

DATED

9th May

2013

JULIAN FREDERICK JONES and JUDITH FRANCES JONES, SARAH ANNE
MULLEY and ROGER FRANK MULLEY (1)

and

THE COUNCIL OF THE BOROUGH OF HAVANT (2)

DEED

Pursuant to (inter alia)
Section 106 of the Town and Country Planning Act 1990
Relating to land at St Andrews House, 56 -61 West Street,
Havant Hampshire PO9 1LB

Mrs J Barden-Hernandez
Solicitor to the Council
Havant Borough Council
Civic Offices
Civic Centre Road
Havant, Hampshire
PO9 2AX

THIS DEED is made the 9th day of
BETWEEN

May

2013

- (1) JULIAN FREDERICK JONES and JUDITH FRANCES JONES of Lan Docas, Marine Walk, Hayling Island, Hampshire PO11 9PO and SARAH ANNE MULLEY and ROGER FRANK MULLEY of Heron House, Pond Lane, Clanfield, Waterlooville, Hampshire PO8 0RG ("the Owner") and
- (2) THE COUNCIL OF THE BOROUGH OF HAVANT OF Civic Offices Civic Centre Road Havant Hampshire PO9 2AX ("the Council")

WHEREAS:

- (1) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 for the area within which the Land is situate
- (2) The Owner is the freehold owner of the Land and a certificate from the Solicitor to the Owner has been produced to the Council that the Owner is immediately entitled to possession and subject only to the mortgage (if any) no other person having an interest therein at law or in equity.
- (3) The Council is the Local Authority for the purpose of Section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this Deed will facilitate be conducive and incidental to the Council's functions
- (4) The Owner has submitted the Application for the Development to the Council and the Council being desirous of improving the area and general locality of the Land and wishing to restrict and regulate the development and use of the Land is minded to grant planning permission pursuant to the Application.

NOW THIS DEED WITNESSETH as follows:

1. Statutory Powers

This Deed is made pursuant to:

- 1.1 Section 106 of the Town and Country Planning Act 1990
- 1.2 Section 111 of the Local Government Act 1972 to the intent that (save as provided by Clause 17) it shall bind the Owner/Mortgagee and the successors in title to each and every part of the Land and its assigns

2. Interpretation

- 2.1 Reference in this Agreement to a Clause Schedule or Recital shall mean a Clause Schedule or Recital to this Agreement

2.2 Headings in this Agreement are for ease of reference only and shall not affect construction or interpretation of any of the provisions of this Agreement

2.3 In this Agreement where the context so admits:

2.3.1 words importing one gender shall include all other genders

2.3.2 words importing the singular shall include the plural and vice versa

3. Planning Obligations

The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Town and Country Planning Act 1990 and are enforceable by the Council

4. Covenants Binding on Commencement

4.1 The covenants, undertakings, obligations and restrictions in this Agreement shall become binding on the parties to this Agreement upon Commencement in respect of the Development.

5. Definitions

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

"The Act"

Means the Town and Country Planning Act 1990 as amended.

"Affordable Housing"

Means subsidised housing which is rented or sold (including an equity share in whole or part) provided for persons whose needs are not met by the housing market and such dwellings shall meet the needs of eligible households including availability at a cost low enough for them to afford determined with regard to local incomes and local house prices

"Affordable Housing Land"

means the land upon which the Affordable Housing Units as identified and specified in clause 20 shall be constructed including their curtilages and parking provisions and to which the provisions of clause 20 shall apply

"Affordable Housing Units"

8 units (30%) of residential accommodation

"Affordable Rent"

to be provided upon the Affordable Housing Land unless otherwise agreed in writing with the Council which are to be made available by the Owner for Affordable Housing on the Affordable Housing Land as herein provided

means the letting of the Affordable Housing Units to an Eligible Person at a rent level of up to 80% of the local market rents (inclusive of service charge) and in accordance with the guidance issued by the Homes and Communities Agency in 2011

"Affordable Rented Accommodation"

means in relation to the Affordable Housing Units housing for rent available to persons who cannot afford to rent or buy houses generally available on the open market with the rent being at a Affordable Rent

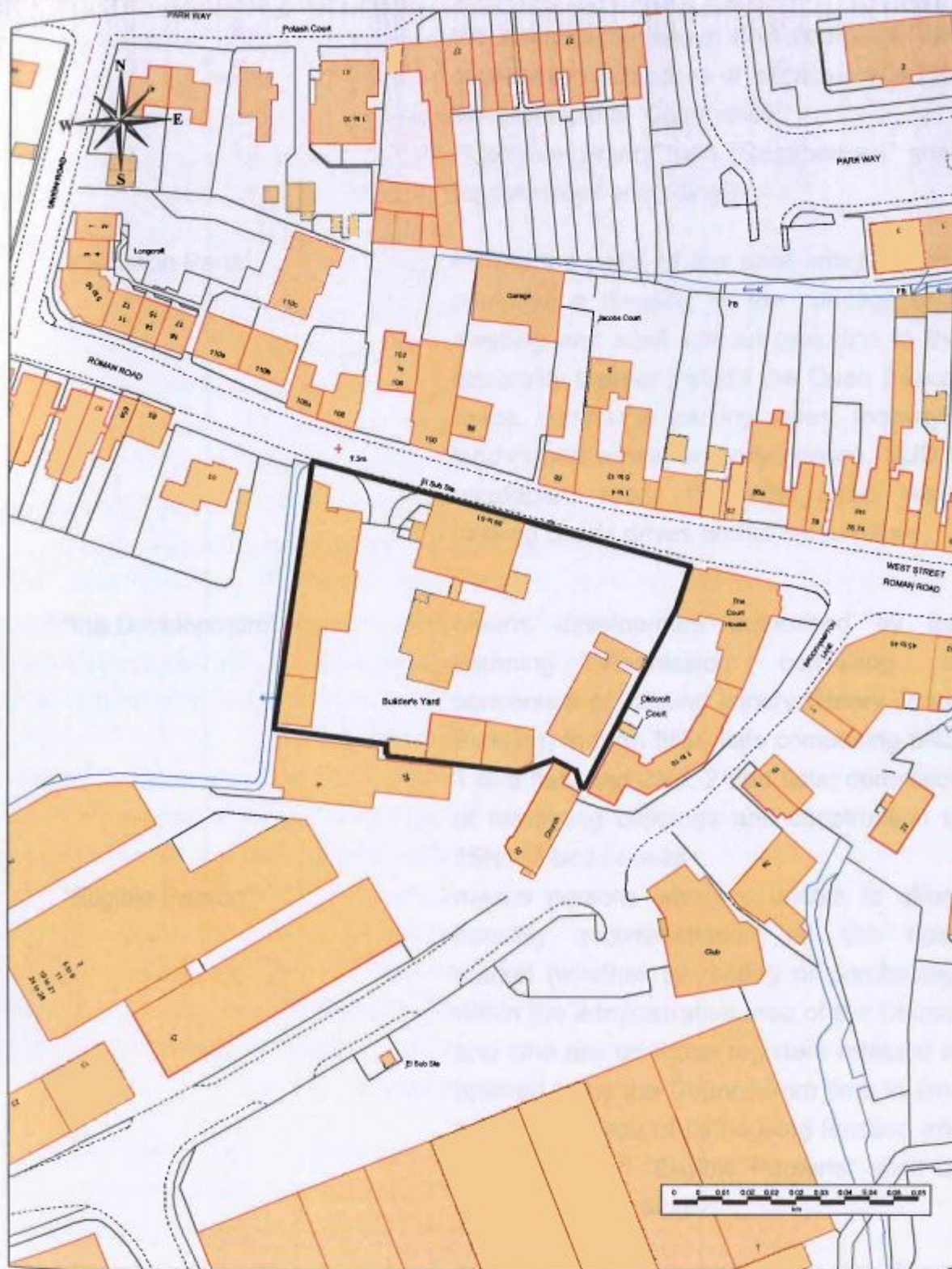
"Alternative Affordable Housing Provider"

means any organisation or body operating as a private landlord who is not an Registered Provider but who has entered into a management contract with an Registered Provider for the management of the Affordable Housing Units to ensure the Affordable Rented Housing Units are retained for future Eligible Persons and to ensure the recycling of any grant

"the Application"

means the application submitted to the Council by the Association given reference number APP/12/01233 for the Development means the carrying out of a material operation as defined by section 56(4) of the Act save that for the purposes of this Undertaking and no other the following operations shall not be deemed to be a material operation namely; archaeological investigation demolition site clearance site preparation diversion and laying of services

"Commence Development"



Public Service Plaza
 Centre Road
 Havant
 Hampshire PO9 2AX
 Tel: 023 9247 4174 fax 023 9248 0263
 www.havant.gov.uk



Title:

S106 Plan for St Andrews House
 59-61 West Street, Havant
 PO9 1LB

Drawn By:

HL

Scale:

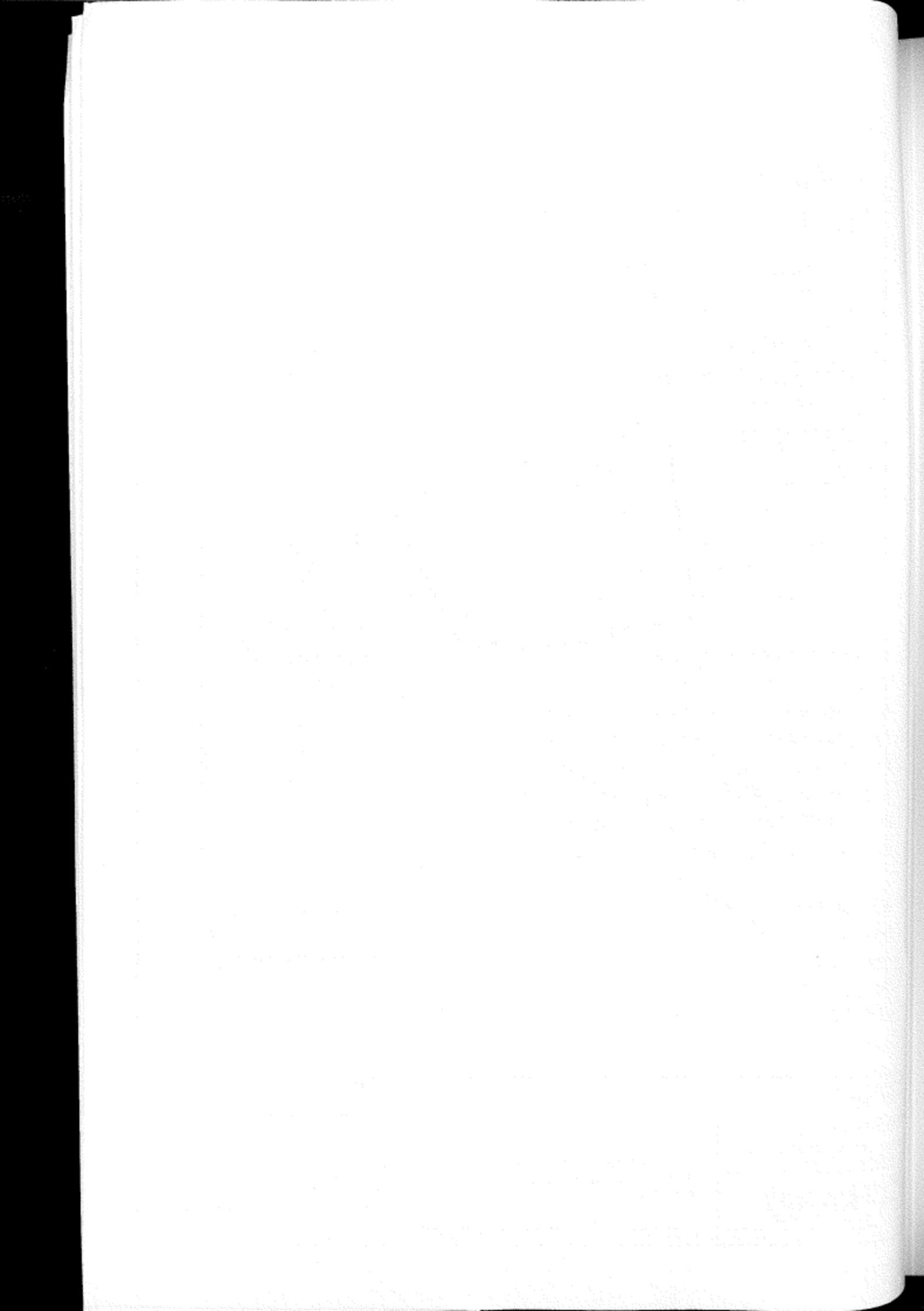
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Drawing No:

PC44/0551

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the erection of fences and hoardings and construction of access or service roads and the expressions "Commence"

"Commencement" and "Commenced" shall be construed accordingly

"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 Open Space, roads, communal parking areas, footways, landscaped areas, amenity spaces, SUDS, unadopted roads footpaths cycle ways parking courts drives and street furniture

"the Development"

Means development authorised by the Planning Permission consisting of conversion of existing joinery (Henry Jones Building) to form 8No. flats comprising 6No. 1 bed flats and 2No. 2 bed flats; demolition of remaining buildings and construction of 16No. 3 bed houses

"Eligible Person"

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 Persons" shall be construed accordingly

"Homebuy Agent"

means the body nominated by the Homes and Communities Agency to be responsible for low cost home ownership nominations within the administrative area of the Council or in the event that nobody has been nominated such other body or organisation as the Council shall first approve in writing.

"Homes and Communities Agency"

means the body corporate charged under the Housing and Regeneration Act 2008 with the functions of regulating the provision of Affordable Housing within the Council's administrative area by any Registered Provider or if such body ceases to exist or is superseded the equivalent body

"Indexed"

Means in respect of the Hampshire County Council Transport Contribution such sum to be index linked in accordance with the All Items Index of Retail Prices (RPI) published by the Office of National Statistics or any replacement thereof from the date hereof until the date of payment and such indexation shall only be applied in circumstances where the RPI at the date of payment stands at a higher level than it did at 1 April 2012

"the Land"

Means the Land at St Andrews House, 59 – 61 West Street Havant shown for identification purposes only edged by heavy black line on the Plan

"Low Cost Home Ownership"

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

"the Monitoring Fee"

means the sum of NINE HUNDRED AND FORTY NINE POUNDS SIXTY NINE PENCE (£945.69) being a Fee (being applied at such time and in such manner as the Council shall in its absolute discretion determine) used towards the costs to be incurred by the Council in the provision of suitably qualified and experienced persons whose function inter alia is to monitor coordinate and enforce section 106

"Mortgage"

Obligations

means the mortgage or charge (if any)

"Mortgagee"

means the mortgagee or chargee (if any)

"Obligations" and
"OBLIGATIONS"

means those planning obligations (being restrictions requirements covenants agreements obligations or any of the foregoing) enforceable at law and in particular (but without prejudice to the availability to any enforcing authority of any power which may be available to it for the purposes of the enforcement of this Deed) under the authority of the statutory provision referred to in this Deed.

"Occupation" and "Occupied"

shall mean occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

"Open Market Housing Units"

Means the Residential Units available for sale on the open market but excluding the Affordable Housing Units

"the Owner"

Means the owner and in the case of two or more owners each or all of them as owners of any or all parts of the Land and as parties to this Deed of Agreement acting and being obliged by this Agreement jointly and severally who is (or are) described in recital 2 of this Agreement being a person or persons identified in accordance with Section 106 (9)(c) of the Act.

"Plan"

Means the plan reference PC44/0551 annexed hereto

"the Planning Permission"

means the grant of planning permission made in response to the Application

including where appropriate any grant of approval in respect of matters reserved by the said grant of planning permission or any subsequent grant of planning permission for the Development or for such other development on the Land as is not materially different from the Development (the determination of materiality being solely at the discretion of the Council) in the form annexed hereto.

"the Playing Space Contribution" Means the sum of Thirty One Thousand Five Hundred And Twenty Three Pounds (£31,523.00) being a contribution (being applied at such time and in such manner as the Council shall in its reasonable discretion determine) to the costs to be incurred by the Council in the provision, improvement and maintenance of playing space to meet the needs of residents of new housing developments

"Registered Provider" means a Registered Provider of Social Housing registered under the provisions of Section 111 of the Housing and Regeneration Act 2008

"Residential Units" Means residential dwellings whether individually or in groups and whether divided vertically or horizontally

"Shared Ownership" means affordable housing leased to a lessee who purchases a percentage of the equity of the intermediate housing unit and pays a rent in relation to the share of the equity retained by the Registered Provider/Alternative Affordable Housing Provider.

"Solicitor" means the solicitor giving the certificate at clause 23 of this Deed

"Staircasing Receipts" means monies received by a Registered Provider or an Alternative Affordable

Housing Provider arising from the sale (net of reasonable evidenced sale costs) of any further share of the equity or ownership of a Shared Ownership Unit following the first acquisition by that occupier of an interest in that Affordable Housing Unit provided that such a receipt shall be excluded from this definition to the extent to which the Registered Provider or Alternative Affordable Housing Provider is required to pay that receipt to the Homes and Communities Agency or any other person or body pursuant to an arrangement for grant funding in relation to the provision of Affordable Housing Units on the Land

"SUDS Area"

means a scheme of Sustainable Urban Drainage set out on the Land

"Unit"

means a residential unit contained within the Development

- 6 With the intention and so as permanently to bind the Land and all parts thereof so far as lawfully may be effected and into whomsoever hands the same may come and so that the Obligations hereby created shall be enforceable both against the Owner and the Mortgagee (if any) and their respective successors the Owner and the Mortgagee (should it or they take possession of any part of the Land or exercise powers of sale under its security) HEREBY SEVERALLY COVENANT AND UNDERTAKE AS A PLANNING OBLIGATION TO COMPLY FULLY WITH THE OBLIGATIONS PROVIDED that no person shall be liable for a breach of the Obligations after parting with all its interest in the Land, except in respect of a breach subsisting prior to parting with such interest.
7. This instrument or document hereby expresses itself as executed as a Deed.
8. The Owner (and each of them acting in concert in the case of more than one joint owner) has produced at clause 22 a certificate of title with the intention that the Council may and shall rely upon the truth of the matters therein certified namely that the Owner is immediately entitled to possession and occupation of a freehold estate in the Land no other person having an interest

therein at law or (to the best of the Owner's knowledge and belief) in equity other than the Developer and the Association by mere reason of the entering into conditional contracts to acquire the Land.

9. This Deed is made pursuant to Section 106 of the Act with the intent that it shall bind the Owner's interest in the Land and be enforceable against them and the persons deriving title under them and shall be a planning obligation for the purposes of the Act PROVIDED that no person shall be liable for a breach of the Obligations after parting with all its interest in the Land except in respect of a breach subsisting prior to parting with such interest.
10. This Deed shall have effect indefinitely from the time the Permission is granted save as provided for in Clause 4 and Clause 16.
11. In the event of any difference between the description of the Development in this Deed and the terms of the grant of permission issued by the Council in response to the Application the text of the grant of planning permission only shall be deemed to express the permission granted by the Council in response to the Application.
12. The obtaining consequent upon the provisions of this Deed of expressions of acceptance or satisfaction on the part of the Council with things done in discharge of Obligations or determinations of materiality for the purposes of this Deed shall be ineffective and not relied upon by any person unless in writing by the Council's Executive Head for Planning and the Built Environment for the time being or such other officer who may be identified in writing by the Council for this purpose.
13. In the event that any provision of this Deed is held to be invalid or unenforceable the remaining provisions of this Deed shall remain in full force and effect.
14. Nothing in this Deed shall be construed as prohibiting or limiting any right to develop any part of the Land in accordance with a planning permission granted by the Council or by the First Secretary of State on appeal or reference to him after the date of this Deed
15. No person or company shall be liable for any breach of this Deed unless he or it holds an interest in the part of the Land in respect of which such breach occurs or held such an interest at the date of the breach
16. If the Permission expires within the meaning of section 91 of the 1990 Act or is revoked quashed or otherwise withdrawn or modified by any statutory or judicial

procedure without the consent of the Owners or its successors in title this Deed shall cease to have effect

17. This Deed 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,

Obligations

18 The Playing Space Contribution

- 18.1 The Owner covenants to pay cause or permit to be paid to the Council the Playing Space Contribution prior to 4 months after Commencement of the Development

19. The Monitoring Fee

- 19.1 The Owner covenants not to Commence the Development or introduce or cause permit or suffer the Commencement of the Development permitted by the Permission at any time before the Owner shall have paid to the Council the Monitoring Fee

20 Affordable Housing

The Owner covenants to the Council as follows

- 20.1 To provide not less than the 30% (8 units) Affordable Housing Units upon the Land. These Affordable Housing Units should reflect the mix of the site generally. The precise location mix and tenure of the Affordable Housing Units to be approved in writing by the Council prior to Commencement of the Development subject to an assessment by the Council of local housing market conditions.
- 20.2 All Affordable Housing Units on the Land will be integrated and compatible with the design of the Market Housing Units.
- 20.3 That no more than 50% of Residential Units shall be constructed prior to provision of 4 Affordable Housing Units and thereafter the remaining Affordable Housing Units shall be constructed contemporaneously with any adjoining Market Housing Units to provide a mixed development

- 20.4 That the Affordable Housing Units will be constructed to at least the minimum standard required by the Homes and Communities Agency (or such other successor body's standards) Design and Quality Standards (2007) and the Code for Sustainable Homes published by the Government (or such replacement guidance) or other similar standard as may be reasonably required by the Council.
- 20.5 Where Affordable Housing Funding has not been secured despite the use of reasonable endeavours so to do the Owner will notify the Council in writing that it has not been successful in securing Affordable Housing Funding The Council will then where it is reasonably satisfied that the Owner has complied with the obligations to use reasonable endeavours in all material aspects issue a written notice to the Owner confirming that in accordance with this Clause 20.5 authorising the Owner to adjust the proportion of Affordable Rented Housing Units to a figure to be agreed with the Council subject to:
- (a) the level of any Affordable Housing Funding available
 - (b) the Homes and Communities Agency's "Economic Assessment Tool" or any such other economic assessment tool submitted by the Owner and agreed by the Council to evaluate the portion of Affordable Rented Housing Units to be provided with the level of Affordable Housing Funding available and
 - (c) the results of any financial viability assessment carried out by the Owner
- 20.6 The mortgage rent and service charges to be charged on the Shared Ownership Units shall meet the requirements of an Affordability Test as follows:
- the total cost to include mortgage rent and service charges payable by the Occupier of the Shared Ownership Unit does not exceed more than thirty per cent (30%) of the gross median income plus five per cent (5%) of those persons on the Housing Registers held by the HomeBuy Agent in relation to Havant
 - the provisions of the Affordability Test may be varied by agreement in writing by the Owner and the Council
- 20.7 No more than twelve (12) of the Market Housing Units within the Development will be Occupied until the Affordable Housing Units have been

constructed in accordance with the Planning Permission and made ready for residential Occupation and written notification in relation to that has been given to the Council.

20.8 No Market Housing Units within the Development will be Occupied until either:

- (a) the Owner has entered into a binding contract or an agreement for lease with a Registered Provider or an Alternative Affordable Housing Provider for the transfer of the freehold or a long lease of no less than 125 years of the Affordable Housing Land to include the construction of the Affordable Housing Units (and has informed the Council to whom the Affordable Housing Land has been transferred) or
- (b) the Affordable Housing Land has been transferred fully provided with services to a Registered Provider or an Alternative Affordable Housing Provider and written evidence of compliance in respect of the above has been supplied to the Council to its satisfaction

20.9 Where the Owner intends to provide Affordable Housing Units in association with an Alternative Affordable Housing Provider or a Registered Provider they shall only be used if the Registered Provider and/or the Alternative Affordable Housing Provider can demonstrate to the Council:

- (a) A good judgement by the Home and Communities agency or successor body; and
- (b) acceptable sustainable management arrangements and community development policies.

20.10 Any transfer of the Affordable Housing Land shall contain the following:

20.10.1 a covenant not to use the Affordable Housing Units otherwise than for the provision of Affordable Housing. and

20.10.2 a covenant not to dispose of any of the Affordable Housing Units other than by sale by way of Shared Ownership or Affordable Rent to the intent that all Affordable Rented Housing Units shall be used for the purpose of providing Affordable Housing to Eligible Persons, and

20.10.3 a covenant requiring a Registered Provider or an Alternative Affordable Housing Provider to enter into an agreement with the Council granting the Council the right to nominate 100 per cent of

the Occupiers of the Affordable Rented Units when initially let and all subsequent true voids, and

20.10.4 a covenant to manage all Staircasing Receipts of Affordable Housing Units which are grant funded in accordance with Housing Corporation or Homes and Communities Agency regulations, and

20.10.5 a covenant to provide the Council with details of Staircasing Receipts from non-grant funded Affordable Housing Units and in co-operation with the Council to reach agreement to invest 50% of the Staircasing Receipts in the provision of new build Affordable Housing or to invest in measures to enhance the provision of Affordable Housing within the administrative area of the Council including facilitating the acquisition of market housing or the conversion or refurbishment of existing housing to bring such housing back into beneficial use to enable it to be occupied by Eligible Persons provided that the use of Staircasing Receipts is limited to provision within the administrative area of the Council for a period of 3 years after receipt by the Owner thereafter for a period of 1 year within the administrative area of Hampshire and thereafter to any Affordable Housing provision within the United Kingdom.

20.11 The covenants set out in Clause 20.10 and 20.13 shall not be binding or enforceable against any purchaser who purchases from the Registered Provider or Alternative Affordable Housing Provider the entire freehold to an Affordable Housing Unit or a long leasehold interest pursuant to an equity share arrangement nor shall such covenants be binding or enforceable against such a purchaser's successors in title

20.12 Where the Owner intends to provide management services for the Affordable Housing Units in association with a Registered Provider or an Alternative Affordable Housing Provider they shall only be used if the provider can demonstrate to the Council that they are approved and regulated for such activities by the Homes and Communities Agency or any successory body.

20.13 The Owner covenants that the Affordable Rented Accommodation shall only be occupied by Eligible Persons.

20.14 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 a Registered Provider or an Alternative Affordable Housing Provider in relation to the Affordable Housing Units then a mortgagee chargee 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 an Affordable Housing Unit or Affordable Housing Units free from the obligations PROVIDED THAT the Mortgagee shall first follow the procedures set forth below:

(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 time offer to sell ("the Offer") the Affordable Housing Unit or Affordable Housing Units to the Council for an amount ("the Purchase Price") to be agreed or determined in accordance with Clause 20.14

(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 Clause 20.14 the Council shall accept the Offer or shall nominate a Nominee so to do 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 or Affordable Housing Units subject to tenancies subsisting at the date of the Notice but disregarding the provisions of this Deed which restrict Occupation to persons on the Council's Housing Register and in default of agreement on the Purchase Price within two months of the Council's notification under Clause 20.14 the Purchase Price shall be determined by an Expert pursuant to the provisions of Clause 26

(d) any transfer to the Council or to the Nominee shall be completed within two (2) months of the date the Purchase Price is agreed or determined by an Expert in accordance with the provisions of Clause 26 ("the Completion Period")

(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 or Affordable Housing Units 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 Clause 20 which shall not be binding upon any purchaser from the Mortgagee or any subsequent successor in title of the Affordable Housing Unit or Affordable Housing Units and at the written request of the Mortgagee the Council shall expeditiously issue written confirmation that the restrictions in this Clause 20 have been discharged and rendered of no effect in respect of the Affordable Housing Unit or Affordable Housing Units and the Council shall take steps to cancel any entry in the Local Land Charges Register insofar as it may be recorded against the Affordable Housing Unit or Affordable Housing Units

20.15 The Affordable Housing Units provided on the Land will be monitored in order to ensure compliance with the obligations in this Clause 20 and the Owners will impose a covenant upon the Registered Provider or the Alternative Affordable Housing Provider which requires them at such dates to be agreed by the parties to make written returns to the Council detailing

- the affordable housing provision including
- the type of dwelling,
- the tenure of the dwelling,
- the next internal floor area of the dwelling
- details of the occupiers
- the grant funding 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 reasonably

required by the Council.

21. SuDS

The Owner Covenants to the Council as follows:

- 21.1 The Owner will design a SUDS Scheme for the SUDS Area in accordance with the CIRIA c697-SUDS Manual or any equivalent and updated national design guidance as it may become available prior to obtaining the consents referred to in paragraph 21.2 below.
- 21.2 The Owner will obtain all necessary statutory consents 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.
- 21.3 Following approval of the SUDS Scheme by the Environment Agency the Owner will deliver in writing to the Council and County Council prior to Commencement of Development the following:
 - 21.3.1 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; and
 - 21.3.2 A maintenance regime document for the SUDS Scheme to ensure its correct functioning and operation until transfer of the Common Parts to a management company or if earlier adoption by the approved body.
- 21.4 The Owner will ensure that the SUDS Scheme designed for the Development shall be so designed as to attenuate flows on the Land so as not to exceed the greenfield run-off rate (Q_{bar}) from the Land calculated in accordance with the relevant standard (currently Institute of Hydrology 124 with appropriate pro-rata adjustment to reflect the site area). Proposals should be tested against 1, 30 and 100 year return periods as well as a 100 year + 30% climate change scenario and the design parameters of the Scheme shall address its construction, use and maintenance in light of local hydrology, land use, the impact and use of physical site features, resulting benefits to the community & the environment, and future operation (both economic & maintenance).
- 21.5 The Owner will design the detention basins in accordance with the method prescribed in the Flood Risk and Drainage Assessment report prepared by Opus International Consultants (UK) Ltd dated 25.01.13.

21.6 The Owner will provide to the Council prior to Commencement of Development the design of the SUDS Scheme including the provision of features necessary within the Development and without prejudice to the generality thereof (*inter alia*);

21.6.1.1 All relevant drawings and design calculations; and

21.6.1.2 A copy of the consents and evidence referred to in clause 21.2 above.

21.6.2 To agree in writing with the Council prior to Commencement of Development the designs for the SUDS Scheme together with a programme for its construction and delivery.

21.6.3 To construct the SUDS Scheme in accordance with the approved design and the programme agreed in accordance with clause 21.6.2 above .

21.6.4 Not to permit occupation of any Residential Unit within the Development unless and until the SUDS scheme has been constructed and is ready for use in accordance with the provisions of this clause 21.

21.6.5 To maintain the SUDS Scheme in accordance with the maintenance regime to be agreed in clause 21.3.2 above until transfer of the Common Parts to a management company or if earlier adoption by the approved body.

21.6.6 To provide to the Council a performance bond ("Bond") issued by a clearing bank or other institution (hereinafter called "the Surety") approved by the Council (such approval not to be unreasonably withheld or delayed) in a form agreed in writing by the Council (such agreement not to be unreasonably withheld or delayed) for the cost of construction of the SUDS scheme.

21.6.7 The Bond shall be to the effect that:

(i) If the Owner shall fail to construct the SUDS scheme in accordance with the provisions contained in this clause 21 or prior to completion of such construction 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 failure require by written notice the Surety to pay the Council a sum equivalent to any expenditure which the Council may incur in carrying out the construction of the

SUDS scheme and also the Council's reasonable legal costs properly arising from the provision of the SUDS scheme for which sum the Surety binds itself and its successors and assigns to the Council.

(ii) Such Bond to be provided prior to Occupation of any Residential Unit within the Development and to endure until the SUDS scheme is adopted or if earlier the date of completion of construction of the Development.

22. Management of the Land

22.1 The Owner covenants not to Commence the Development unless and until the Council has approved in writing (such approval not to be unreasonably withheld or delayed) the Owner's proposal for an entity to be responsible for the maintenance and management of Common Parts including the following features:

- (i) Open Space
- (ii) SUDS Scheme (if unadopted)
- (iii) unadopted roads footpaths cycle ways parking courts and drives
- (iv) any other land that does not form part of either of the Open Space or any Residential Unit

such proposals to include full details of the proposed structure and voting rights of the entity (the "Management Company")

22.2 The Owner covenants not to Commence the Development unless and until the Council has approved in writing (such approval not to be unreasonably withheld or delayed) the Owner's proposal for the maintenance and management of the Common Parts including the following features:

- (i) Open Space
- (ii) SUDS Scheme (if unadopted)
- (iii) unadopted roads footpaths cycle ways parking courts and drives
- (iv) any other land that does not form part of either of the Open Space or any Residential Unit

22.3 The Owner shall not Occupy or cause or permit Occupation of any Residential Unit until:

- (i) the Management Company has been formed in accordance with the approved proposal; and
- (ii) the Management Plan has been approved in writing by the Council (such approval not to be unreasonably withheld or delayed)

Management Company

- 22.4 Prior to the expiry of six months from Commencement of Development to supply to the Solicitor to the Council for written approval by the Council (such approval not to be unreasonably withheld or delayed):-
 - 22.4.1 a draft memorandum and articles of association for the Management Company and/or a draft of the transfer/lease for the purpose of managing maintaining and cleansing of the Common Parts; and
 - 22.4.2 proposals for arrangements to secure the future maintenance of the Common Parts by the Management Company (which may include a Transfer of the Common Parts to the management Company or the granting of a long lease of the Common Parts by the Owner in favour of the Management Company) so as to ensure that the Common Parts are properly maintained such proposals to include details of how the costs of street lighting charges, cleaning and maintaining the Common Parts, shall be met (by residents of the Development or otherwise); and
 - 22.4.3 proposals for arrangements to secure the future access for the public to the Open Space
- 22.5 Any submission of documents or details to the Council pursuant to this clause 22 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
- 22.6 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 clauses 22.1.1 and 22.1.3 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

22.7 Forthwith after the approval by the Council of the proposed memorandum and articles of association and/or the said transfer (which approval may include such reasonable modifications as the Council considers appropriate) the Owner shall take all necessary steps to secure the formation and registration of the Company at Companies House (taking into account any modifications required by the Council) and to notify the Council accordingly within seven days of the completion of the registration of the Company

22.8 The Owner shall repair and maintain the Common Parts to the reasonable satisfaction of the Council until such time as the Management Company is registered and the maintenance arrangements to be approved by the Council (such approval not to be unreasonably withheld or delayed) have been completed and the Common Parts have been transferred to the Management Company and all Dwellings on the Land have been sold or leased.

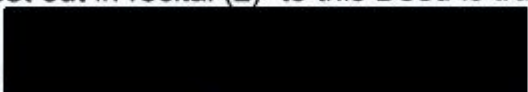
22.9 At any time prior to the expiry of six months from the Commencement of Development the Owner may submit to the Council for its written approval alternative proposals for the maintenance and upkeep of the Common Parts, (such approval not to be unreasonably withheld or delayed) and in relation to any such alternative arrangements the provisions of clauses 22.1 22.2 22.3 22.4 22.5 and 22.6 shall apply to the extent that the Owner shall remain responsible for the maintenance and upkeep of the Common Parts, without prejudice to the generality of clause 22.5 above until such alternative arrangements (as approved by the Council) have been fully implemented

23. Commencement

23.1 The Owners will notify the Council in writing at least 14 days before Commencement of the Development

24. Certificate of Title.

As Solicitor for the Owner we hereby certify that on the date of this Deed what is set out in recital (2) to this Deed is true.

Signed: 

Name: Blake Lapthorn

Address: New Kings Court, Tollgate

25. Council Discretion

Nothing in this Deed shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Town and Country Planning Act 1990 or under any other Act PROVIDED ALWAYS THAT this Deed shall remain in full force and effect notwithstanding the terms and conditions of any planning permission which may or have been at any time issued by the Council or any other appropriate person pursuant to the provisions of the said Act

26. Disputes

Any dispute or difference between the parties in connection with this Agreement (which shall include any matter hereunder which the Council has the discretion to agree or approve but does not do so) shall be referred to and determined by a single arbitrator ("the Expert") to be appointed by agreement by the parties to the dispute or in default of agreement to be either an independent and duly qualified surveyor to be appointed by the President for the time being of the Royal Institution of Chartered Surveyors or a member of any other appropriate professional body as may be agreed between the parties and any person appointed shall act as arbitrator under the Arbitration Act 1996. Such arbitrator's decision (including without limitation as to the payment of costs of the arbitration) shall be final and binding upon the parties save in respect of any decision which is founded upon error in law or legal interpretation by such arbitrator

27. No 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 terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing at any time any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owner

28. Costs

The Owner hereby agrees to pay the Council's reasonable legal and other costs in connection with the preparation and stamping of this Deed such costs to be paid on completion of this Deed

29. Successors

The expression "the Owner" and "the Mortgagee" shall include their respective successors in title and assigns.

30. Council Successors

The expression "the Council" shall include successors to its functions as Local Planning Authority for the purposes of the Town and Country Planning Act 1990

31. Enforcement

It is hereby agreed and declared that the provisions of this Deed shall not bind nor be enforceable against (1) any Mortgagee or Chargee of the Affordable Housing Land or part thereof nor any person or persons who shall directly or indirectly derive Title to the Affordable Housing Land or any part or parts thereof from such Mortgagee or Chargee or any Receiver appointed by such Mortgagee or Chargee AND (2) any person or persons acquiring any of the Affordable Housing Units under a Voluntary Right to Acquire or a Statutory Right to Buy pursuant to the Housing Act 1985 the Housing Act 1988 or the Housing Act 1996 or any statutory re-enactment or modification thereof and all successors in title to such person or persons AND (3) any lessee pursuant to a shared ownership lease whether or not such lessee has staircased to 100% ownership and such lessee mortgagee and successors in title

32. Notices

Save where particular clauses specify otherwise all notices to be served and notifications to be given for the Council shall be marked for the attention of the Executive Head of Planning and Built Environment.

33. Third Parties

The Contracts Rights of Third Parties Act 1999 shall not apply to this Agreement.

34. Liability

- (1) No person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest

- (2) If the planning permission shall expire before Commencement or shall at any time be revoked quashed modified or otherwise withdrawn then this Agreement shall immediately determine and cease to have further effect but in ceasing to have further effect shall not prejudice any express or implied rights accrued or accruing to the Owner by virtue of anything by the covenant in connection with or arising from the terms of this Agreement
 - (3) On the written request of the Owner (or in the alternative the party responsible for the performance of any particular covenant contained herein) at any time after each or all of the Obligations have been performed or otherwise been discharged the Council will issue written confirmation of such performance or discharge.
 - (4) The Council will on the written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation of it and cancel all related entries in the Register of Local Land Charges
 - (5) This Agreement is a local land charge and shall be registered as such
35. Covenants given by the Council.
- (1) The Council covenants with the Owner to pay the Playing Space Contribution into a separately identified interest-bearing section of the Council's combined accounts as soon as reasonably practicable.
 - (2) The Council covenants with the Owner not to use any part of the Playing Space Contribution other than for the purposes for which it was paid (whether by the Council or another party)

IN WITNESS whether the parties hereto have executed these presence as a Deed
the day and year first before written

Signed as a DEED by me)
the said JULIAN FREDERICK JONES)

in the presence of:)

Name of witness:)

U JAMES HARDY SMITH

Address:

BLAKE LAPTNRV
NEW KINGS COURT, TOLLGATE
CHANDLERS FORD
S053 3LG

Signed as a DEED by me)
the said JUDITH FRANCES JONES)

in the presence of:)

Name of witness: [REDACTED]

Address:

JAMES HARDY SMITH
BLAKE LAPHORN
NEW KINGS COURT, TOLLGATE
CHANDLERS FORD

Signed as a DEED
the said SARAH A [REDACTED]

in the presence of [REDACTED]

Name of witness: [REDACTED]

Address:

JAMES HARDY SMITH
BLAKE LAPHORN
NEW KINGS COURT, TOLLGATE
CHANDLERS FORD

Signed as a DEED
the said ROGER FR [REDACTED]

in the presence of: [REDACTED]

Name of witness: [REDACTED]

Address:

JAMES HARDY SMITH
BLAKE LAPHORN
NEW KINGS COURT, TOLLGATE
CHANDLERS FORD
SO53 3LG

EXECUTED as a DEED by affixing
THE COMMON SEAL of)
THE COUNCIL OF THE BOROUGH)
OF HAVANT)
in the presence of:)

[REDACTED]



12798

Deputy to the
Solicitor to the Council