

Dated:

27th MARCH

2024

THE COUNCIL OF THE BOROUGH OF HAVANT

and

COWLKIRK LIMITED

and

SUCCESS NATIONS LIMITED

AGREEMENT

pursuant to Section 106 of the Town and Country
Planning Act 1990 and other powers relating to
81c London Road, Waterlooville PO7 7EL

**Southampton, Fareham & Havant Legal Partnership
Southampton City Council
Civic Offices
Southampton
SO14 7LY**

Ref: ENV-056580

THIS DEED is made on

27th MARCH

2024

BETWEEN:

- (1) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza, Civic Centre Road, Havant, PO9 2AX ("the Borough Council")
- (2) **COWLKIRK LIMITED** (Co. Regn. No 01047150) whose registered address is at 120 High Street, Edgware, Middlesex HA8 7EL ("the Owner")
- (3) **SUCCESS NATIONS LIMITED** (Co Regn. No 12832101) whose registered address is at 63 Castle Road, Southsea, England PO5 3AY ("the Developer")

RECITALS

- A The Borough Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- B The Owner is the freehold owner of the Land registered with title absolute at the Land Registry under Title Number HP511326.
- C The Land is subject to a conditional contract to dispose of the Land to the Developer upon the grant of Planning Permission.
- D The Developer on behalf of the Owner has submitted the Application to the Borough Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- E The Borough Council has resolved to grant the Permission subject to the prior completion of this Deed.
- F The Owner and the Developer have agreed that the Development shall be carried out only in accordance with the rights and obligations set out in this Deed.
- G The Owner and the Developer have agreed to be parties to this Deed and consent to this Deed being entered into and to the obligations becoming binding on the Land.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS

- 1.1 In addition to the definitions set out below, a series of specific definitions are included in each of the Schedules to this Deed giving further defined terms and expressions to facilitate interpretation and unless stated to the contrary the specific definitions in the Schedules shall apply throughout this Deed where the relevant terms and expressions are used.
- 1.2 In this Deed the following expressions shall have the meanings indicated:

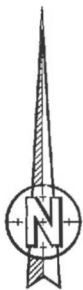
"Act"	The Town and Country Planning Act 1990 (as amended)
"Application"	The application for planning permission allocated reference number APP/22/01072 for the demolition of existing building for the construction of 13 No. flats with two Class E

	(Commercial, Business and Service) units on ground floor with bin and cycle store
"Borough Council's Legal Costs"	The Borough Council's legal costs in connection with the preparation and completion of this Deed
"Borough Council's Monitoring Charge"	The sum of £1,959.03 (one thousand, nine hundred fifty-nine pounds and three pence) towards the costs incurred by the Borough Council in the provision of a suitably qualified and experienced person whose function is to monitor and enforce compliance with the terms of this Deed
"Commence"	The carrying out of a "material operation" (as defined in section 56(4) of the Act) in connection with the Development save that for the purposes of this Deed and for no other purpose operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements shall not be included (and "Commencement" and "Commenced" shall be construed accordingly)
"Completed"	Practically complete save for minor snagging items such that it is reasonably fit for occupation (and "Complete" and "Completion" shall have the same meaning)
"Contributions"	Any one or number of the financial contributions required to be made pursuant to this Deed including, for the avoidance of doubt, the Borough Council's Monitoring Charge
"Deed"	This agreement made by deed
"Development"	The development of the Land in accordance with the Permission
"Enabling Powers"	Section 111 of the Local Government Act 1972 (as amended) Section 1 of the Localism Act 2011 and all other enabling powers which may be relevant for the purpose of giving validity to or facilitating the enforcement of the obligations created by this Deed
"Index Linked"	For the purposes of any payment or financial contribution due under this Deed means adjusted in accordance with the Inflationary Index by multiplying in each case the payment due by a fraction whose denominator shall be the last Inflationary Index monthly figure published before the date of this Deed and whose numerator shall be the last published Inflationary Index monthly figure available before the date on which payment is due but which for the avoidance of doubt shall not fall below the original payment figure
"Inflationary Index"	For the purposes of the Solent Recreation Mitigation Strategy Contribution the Retail Prices Index all items excluding

	mortgage interest payments (RPIX) issued by the Office for National Statistics or during any period when no such index exists the index which replaces the same or is the nearest equivalent thereto as the Borough Council shall reasonably nominate taking into account any official reconciliation of changes in its basis of calculation; and For all other purposes, the Consumer Prices Index issued by the Office for National Statistics or during any period when no such index exists the index which replaces the same or is the nearest equivalent thereto as the Borough Council shall reasonably nominate taking into account any official reconciliation of changes in its basis of calculation
"Interest"	Interest at 4 per cent above the base lending rate of the Barclays Bank Plc (calculated on a daily basis from the date on which it fell due until the actual date of payment)
"the Land"	The land known as 81c London Road, Waterlooville PO7 7EL shown for identification purposes only edged with a red line on Plan 1
"Occupation"	Occupation for the purposes permitted by the 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" and "Occupied" shall be construed accordingly
"Plan 1"	The plan annexed hereto bearing drawing number KAD06APPA and entitled "Location Plan" showing the Land edged red
"Permission"	The full planning permission subject to conditions to be granted by the Borough Council pursuant to the Application
"Statutory Undertakers"	Organisations licensed by the government which include (but not limited to) all utilities electricity, gas, water, telephone, cable telephone and television and other telecommunication companies
"Working Day(s)"	Any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

2 INTERPRETATION

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.2 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all words shall be construed interchangeable in that manner.



Police
Station

SWISS ROAD

HAMBLEDON ROAD

10

9

8

PO

2

1

81c

81b

81a

LONDON ROAD (Buses Only)

Location Plan - 1:500

0m 10m 20m 30m 40m 50m

Rev	Revision	By	Date	
KNIGHT AD DESIGN K.A.D. Ltd First Floor Unit 7 The Quadrant Port Solent PO8 4TP T: 01489 689194 E: admin@k-a-d.co.uk W: www.k-a-d.co.uk				
Client PINK ROCK LTD				
Project 81C LONDON ROAD WATERLOOVILLE PO7 7EL				
Drawing LOCATION PLAN				
Scale 1:500@A4		Date SEP 2022		
Project no.	Sequential	Slip/Floor	Detail	Rev
KAD	06	A	PP	A

- 2.3 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 severally unless there is an express provision otherwise.
- 2.4 Any reference to a statute or other legislation shall include any modification, extension or re-enactment of that statute or legislation 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 statute or deriving validity from it.
- 2.5 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Borough Council the successors to their respective statutory functions.
- 2.6 References to "the parties" shall mean the parties to this Deed and reference to a "party" shall mean any one of the parties.
- 2.7 The headings are for reference only and shall not affect construction.
- 2.8 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.9 Obligations not to do something under this Deed shall be deemed to be obligations not to permit or suffer such thing to be done.

3 STATUTORY AUTHORITY

- 3.1 This Deed is made pursuant to Section 106 of the Act and the Enabling Powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Borough Council as local planning authority against the Owner, their successors in title and any person deriving title in the Land or any part of it from the Owner.

4 EFFECT OF THE AGREEMENT

- 4.1 This Deed shall take effect on the day and year first before written save for clauses 5, 6 and the Schedules to this Deed which shall take effect on the grant of the Permission.

5 THE OWNER'S COVENANTS

- 5.1 The Owner and Developer hereby covenants with the Borough Council that they will observe and perform the covenants on their part contained in Schedules One to Two (inclusive).

6 THE BOROUGH COUNCIL COVENANTS

- 6.1 Subject to the performance by the Owner and Developer of their obligations under this Deed the Borough Council hereby covenants with the Owner and Developer that they will observe and perform the covenants on their part set out in Schedule Three.

7 RELEASE AND LAPSE

- 7.1 It is hereby agreed that the Owner and Developer shall not be liable for a breach of any of their obligations under this Deed (save for antecedent breaches) after they shall have parted with all of their respective interests in the Land.
- 7.2 It is further agreed that this Deed shall lapse and be of no further effect if:
- 7.2.1 the Permission expires; or
 - 7.2.2 the Permission shall be varied or revoked other than with the consent of the Owner; or
 - 7.2.3 the Permission is quashed following a successful legal challenge.
- 7.3 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 Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.4 This Deed shall not be enforceable against Statutory Undertakers who have an interest in or arising purely in connection with their apparatus or operational land situated within the Development.

8 LOCAL LAND CHARGE

- 8.1 This Deed is a local land charge and shall be registered as such by the Borough Council.
- 8.2 Upon the full compliance with any terms of this Deed either the Owner or Developer may request that the Borough Council procure that this is noted in the register of local land charges relating to it as soon as reasonably practicable.

9 DUTY TO ACT REASONABLY

- 9.1 All parties to this Deed acknowledge that they are under a duty to act reasonably and (without prejudice to generality) if any deed consent approval or expression of satisfaction is due from one party to another under the terms of this Deed the same shall not be unreasonably withheld or delayed.

10 NO FETTER ON DISCRETION OR WAIVER

- 10.1 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Borough Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 10.2 Nothing in this Deed shall impose any contractual or other obligations on the Borough Council to grant the Permission.
- 10.3 No waiver (whether expressed or implied) by the Borough Council 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 Borough Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

11 COVENANT AS TO TITLE

- 11.1 The Owner hereby covenants with the Borough Council that no person other than the parties to this Deed has any interest in the Land for the purposes of section 106 of the Act.

12 SEVERABILITY

- 12.1 It is agreed that if any part of this Deed shall be declared unlawful or invalid by a court of competent jurisdiction then (to the extent possible) the remainder of this Deed shall continue in full force and effect.

13 THE BOROUGH COUNCIL'S LEGAL COSTS AND MONITORING CHARGE

- 13.1 The Developer hereby covenants with the Borough Council that it will on or before the date of this Deed pay the Borough Council's Legal Costs to the Borough Council.

- 13.2 The Owner hereby covenants with the Borough Council:

- 13.2.1 that prior to the Commencement of Development it shall pay the Borough Council's Monitoring Charge to the Borough Council; and

- 13.2.2 not to Commence Development unless the Borough Council's Monitoring Charge has been paid to the Borough Council.

14 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 14.1 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Deed shall be enforceable by a third party who is not a party to the Deed and for the avoidance of doubt the terms of this Deed may be varied by Deed between the parties and the Council without the consent of any such third party.

15 NOTIFICATION OF COMMENCEMENT/OCCUPATION

- 15.1 The Developer covenants with the Borough Council that it will:

- 15.1.1 notify the Borough Council in writing of the date of Commencement of the Development within ten Working Days of it occurring; and

- 15.1.2 notify the Borough Council in writing of the date of Occupation for the first time of any part of the Development within ten Working Days of it occurring;

- 15.1.3 pay to the Borough Council upon written demand its reasonable fees for additional monitoring caused by the Owner's non-compliance with clauses 15.1.1 or 15.1.2.

16 NOTICES

- 16.1 Any notices required to be served by one party on another under this Deed shall be served by First Class prepaid post or by email in the following manner:

- 16.1.1 on the Borough Council at the address shown above or by email to cil@havant.gov.uk marked "for the attention of Executive Head of Place" and bearing the reference "s106 - APP/22/01072 - 81c London Road, Waterlooville PO7 7EL";

- 16.1.2 on the Owner at the address as detailed above or as notified by the Owner in writing to the Borough Council; and
- 16.1.3 on the Developer at the address as detailed above or as notified by the Developer in writing to the Borough Council.

17 INDEX LINKING

- 17.1 Each and every one of the Contributions which are to be paid under the terms of this Deed shall be Index Linked.

18 PAYMENT OF THE CONTRIBUTIONS

- 18.1 The Contributions shall be payable to the Borough Council by either:
 - 18.1.1 by BACS or telegraphic transfer; or
 - 18.1.2 cheque made payable to Havant Borough Council.
- 18.2 All payments must state the Application reference number and the address to which this Deed relates.
- 18.3 Payment by cheque shall be sent to the Borough Council in accordance with the details set out in clause 16.1.1 identifying the obligation to which the payment relates.

19 INTEREST ON LATE PAYMENTS

- 19.1 Any amount due from the Owner or the Developer under this Deed which is not paid on the due date shall be payable with Interest.

20 CONSENT OF THE DEVELOPER

- 20.1 The Developer hereby consents to this Deed being entered into and to the obligations becoming binding on the Land notwithstanding any registration by or on behalf of the Developer to protect its interest in the Land pursuant to the conditional contract referred to in Recital C.
- 20.2 Notwithstanding clause 3.2, no obligation in this Deed shall be binding on or enforceable against any other chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part or parts of the Land or any receiver appointed by such chargee or mortgagee or any person deriving title through such charge, mortgage or receiver unless and until such chargee, mortgagee, receiver or person has entered into possession of the Land or part thereof to which such obligation relates

21 NOTIFICATION OF SUCCESSORS IN TITLE

- 21.1 The Owner and the Developer covenant(s) with the Borough Council that they will give immediate written notice to the Borough Council of any change of ownership of the Land if at such time the obligations contained within this Deed have not fully 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.

22 VAT

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

23 DISPUTE RESOLUTION

- 23.1 Where it is provided in this Deed that a matter is to be approved (or another cognate expression is used) by the Borough Council and such approval has been refused or given conditionally in accordance with the provisions of this Deed and the Owner or Developer wishes to dispute such refusal or conditions, then the Owner or Developer may notify the Borough Council that the matter is in dispute and:

23.1.1 the parties to the dispute shall first attempt to resolve that dispute or difference amicably including holding a meeting attended by at least one senior representative from each party within 10 Working Days of receipt of notice that a matter is in dispute;

23.1.2 if after a further 5 Working Days the parties are unable to resolve the dispute amicably pursuant to clause 23.1.1, one party may serve notice on the other party or parties (as the case may be) to the dispute of their intention to refer the dispute in accordance with clause 23.2 specifying in such notice:

23.1.2.1 the nature, basis and brief description of the dispute; and

23.1.2.2 the clause or paragraph of this Deed pursuant to which the dispute has arisen; and

23.1.2.3 a written request to concur as to the appropriateness of the professional qualifications of the person (or body) they propose to be appointed pursuant to clause 23.2.

23.2 Any such dispute or difference notified pursuant to clause 23.1.2 shall be referred to an independent and suitable person holding appropriate professional qualifications, in light of the subject matter in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

23.3 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 23.2 or as to the appropriateness of the professional body within 10 Working Days after any party has given the other parties to the dispute or difference a written request to concur as to the appropriateness of the professional qualifications of the person (or body) to be appointed pursuant to clause 23.2 then such question may be referred by any party to the president for the time being of the Law Society for them to appoint a solicitor to determine the appropriate professional body or person to resolve the dispute such solicitor acting as an expert and their decision shall be final and binding on all parties in the absence of manifest error and their costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

- 23.4 Any expert howsoever appointed ("the Expert") shall be subject to the express requirement that a decision is reached and communicated to the relevant parties within the minimum practical timescale allowing for the nature and complexity of the dispute and in any event not more than 20 Working Days after the conclusion of any hearing that takes place or twenty Working Days after they have received any final written representation pursuant to clause 23.5.
- 23.5 The Expert shall be required to give notice to any of the said parties requiring them to submit to the Expert within 10 Working Days of notification of the Expert's appointment written submissions and supporting material and the other parties will be entitled to make a counter written submission within a further 10 Working Days.
- 23.6 Nothing in this clause 23 shall be taken to fetter the ability of the Borough Council to carry out its statutory functions as local planning authority with power to enforce any breach of the obligations entered into by the Owner or Developer in this Deed or any other planning breach in respect of the Development.

24 SECTION 73 PERMISSION

- 24.1 Unless otherwise required by the Borough Council if any future planning permission is granted pursuant to section 73 of the Act for development of the Land without compliance with conditions or subject to conditions differing from those granted pursuant to the Permission ("a Section 73 Permission") then with effect from the date that any such Section 73 Permission is granted the obligations in this Deed shall (in addition to continuing to bind the Land in respect of the Permission) apply to and bind each such Section 73 Permission and the Land itself without the need for any further act by the parties and the definition of "Permission" in this Deed shall be construed to include reference respectively to the Section 73 Permission granted pursuant to any such application PROVIDED THAT nothing in this clause shall fetter the discretion of the Borough Council in determining any application under section 73 of the Act and for the avoidance of doubt any such further permission may be the subject of additional obligations.

25 JURISDICTION

- 25.1 This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

26 DELIVERY

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

SCHEDULE ONE

HABITATS OBLIGATIONS

DEFINITIONS

In this Schedule the following terms have the following meanings:

"Solent Recreation Mitigation Strategy"	The framework to mitigate potential impacts on the Solent Special Protection Areas from increased visitor pressure arising from housebuilding dated 1 April 2018
"Solent Recreation Mitigation Strategy Contribution"	The sum of £7,510.55 (seven thousand, five hundred and ten pounds and fifty-five pence) towards the Solent Recreation Mitigation Strategy
"Solent Special Protection Areas"	The Special Protection Areas (designated under the Wildlife and Countryside Act 1981) in the Solent covered by the Solent Recreation Mitigation Strategy
"Nitrates Contribution"	The sum of £31,670 (thirty-one thousand, six hundred and seventy pounds) towards the Council's nutrient mitigation projects in order to achieve nutrient neutrality in respect of the Development

The Owner and Developer covenants with the Borough Council as follows:

1 Solent Recreation Mitigation Strategy Contribution

- 1.1. To pay the Solent Recreation Mitigation Strategy Contribution to the Borough Council prior to the Commencement of Development.
- 1.2. Not to Commence the Development unless the Solent Recreation Mitigation Strategy Contribution has been paid to the Borough Council.

2 Nitrates

- 2.1. To pay the Nitrates Contribution to the Borough Council prior to the Commencement of Development.
- 2.2. Not to Commence the Development unless the Nitrates Contribution has been paid to the Borough Council.

SCHEDULE TWO
HEALTH OBLIGATIONS

DEFINITIONS

In this Schedule the following terms have the following meanings:

"Clinical Commissioning Group Contribution"	The sum of £2,080 (two thousand and eighty pounds) as a contribution towards the provision of health facilities in the Borough.
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The Owner and Developer covenants with the Borough Council as follows:

1 Clinical Commissioning Group Contribution

- 1.1 To pay the Clinical Commissioning Group Contribution to the Borough Council prior to the first Occupation of the Development.
- 1.2 Not to Occupy the Development unless the Clinical Commissioning Group Contribution has been paid to the Council.

SCHEDULE THREE

BOROUGH COUNCIL COVENANTS

1. The Borough Council covenants with the Owner and the Developer as follows:
 - 1.1. Where any payment referred to in this Deed is paid for a particular purpose it will not be used by the Borough Council otherwise than for that purpose or for such other purpose for the benefit of the Development as the Owner or the Developer and the Borough Council shall agree in writing.
 - 1.2. In the event that the Contributions or any element or part of the Contributions remains unspent or committed unconditionally to be spent within 10 years after the date on which it is paid to the Borough Council then the Borough Council shall on written demand return to the Developer the unexpended or uncommitted (as the case may be) part of the Contributions.

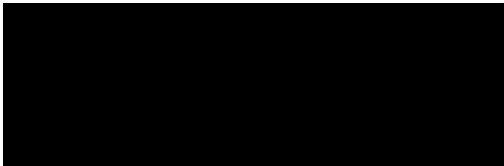
IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

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



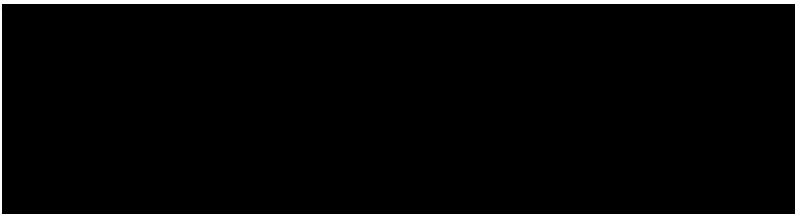
103576

Authorised Signatory:



EXECUTED AS A DEED by
COWLKIRK LIMITED
Acting by

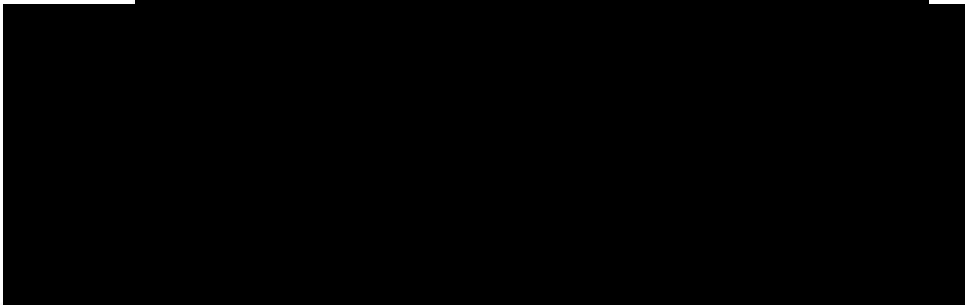
Director
in the presence of:



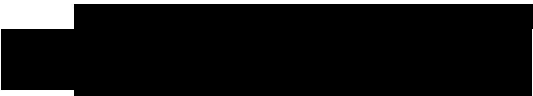
Witness Signature

Witness Name

Witness Address



EXECUTED AS A DEED by
SUCCESS NATIONS LIMITED



Acting by



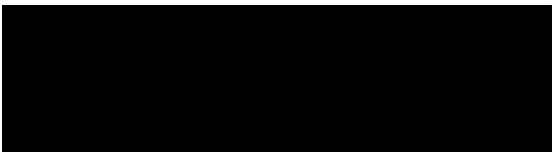
Director

in the presence of:

Witness Signature

Witness Name

Witness Address



ANDREW RAFFERTY LL.B
Solicitor
Bramsdon and Childs
141 Elm Grove
Southsea, Portsmouth
PO5 1HR