by way of Commencement of Development;

4. Covenants to the Council

- 4.1 The Owner covenants with the Council to observe and perform the covenants restrictions and obligations contained in Schedules hereto;
- 4.2 The Developer covenants with the Council to observe and perform the covenants restrictions and obligations contained in Schedules hereto to the extent set out in Clause 1.1 above;

4.3 On the date hereof the Developer shall pay to the Owner the Owner's proper and reasonable legal costs in this matter relating to the negotiation and completion of this Undertaking

5. Indexation

5.1 The Transport Contribution and the Public Open Space Contribution shall be Index Linked from the date that the Planning Permission is granted until the date of payment;

5.2 Where reference is made to any 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;

6. Release and Discharge

6.1 The obligations in this Deed shall cease to have effect if before the Commencement of Development the Planning Permission:

6.1.1 expires, or

6.1.2 is modified or revoked by any statutory procedure in either case without the consent of the Owner, or

6.1.3 is quashed following a successful legal challenge;

6.2 The Owner and the Developer including for the avoidance of doubt their successors in title and assigns to the Site shall cease to have any statutory or contractual obligation or liability under the terms of this Undertaking once they have parted with their interest in the Site or that part where the breach occurs (save in so far as it relates to any relevant prior breach of the obligations under this Undertaking);

7. Miscellaneous

7.1 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (whether granted on appeal or not) other than the Planning Permission after the date of this Undertaking;

7.2 Any notice served under this Undertaking shall be deemed to be sufficiently served if it is delivered personally or by recorded post to the appropriate person at the addresses previously stated;

7.3 This Undertaking is a local land charge and shall be registered as such pursuant to the provisions of the Local Land Charges Act 1975 and section 106(11) of the Act;

8. Interest on Late Payment

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 rate from time to time of NatWest Bank Plc;

9. **Ownership**

The Owner warrants on the date of this Undertaking that Recital B is correct and no person other than the Developer has an interest in the Site;

10. **Cancellation of Entries**

10.1 Upon completion of any of the covenants restrictions and obligations contained herein the Owner may apply to the Council for written confirmation of such completion and the Council in accepting this Undertaking agree to issue written notice to that effect;

10.2 Following the performance and full satisfaction of all the terms of this Deed (or if the deed is determined pursuant to Clause 6) the Owner may apply to the Council for the entries in the Local Land Charges register to be removed and the Council in accepting this Undertaking agree that upon such request to remove the said entries;

11. **No Compensation Payable**

11.1 No compensation shall be payable to the Council as a result of the obligations contained in this Deed;

12. **Value Added Tax**

12.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly paid;

12.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly

13. **Waiver**

No waiver (whether expressed or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants restrictions or obligations of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions contained in this Deed or acting on any subsequent breach or default of this Deed

14. **Contracts (Rights of Third Parties) Act 1999**

The Owner and Developer do not intend that any term of this Undertaking shall be enforceable solely by virtue of the Contract (Rights of Third Parties) Act 1999 by any person who is not a party to this Undertaking;

15.

Council's Legal costs and Monitoring Fees

The Developer shall on the completion of this Undertaking pay the reasonable legal costs of the Council in connection with the preparation and completion of this Undertaking and its Monitoring Fee pursuant to Schedule 7 below;

16.

Community Infrastructure Levy Regulations

The Council is satisfied that the planning obligations given by the Owner and the Developer and set out in Schedules 1, 2 & 8 of this Deed accord with the three statutory tests set out in Regulations 122 (2)(a)-(c);

17.

Governing Law

17.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales;

18.

Disputes

18.1 In the event of any dispute or difference arising between the parties in respect of any matter contained in this undertaking including questions of value and any question of reasonableness the same shall be referred to an independent person ("The Specialist") for determination in accordance with the following provisions

18.1.1 the Specialist shall have at least 10 years post qualification experience in the subject matter of the dispute;

18.1.2 where such dispute relates to engineering construction or highway works it shall be referred to a Chartered Civil Engineer agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Institution of Civil Engineers; and

18.1.3 where such dispute relates to the valuation of property it shall be referred to a Chartered Surveyor agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Royal Institution of Chartered Surveyors;

18.1.4 where such dispute relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the parties or in default of agreement

appointed on the application of either party or at the direction of the President for the time being of the Royal Town Planning Institute

PROVIDED THAT the parties may otherwise agree an alternative Specialist appropriate to the nature of the dispute

18.2 UNLESS OTHERWISE AGREED by the parties to the dispute the Specialist is to act as an independent expert; and

18.2.1 each party may make written representations within 21 Working Days of the appointment of the Specialist and will copy the written representations to the other party;

18.2.2 each party is to have a further 14 Working Days to make written comments on the other's representations and will copy the written comments to the other party;

18.2.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he may reasonably require;

18.2.4 the Specialist is not to 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;

18.2.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision

18.3 Responsibility for the costs of referring a dispute to the Specialist under this clause 18, including costs connected with the appointment of the Specialist and the Specialist's own costs will be decided by the Specialist.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Signed as a DEED by)

BLOOR HOMES LIMITED)

Acting by a Director and its Secretary/)

Two Directors)

Authorised Signatory

Director/Secretary

Director/Secretary

Authorised Signatory

Executed as a Deed by affixing
the common seal of **HAMPSHIRE
COUNTY COUNCIL**
in the presence of:

Authorised Signatory

36/14510

SCHEDULE 1

Transport Obligations

The Owner and Developer hereby covenant and undertake to be bound by the following obligations:

1. To serve written notice on the Council not less than ten (10) working days;
 - 1.1 before the date of the Commencement of Development, and
 - 1.2 before first Occupation of any Dwelling, and
 - 1.3 the actual date of first Occupation of any Dwelling;
2. Prior to Occupation of any Dwelling to pay to the Council (acting as agent for Hampshire County Council being the local highway authority) the Transport Contribution;
3. Not to Occupy or permit Occupation of any Dwelling unless and until the Transport Contribution has been paid as aforesaid;
4. Prior to Commencement of Development to enter into a Highways Agreement with the highway authority to deliver improvements to New Lane consisting of (but not limited to) traffic management improvements as shown in principle on drawing P764/S278/01.
5. Prior to Occupation to prepare and submit a draft of the Residential Travel Plan to the Council for approval based on the Residential Travel Plan Framework and the County Council's guidance "A Guide to Development Related Travel Plans dated January 2009" (or amendment replacement or variation thereof);
 - 5.1 Not to Occupy the Development unless and until the Residential Travel Plan has been approved in writing by the Council
 - 5.2 Not to amend the Residential Travel Plan without the prior written approval of the Council
 - 5.3 Not to use the Development otherwise than in accordance with the approved Residential Travel Plan (including any approved amendments to them)
 - 5.4 Prior to the Occupation of the Development to appoint a Travel Plan Co-Ordinator
PROVIDED THAT:-

- 5.4.1 the post of the Travel Plan Coordinator shall be retained for a period of no less than five (5) years from the date of his first appointment;
- 5.4.2 the Travel Plan Coordinator shall be responsible for (amongst other things) monitoring the performance of the Residential Travel Plan;
- 5.4.3 the Travel Plan Coordinator shall provide a progress report (as to the performance of the Residential Travel Plan) to the Council no less than once every year throughout the monitoring period being five years from the date of first Occupation
- 5.5 Not to permit Occupation unless and until the first instalment of the Travel Plan Monitoring Fee (£250) has been paid to the Council and therefrom the remaining four annual instalments of £250 shall be paid on the 1st April in each year.
6. Following the written request of the Council at any time during the period beginning from Commencement of Development and ending 1 year from practical completion of the last Dwelling, to pay to the Council the Traffic Regulation Order Contribution
- 7.1 Prior to Occupation of any Dwelling to submit the Parking Permit Scheme to the Council for their approval and not to permit Occupation of any Dwelling until the Parking Permit Scheme has been approved by the Council
- 7.2 To implement and thereafter comply with the provision and requirements of the approved Parking Permit Scheme as approved pursuant to paragraph 7.1 above for the life of the Development to the satisfaction of the Council

SCHEDULE 2

Affordable Housing

The Owner and Developer hereby covenant and undertake to be bound by the following obligations;

1. To provide 29.49% of the total number of residential units within the Development as Affordable Housing Units;
2. To ensure that the Affordable Housing Units within the Development will be integrated and compatible with the design of the Market Housing Units;
3. To ensure that no more than 30% of the Open Market Units are constructed prior to the transfer of at least 64% of the Affordable Housing Units to an Affordable Housing Provider or Eligible Person (on either a freehold basis or long leasehold of at least 125 years) and thereafter the remaining Affordable Housing Units shall be constructed contemporaneously with any adjoining Market Housing Units to provide a mixed development;
4. That the Affordable Housing Units shall be constructed to at least the minimum standard required by the Homes and Community Agency as published in the document Design and quality standards dated April 2007 and for the avoidance of doubt this will include the provision of level 3 accreditation of the Code for Sustainable Homes published by the Government and applicable at the time of the grant of the Planning Permission;
5. The transfer to the Affordable Housing Provider of the Affordable Housing Land shall contain the following:
 - 5.1 a covenant not to use the Affordable Housing Units otherwise than for the provision of Affordable Housing
 - 5.2 a covenant not to dispose of any of the Affordable Housing Units other than for the purpose of providing Affordable Housing to Eligible Persons, and
 - 5.3 not to dispose or let any of the Low Cost Home Ownership Units (including Shared Ownership Units) other than to persons nominated by the Home Buy Agent.
 - 5.4 a covenant requiring the Affordable Housing Provider to enter into an agreement with the Council granting the Council the right to nominate 100% of the occupiers of the Affordable Rented Units when initially let and on subsequent true voids up to 100% of the occupiers or such other percentage as the Council may agree to PROVIDED ALWAYS that if the Council are unable to nominate an occupier within 12 weeks of being notified by the Affordable Housing Provider of an Affordable Rented Unit being available to let then the Affordable Housing Provider shall be free to let the said unit outside of any agreement with the Council to a person who

meets the objectives of the Affordable Housing Provider and is in need of Affordable Housing;

6. Where the Owners intend to provide Affordable Rented Units in association with an Affordable Housing Provider they shall only be used if the Affordable Housing Provider can demonstrate to the Council:

- (a) A good judgement by the Homes and Communities Agency or predecessor and/or successor body; and
- (b) Acceptable sustainable management arrangements and community development policies.

7. The Affordable Housing Units shall only be occupied by Eligible Persons;

8. In the event only that there is a default under any legal charge or mortgage of an Affordable Housing Unit or any default under any legal charge or mortgage held by an Affordable Housing Provider in relation to any Affordable Housing Units then a mortgagee charge receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 (the Mortgagee") shall be entitled to exercise its power of sale in respect of any Affordable Housing Unit(s) free from the obligations provided that the Mortgagee shall first follow the procedures set out below;

In the event only that;

- (a) the Mortgagee shall give 'written notice' ("the Notice") to the Council of its intention to exercise its powers of the sale and shall at the same time offer to sell ("the Offer") the Affordable Housing Unit(s) to the Council for an amount ("the Purchase Price") to be agreed or determined in accordance with paragraph 8(c) of this Part
- (b) the Council shall notify the Mortgagee in writing within one (1) month of the date of the Offer whether or not it wishes to accept the Offer (in the case of acceptance such acceptance to be expressed to be conditional upon the Purchase Price being agreed) and if it does not wish to accept the Offer the Council may at the time of notifying the Mortgagee of its decision nominate a nominee ("the Nominee") in its place
- (c) If pursuant to paragraph 8(b) the Council shall accept the Offer or shall nominate a Nominee then the Mortgagee and the Council (or the Nominee as the case may be) shall endeavour to agree the Purchase Price which shall represent the open market value of the Affordable Housing Unit(s) subject to tenancies subsisting at the date of the Notice but disregarding the provisions of this Deed which restrict Occupation to Eligible Persons and in default of agreement on the Purchase Price within one month (1) of the Council's

notification under paragraph 8(b) the Purchase Price shall be determined by a Expert pursuant to the provisions of Clause 18 above.

(d) any transfer to the Council or to the Nominee shall be completed within one (1) month of the date the Purchase Price is agreed or determined by an Expert in accordance with the provisions of Clause 18 above" ("the Completion Period") Provided that the Completion Period shall be no longer than 3 months from the date on which the Offer is made pursuant to paragraph 8(a)

(e) either party may at any time give to the other written notice of its intention to discontinue in any of the following circumstances namely:

- *If the Council shall fail to give notice of intention to accept the Offer within one month of the date of the offer or*
- *If the Council shall decline the offer and fail to nominate a Nominee within one month of the date of the Offer or*
- *If either the Council or the Nominee shall at any time serve notice of intention to discontinue or*
- *If the transfer of Affordable Housing Unit(s) shall not be completed within the Completion Period notwithstanding the readiness willingness and ability of the Mortgagee to complete the transfer*

(f) Then in any of the above circumstances the Mortgagee shall be entitled (subject to compliance with Sections 39 to 50 of the Housing Act 1996 so far as is applicable) to exercise its powers of sale unfettered by the restrictions in this Schedule which shall not be binding upon any purchaser from the Mortgagee or any subsequent successor in title of the Affordable Housing Unit(s)

9 None of the provisions of paragraphs 1 – 7 of this Schedule will be binding on any of the following;

9.1 Any Mortgagee of an Affordable Housing Provider in respect of any or all of the Affordable Housing Units provided the requirements of paragraph 8 above have been satisfied,

9.2 Any tenant exercising any right to acquire or right to buy an individual Affordable Housing Unit or the chargee, and

9.3 Any shared owner or home buy tenant or their Chargee who acquires 100% of the equity in any individual residential dwelling comprised within the Affordable Housing Units

9.4 Any successor in title and those deriving title from any of 9.1 – 9.3 above

10. The Affordable Housing Units provided on the Site will be monitored in order to ensure compliance with the obligations in this Schedule and the Owner and / or the Affordable Housing Provider (as appropriate) will on written request from the Council make written returns to the Council detailing the affordable housing provision including;

- the type of dwelling
- the tenure of the dwelling
- the net internal floor area of the dwelling
- details of the occupiers
- the subsidy provided for the dwelling
- technical information in relation to the Code for Sustainable Homes
- the location of the Affordable Housing Units
- any other information on the Affordable Housing Units as may reasonably be required by the Council

SCHEDULE 3

Public Rights of Way

The Owner and Developer hereby covenant and undertake to be bound by the following obligations:

1. Prior to Commencement of Development to submit to the Council for its prior approval – such approval not being unreasonable withheld or delayed – the Public Right of Way Scheme
2. Prior to Commencement of Development to construct and implement the approved temporary Public Right of Way route approved as part of the Public Right of Way Scheme and not to permit or cause Commencement of Development until the said temporary Public Right of Way has been provided and thereafter to maintain the said temporary Public Right of Way until the permanent Public Right of Way has been completed and brought into use.
3. To construct and implement the approved permanent Public Right of Way approved as part of the Public Right of Way Scheme prior to Occupation of 75% of the Dwellings and not to permit or cause Occupation of more than 75% of the Dwellings until the said permanent Public Right of Way route has been provided

SCHEDULE 4

Management Company

1. Prior to Commencement of Development to obtain the Council's written approval (such approval not to be unreasonably withheld or delayed) to the following details in respect of a management company ("the Company"):-
 - 1.1 a draft memorandum and articles of association for the Company for the purpose of;
 - 1.1.1 managing, maintaining (including sweeping, scavenging, repair and replacement of street lighting) and cleansing of the Common Parts and the SUDS (until their adoption).
 - 1.1.2 the management arrangements for any new roads and footpaths to be provided and maintained (including sweeping, scavenging, repair and replacement of street lighting) to an adoptable standard of the highway authority.
 - 1.2 proposals for arrangements;
 - 1.2.1 to secure the future maintenance of the Common Parts and the SUDS (until their adoption) (which may include a transfer of the Common Parts and the SUDS to the Company or the granting of a long lease of the Common Parts and the SUDS by the Owners in favour of the Company) so as to ensure that the Common Parts and the SUDS are properly maintained, such proposals to include details of how the costs of street lighting charges, cleaning and maintaining the Common Parts and the SUDS (until their adoption) including the area for ecology
 - 1.2.2 of the management (until their adoption) for any new roads and footpaths and parking spaces to be provided and maintained (including sweeping, scavenging, repair and replacement of street lighting) to an adoptable standard of the highway authority shall be met (by residents of the Development or otherwise).
2. Any submission of documents or details to the Council pursuant to this Schedule shall 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. The Council shall give notice to the Owner of its decision to either approve (with or without modifications) or to refuse to approve the details submitted by the Owner under Paragraph 1 and 2 above within one month of receipt of such details and in the event that the Council fails to give such notice the details as submitted shall be deemed to have been approved (provided the Owner has supplied the details fully in accordance with the provisions of this Schedule)
4. Forthwith after the approval by the Council of the proposed memorandum and articles of association the Owner shall take all necessary steps to secure the formation and registration of the Company at Companies House and to notify the Council accordingly within seven days of the completion of the registration of the Company
5. The Owner shall repair and maintain the Common Parts and the SUDS (until their adoption) the new roads and footpaths and the parking spaces to the reasonable satisfaction of the Council:-
 - 5.1 until such time as the Company is registered and the maintenance arrangements approved by the Council have been completed and the relevant areas transferred to the Company and all Dwellings on the Land have been sold or leased; and
 - 5.2 in the event of the Company at any time failing to maintain the Common Parts and the SUDS including the area for ecology to the reasonable satisfaction of the Council.
6. The Owner may submit to the Council for its written approval alternative proposals for the management and maintenance of the Common Parts and the SUDS (until their adoption) (such approval not to be unreasonably withheld or delayed) and in relation to any such alternative arrangements the provisions of paragraphs 1, 2, 3, 4 and 5 of Schedule 4 shall apply to the extent that the Owner shall remain responsible for the management and maintenance of the Common Parts and SUDS without prejudice to the generality of paragraph 5.2 above until such alternative arrangements (as approved by the Council) have been fully implemented.

SCHEDULE 5

Employment and Skills Plan

1. Prior to Commencement of the Development to submit to the Council for written approval the Employment and Skills Plan for the construction phase of the Development and unless otherwise agreed in writing with the Council not to Commence the Development or permit Commencement until an Employment and Skills Plan has been approved by the Council.
2. The Employment and Skills Plan for the construction phase of the development shall include arrangements setting out how the Owner and to the extent they are not the same person any developer or Occupier and their contractors will work directly with local employment/training agencies as part of an employment and training consortium including but not limited to:
 - 2.1 Jobcentre Plus and the Skills Funding Agency; and
 - 2.2 Voluntary and private sectors providers; and
 - 2.3 Sixth form colleges; colleges of further education; and Universities
3. The Employment and Skills Plan shall specify the provision for training opportunities and other initiatives in respect of the vocational and employability skills required by the Owners/developer and their contractors, for any new jobs and business opportunities created during the construction of the Development.
4. Following approval of the Employment and Skills Plan by the Council the Owner will commence and where necessary procure commencement and promote the objectives of the approved plan and ensure that so far as is reasonably practicable the objectives are met
5. As part of the Employment and Skills Plan the Owner may be required to provide financial contributions to the Council to cover specific costs incurred by the Council in the implementation of the Employment and Skills Plan. The Plan shall set out the matters on which reasonable expenditure may be incurred together with the timings for such expenditure and the trigger for these payments

SCHEDULE 6

SUDS

1. The Owner will design the SUDS scheme in accordance with the CIRIA c697-SUDS Manual or any equivalent and updated national design guidance as may become available.
2. The Owner will obtain all necessary statutory consents (including reserved matters approval) for the SUDS scheme and to confirm that the design of the SUDS scheme is such that the Environment Agency is satisfied with the adequacy of the SUDS scheme to serve the Development.
3. The Owner will agree in writing with the Council prior to Commencement of Development the following the extent of the SUDS scheme necessary to serve the Development and an indicative programme together with illustrative drawings for the comprehensive delivery of the SUDS scheme
4. To provide to the Council prior to Commencement of Development the design of the SUDS scheme serving the Development including the provision of features necessary within the Development and without prejudice to the generality thereof (*inter alia*):
 - (a) A hydrology report to include the anticipated frequency of flooding events for each SUDS scheme feature serving the Development;
 - (b) All relevant drawings and design calculations; and
 - (c) A copy of the consents and evidence referred to in paragraph 2 above.
together with such other information as shall be reasonably requested in respect of the SUDS scheme serving the Development to enable the Council to be reasonably satisfied that the SUDS scheme will be fit for purpose.
5. To construct the SUDS scheme in accordance with the approvals referred to at paragraphs 2 and 3 above.
6. Not to Occupy any Dwelling within the Development unless and until the SUDS scheme has been constructed and is ready for use in accordance with paragraph 5.
7. To maintain the SUDS Scheme in accordance with the maintenance regime approved by the Council pursuant to paragraph 4 above.
8. To provide to the Council a bond for a total sum made up of (i) the cost of provision of the SUDS scheme and (ii) 10% thereof (together 'the Bond') in a form and sum to be agreed in writing by the Council (such agreement not to be unreasonably withheld or delayed) prior to the Commencement of Development. The Bond is to be issued by a clearing bank or other institution approved by the Council (such approval not to be unreasonably withheld or

delayed) (hereinafter called "the Surety"). The Bond shall be to the effect that:

9. If the Owner shall fail to perform any of the provisions on its part to be performed or observed as set out in this Schedule or shall be adjudicated bankrupt or shall go into liquidation voluntarily or otherwise or shall execute 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 its other rights remedies and powers against the Owner for such non-performance or non-observance carry out complete and/or implement the SUDS scheme and the Council shall be entitled to recover from the Surety under the Bond a sum equivalent to any expenditure which the Council shall incur in carrying out completing and/or implementing the SUDS scheme up to the Total Bonded Sum. The Bond shall be provided prior to Commencement of Development and shall endure unless otherwise agreed in writing by the Council until the SUDS scheme is constructed in accordance with this Schedule and transferred to the Company.

SCHEDULE 7

Monitoring Fee

1. The Developer shall pay to the Council its Monitoring Fees in relation to its reasonable costs incurred in the receipt, validation, checking and discharge or release of any of the obligations contained herein to the sum of £5,000.

SCHEDULE 8

Open Spaces Contribution

1. On or before Occupation of 50% of the Dwellings to cause to be paid to the Council the Public Open Space Contribution.