

DATED 11th August 2015

HAMPSHIRE COUNTY COUNCIL

- and -

PORTFIELD ESTATE COMPANY LIMITED

Deed of Agreement for Highway Works at Former ICTS site, Solent Road, Havant
pursuant to (inter alia) S.278 Highways Act 1980

HCC Legal File Ref: RSN - 101002
HCC Dev. Con. File Ref: - 6/3/13/159

David Kelly BA Hons Solicitor
Head of Legal Services
Hampshire County Council
The Castle
Winchester
Hampshire SO23 8UJ

HAMPSHIRE COUNTY COUNCIL
SECTION 278 DEED OF AGREEMENT

Date:

11th August

2015

PARTIES:

1. **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester
Hampshire SO23 8UJ ("the County Council")
2. **PORTFIELD ESTATE COMPANY LIMITED** (Company Registration
Number 01034905) whose registered office is situated at Brookfield,
Lyminster road, Littlehampton, West Sussex, BN17 7QN ("the
Developer")

WHEREAS

- A. The County Council is the Highway Authority for Hampshire
- B. The Developer is the registered proprietor with title absolute of the Land
registered at Land Registry under Title Number(s) IIP457334 for the benefit
of which Land the highway works hereinafter referred to are carried out
- C. The Developer is desirous of entering into this Agreement for the purposes of
securing the carrying out of the Works as defined herein and the Developer
has agreed that it will pay the cost of construction and maintenance of the
Works
- D. The County Council is satisfied pursuant to Section 278 of the Highways Act
1980 that it will be of benefit to the public for the County Council to enter this
Agreement for the execution of the Works at the expense of the Developer
which Works the County Council is authorised to execute pursuant to the
Highways Act 1980 or are the subject of the Planning Permission

NOW THIS DEED OF AGREEMENT WITNESSETH as follows:

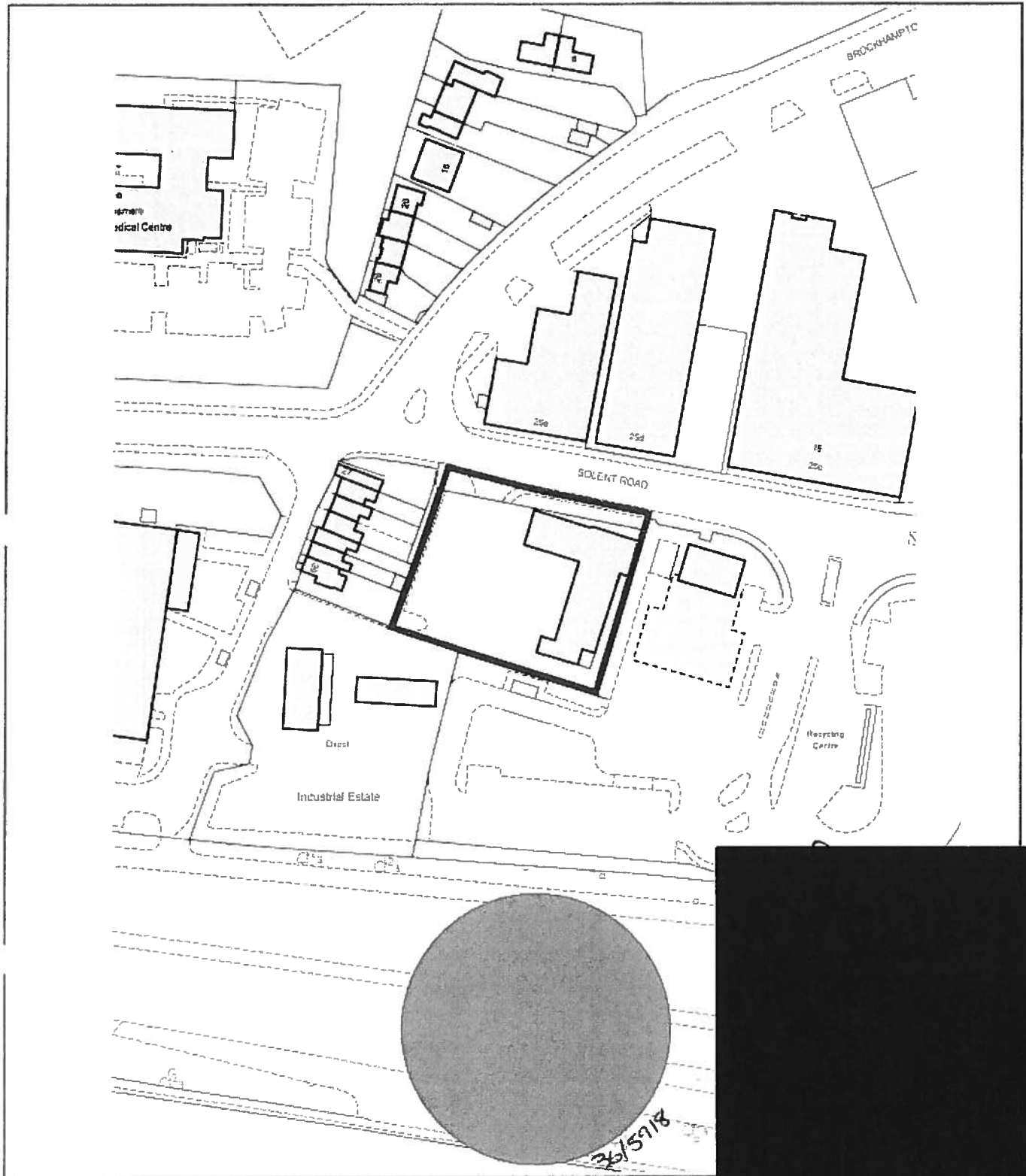
Definitions

- I. In this Agreement the following expressions shall have the following meanings:

"CDM Regulations"	Means the Construction (Design and Management) Regulations 2015
"Certificate of Completion"	Means a certificate issued by the County Council confirming the works have been executed to its satisfaction and can be placed on maintenance
"Certificate of Maintenance"	Means a certificate issued by the County Council pursuant to the provisions of Clause ^{7.2} ~~8.2~~ of this Agreement following the expiry of the Maintenance Period
"Chartered Engineer"	Means a person registered as an engineer with the Engineering Council as having the technical knowledge and practical experience to satisfy its preferred requirements
"Director of Economy Transport and Environment"	Means the County Council's Director of Economy Transport and Environment or such other officer or officers as may from time to time be primarily responsible for the County

[Handwritten signature]

		Council's functions duties and responsibilities as a Highway Authority pursuant to the Act
"Head of Legal Services"		Means the County Council's Head of Legal Services or such other officer or officers as may from time to time be primarily responsible for the provision of legal advice to the County Council
"Interest Accrued"		Means the interest accrued on any Security Deposit provided to the County Council pursuant to Clause 6
"Land"		Means the land for the purposes of identification only shown edged red on plan 480/33/1-1 attached hereto having the benefit of the Planning Permission
"Maintenance Period"		Means a period which shall not exceed 12 months without reasonable justification or as subject to clause 7.2 following the date of the Certificate of Completion
"Management Plan"		Means a works management plan showing how in the course of planning and construction of the



SITE LOCATION PLAN

Solent Road,
HAVANT. PO9 1JH.



Scale 1:1250

Plan No. 480/33/1_1

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	Works the Developer will: (i) minimise disruption to all types of traffic; (ii) avoid instances of newly surfaced highway having to be re-excavated or have further works carried out on them; (iii) minimise the number of closures/diversions required by the Works; (iv) ensure that it takes into consideration the safety of all types of traffic that may be diverted or affected by the Works.
"Planning Permission"	Means the planning permission application reference APP/12/00504 granted 16th of November 2012 for the development of the Land requiring the Works
"Practice Note"	Guidance prepared by the Director to inform Developers with the processes practices and procedures required by the County Council when undertaking works on a highway under s278 Highways Act 1980

"Programme"	Means the programme for execution of the Works agreed in writing by the County Council pursuant to Schedule 2 paragraph 1.1
"Security Deposit"	Means a cash deposit in the sum of the tender price of the Works plus the estimated cost of any commuted sums payable in accordance with this agreement hereof together with the cost of any statutory undertakers works in both cases as approved by the County Council plus 10% thereof
"Specification"	Means the 'Manual of contract documents for highway works: Volume 1 Specification for highway works' published by TSO in November 2009 as modified and extended by any supplements and revisions and further as modified and extended by supplements or practice notes issued by the County Council including the practice note "Offsite Highway Works carried out by Developers on behalf of the Highway Authority" all as in force at the date

		of commencement of the Works
"TSO"		Means The Stationery Office Limited (03049649) and whose registered office is at 10 Eastbourne Terrace, London W2 6LG being formerly Her Majesty's Stationery Office
"Working Day"		Means any day Monday to Friday inclusive excluding bank holidays between the hours of 0830 and 1630 and the expression 'Working Days' shall be construed accordingly
"Works"		Means the highway works described in Schedule 1 hereto

2. This Deed of Agreement is made pursuant to Sections 38 251 278 of the Highways Act 1980 Section 111 of the Local Government Act 1972 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other enabling powers including the Localism Act 2011
3. Where any agreement certificate or approval is to be given by the County Council under the terms of this Agreement then the same shall be in writing and not be unreasonably withheld or delayed

4. Any notice or other communication to be served by the Developer under the terms of this Agreement shall be in writing and shall not be deemed to be given until received by the County Council at The Castle, Winchester, Hampshire SO23 8UJ and addressed to the Head of Legal Services or to such addressee as the County Council may from time to time stipulate

Developer's Covenants

5. The Developer hereby covenants with the County Council as follows:

The Works

- 5.1. To carry out at its own expense and at no cost to the County Council the Works described in Schedule 1 as contractor for the County Council in a good and workman like manner and with proper materials and in accordance in all respects with the terms and conditions described in Schedule 2
- 5.2. To notify the County Council in writing as to the date the Works are opened to the public no later than one month following such opening in addition to and without prejudice to the issuing of the Certificate of Completion

Indemnity

- 5.3. That it hereby indemnifies and shall keep indemnified the County Council in respect of all actions claims demands fees charges expenses and proceedings arising out of or in connection with or incidental to the carrying out of the Works and any works required by any Statutory Undertaker including (but not limited to) any costs expenses and penalties incurred by the County Council in the event the Developer exceeds the timescale specified in the Programme other than those arising under Parts I and II of the Land

Compensation Act 1973 in respect of which the provisions of below shall apply

Public Liability

- 5.4. That it shall without prejudice to its liability under Clause 5.3 and 5.5 hereof to indemnify the County Council be insured against public liability risks for a sum of at least £10,000,000 in respect of any one claim and shall ensure that any person or persons carrying out the Works on its behalf is similarly insured against public liability risks and the Developer or any person authorised by it to carry out the Works shall (without prejudice to the requirements of Schedule 2 paragraph 1.8 of this Agreement) on request by the County Council produce for inspection the relevant original policies of insurance together with receipts for the premiums paid

Land Compensation Claims

- 5.5. That it hereby indemnifies the County Council against all costs associated with its responsibilities and all claims pursuant to Part I and Part II of the Land Compensation Act 1973 (as amended) and regulations made there under (including claims the County Council determine should be met under the provisions of Regulation 4 of the Noise Insulation Regulations 1975) arising out of the use of the Works

Security

6. The Developer shall not commence the Works until it has provided to the County Council the Security Deposit and if the Developer fails at any time to carry out or observe any of the terms conditions and stipulations on its part contained in this Agreement or in the event of the Developer becoming bankrupt or going into liquidation or entering administrative receivership or entering into a deed of

arrangement for the benefit of its creditors the County Council may itself carry out and complete the Works or reinstate the highway or complete such alternative Works as the County Council considers appropriate and remedy any defects prior to the Works becoming maintainable at the public expense or occurring or discovered during the Maintenance Period and may use the Security Deposit or any part thereof to fully reimburse the County Council in respect of any costs and expenses incurred by the County Council in doing so together with the cost to the County Council of preparing an alternative contract and of supervising the execution of this alternative contract together with the cost of any other sums due under the terms of this Agreement PROVIDED THAT upon issue of the Certificate of Completion the County Council will repay to the Developer 85% of the Security Deposit or (if the County Council has used part of the Security Deposit in accordance with this clause) 85% of such figure remaining and PROVIDED FURTHER THAT upon issue by the County Council of the Certificate of Maintenance the balance of such part of the Security Deposit remaining plus any Interest Accrued on the Security Deposit shall be repaid to the Developer

Payments

6. The Developer further covenants with the County Council to pay to the County Council:

On the date of the Agreement

- 6.1. On the date hereof the whole of the reasonable costs incurred by the Head of Legal Services and the Director of Economy Transport and Environment in the preparation of this Deed together with a sum of £150 for costs incurred in

approving administering reducing and releasing the Security Deposit required pursuant to clause 6

Prior to commencement of the Works

6.2. On demand and in any event prior to commencement of the Works the reasonable costs of the Head of Legal Services in approving and administering the Security Deposit required pursuant to Clause 6

6.3. On demand and in any event prior to commencement of the Works the reasonable cost to the County Council of approving the detailed contract drawings for the Works including the cost of approval of preliminary design check drawings and structural approvals (less any pre-check fees already paid to the County Council) on account of such costs

6.4. On demand and in any event prior to commencement of the Works a sum equal to 5 per cent of the cost of the Works as estimated by the County Council or £2,000 (whichever is the greater) being a sum on account of the County Council's reasonable costs incurred in inspecting and administering the Works and further shall pay any balance of the whole of the County Council's reasonable costs incurred in inspecting and administering the Works such balance being due within 14 days following receipt of an invoice from the County Council

6.5. Prior to commencement of the Works the full cost to the County Council of any road traffic orders required to facilitate the Works

6.6. Prior to commencement of the Works the full cost to the County Council of any permanent traffic regulation orders or road hump notices

Prior to issue of Certificate of Completion