

DATED

7th October 1992

1992

RICHARD CHARLES KIRBY
PETER RICHARD WINGATE PEMBERTON

-and-

THE COUNCIL OF THE BOROUGH OF HAVANT

DEED OF STATUTORY COVENANTS AND AGREEMENTS

relating to

land west of Southleigh Road and north
of Rowan Road Havant in Hampshire



**SPEECHLY
BIRCHAM**

SOLICITORS

Bouverie House 154 Fleet Street
London EC4A 2HN

THIS DEED OF AGREEMENT (being intended to be a Deed by the persons making it and the parties to it) is made the *Seventh* day of *October* 1992

BETWEEN

RICHARD CHARLES KIRBY of Bouverie House 154 Fleet Street London EC4A 2HX and PETER RICHARD WINGATE PEMBERTON of Trumpington Road Cambridge ("the Owners" which expression shall include their successors in title (1)

and

THE COUNCIL OF THE BOROUGH OF HAVANT ("the Council") (2)

WHEREAS

- (A) The Owners are as Trustees the sole owners for an estate in fee simple of the parcels of land respectively shown edged red on Plan 1 and Plan 2 annexed hereto
- (B) Apart from any other effect which this Deed may have at law or in Equity this Deed is intended to have effect as a contract and to be entered into in pursuance of Section 111 of the Local Government Act 1972 Section 609 of the Housing Act 1985 and Section 106 of the Town and Country Planning Act 1990 to the intent that it shall bind and be enforceable against the Owners and all and any persons deriving title under them and if it may be that any one or more of the said enactments may be effectual to that end as to some only of the provisions of this agreement this shall not diminish the effectuality of others of the said enactments as to the provisions in question
- (C) This Deed shall constitute a planning obligation for the purposes of Section 106 of the Town and Country Planning Act 1990 and shall be enforceable by the Council as Local Planning Authority

NOW THIS DEED OF AGREEMENT AND PLANNING OBLIGATION WITNESSETH as follows:-

1. DEFINITIONS

In this Deed save where the context otherwise requires the following words and expressions shall have the meanings ascribed to them below

"Council Site" means all that piece of land within the Development Land shown for identification only hatched blue on Plan 2

"Development" means the development of the Development Land pursuant to the Planning Permission

"Development Land" means all that piece of land shown for identification only shown edged red on Plan 2

"Occupation Date" means the date upon which the 151st dwelling on the Retained Site is occupied Provided that if the owners shall submit details for approval which indicate that the Retained Site will accommodate less than 221 dwellings the said figure will be reduced as follows:

$$\frac{d}{221} \times 151$$

where d is the anticipated number of dwellings to be occupied when the Development is complete

"Plan 1" means plan marked "Plan 1" attached hereto

"Plan 2" means plan marked "Plan 2" attached hereto

"Plan 3" means plan marked "Plan 3" attached hereto

"Planning Permission" means planning permission granted for the

construction of 285 houses and associated infrastructure and facilities pursuant to planning application 90/55725 made to the Council as local planning authority

"Restricted Land" means all those pieces of land shown for identification only edged red on Plan 1

"Retained Site" means all that piece of land within the Development Land shown hatched green on Plan 2

"Southleigh Farm Buildings" means all that piece of land within the Restricted Land shown for the purpose of identification only edged red and green on Plan 3

2. RESTRICTIONS ON RESTRICTED LAND

With the intention both to be enforceable as a contractual Deed and also so as permanently to bind the Restricted Land and all parts thereof so far as lawfully may be effected both as at present owned and into whosoever hands the same may come and so that the covenants restrictions stipulations requirements and obligations hereby imposed shall be enforceable against the Owners and their successors the Owners (being entitled validly so to do) hereby jointly and severally grant and also covenant with the Council as local housing authority for the purposes of Section 609 of the Housing Act 1985 and covenant with the Council in pursuance of and for all the purposes of Section 106 of the Town and Country Planning Act 1990 as follows:

- 2.1 no new building will be constructed on the Restricted Land (save for improvements to existing buildings)
- 2.2 no existing building on the Restricted Land will be converted to residential use Provided that any other use or works to existing

buildings permitted by any planning permission hereafter to be obtained may be implemented

- 2.3 the Restricted Land shall except for existing buildings and their curtilages permanently remain in open use
- 2.4 for the first 25 years from the date of this Deed the Restricted Land will be used only for the purposes of agriculture horticulture silviculture or equestrian pursuits (save for parts thereof currently being used for other purposes) Provided that after that date and subject to the restriction in sub-clause 2.3 above the Council may be requested to permit additional or alternative uses which request will not be unreasonably refused (Provided that nothing in this proviso shall relieve of the necessity for planning permission nor shall it affect in any way the permanent restrictions otherwise effected by this Deed)
- 2.5 the planning conditions restricting the occupation of four residential properties at the present time on the Restricted Land (being Woodleigh and Nos 1, 2 and 3 Woodleigh Close) to those with an agricultural connection shall remain in effect unless such conditions cease to have effect as a result of any decision or determination by the Local Planning Authority
- 2.6 the restrictions contained in this Clause 2 shall not apply to Southleigh Farm Buildings (save for the buildings edged green on Plan 3 where the restriction in Clause 2.2 shall apply thereto) and the same may be used and enjoyed free of any restrictions herein contained

3. ACCESS AND FOOTPATH TO BARTONS ROAD

The Owners hereby agree with the Council

- 3.1 To provide a footpath four feet wide with hoggin base from the nearest appropriate road on the Development Land to Bartons Road shown as

"footpath" on Plan 2 no later than the Occupation Date

- 3.2 The footpath referred to in Clause 3.1 above shall be connected to the Council Site via the estate roads or footpaths on the Retained Site or pending construction of the same via a footpath of similar width and construction (the precise location and route of such footpaths or estate roads to be determined by the Owners and in the light of reserved matters approved by the Council)
- 3.3 When the said footpaths referred to in 3.1 and 3.2 above have been constructed they shall be made available for use by the public and the Council with or without pushchairs wheelchairs and prams (but not cycles or motorcycles or any other vehicle) and the Owners shall grant the Council such rights thereover as shall be required to secure such use
- 3.4 The Council and the Owners agree that as from the date when any footpath hereunder constructed is made available to the public (save where the same is to be adopted under any Agreement made under Section 38 of the Highways Act 1980 as a highway maintainable at the public expense) subject to the payment by the Owners of a reasonable commuted sum for the future maintenance thereof (the amount of which shall be notified to the Owners by the Council's Director of Technical Services for the time being at the date when any such footpath shall have been constructed and is available for use by the public) the Council will undertake future maintenance of the same
- 3.5 The Owners shall at the same time as they provide the paths referred to in Clause 3.1 above provide a stile and clear a beaten earth track from Bartons Road to Bartons Copse within the area demised to the Council by Sir Lynton White provided that such path when provided shall be of no less than 4 feet in width and the Council agrees to permit the Owners to enter such land for such purpose
- 3.6 From the date upon which the footpaths referred to in this Clause are made available for public use the Council shall keep the Owners fully

and effectively indemnified in respect of all costs proceedings claims and demands arising from death personal injury or other loss or damage occurring to any person or property howsoever caused in the course of or arising out of any use by the public or the Council or such maintenance hereof

4. THE RETAINED SITE

The Owners covenant with the Council not to construct more than 221 dwellings on the Retained Site

5. OPEN SPACE

- 5.1 The open space (being 3.21 acres in total) on the Development Land shall substantially be provided inter alia by an open space shown as the "village green" on Plan 2 or such minor variation of this as the Council may in writing reasonably permit (such permission not to be unreasonably withheld or delayed) and it shall be laid out landscaped or planted and made available for use as the Planning Permission or approved details thereunder from time to time shall require not later than the Occupation Date
- 5.2 The open space provided in accordance with this Clause shall be dedicated as public open space and thereafter maintained by the Council subject to the payment of £32,757 (indexed in accordance with the Retail Price Index from 31st January 1989 until the date when the same is dedicated) by the Owners to the Council such sum to represent the entire commuted payment by the Owners to the Council in respect of all open space provided under Clause 5.1 above
- 5.3 The sum paid by the Owners to the Council under Clause 5.2 above shall be used together with interest accruing thereon for the maintenance of the "village green" and the paths thereover and for no other purpose
- 5.4 From the date upon which the said village green is accepted by the Council the Council shall keep the Owners fully and effectively

indemnified in respect of all costs proceedings claims and demands arising from death personal injury or other loss or damage occurring to any person howsoever caused in the course of or arising out of use of the village green by the public or the Council or the maintenance thereof

6. HIGHWAYS

The Owners hereby acknowledge that insofar as the Development generates vehicular traffic movements which are properly demonstrated to give rise to the need to improve certain highway junctions (including for the avoidance of doubt Rowan Road/Southleigh Road Southleigh Road/Eastleigh Road and Green Pond Junction) they will enter such arrangements and agreements with the Council and/or any other relevant authority and as are necessary to secure such payments in respect of such improvements as are proper and at such times as are necessary in relation to the extent of development having regard to Department of the Environment Circular 16/91

7. CONDITIONS

- 7.1 This Agreement shall not come into force and shall not bind the parties nor the Restricted Land nor the Development Land until the Planning Permission for the Development has been granted and development shall have commenced pursuant thereto save for this Clause which shall have immediate effect and Clauses 2 and 10 hereof and Clause 8 hereof (provided that the Owners shall not be required to carry out the landscaping scheme referred to therein until such time as they propose to commence the Development) which shall come into force on the grant of the Planning Permission
- 7.2 The Owners shall not be personally liable in respect of any breach hereof in respect of the Development Land or the Restricted Land after they shall have parted with all interest in the part of the Restricted Land or the Development Land in respect of which such breach arises

- 8.1 Prior to commencing the Development the Owners shall submit to the Council for approval a scheme for landscaping the eastern boundary of the Retained Site (such approval not to be unreasonably withheld or delayed)
- 8.2 The Owners agree that they will not commence the Development until they have carried out the initial planting required by the approved landscaping scheme Provided however that the carrying out of the Development shall not be delayed or restricted by any requirement for replacement or replanting of vegetation trees and shrubs
- 8.3 In the event that the Council has not approved the scheme for landscaping the eastern boundary within six weeks from the date of its submission to the Council or notified the Owners of any changes required thereto the same shall be deemed to be approved by the Council for the purposes of this Agreement Provided that if the Council shall within such six week period require amendment of the scheme such approval shall not be deemed to have been given and the six weeks period shall not begin to run again until the date upon which the Owners submit such amendments as are required by the Council or a revised or new scheme shall be submitted

9. VAT

It is hereby agreed and declared as between the parties that the Council shall not be under any liability whatsoever in respect of any obligation to pay VAT under the terms of this Agreement howsoever arising and the Owners hereby covenant with the Council to indemnify and keep the Council effectively indemnified against any liability to pay VAT under the terms of this Agreement whenever and however such liability may arise save that this Clause shall not apply to any VAT arising on the conveyance of the Council site in accordance with Clause 10 below

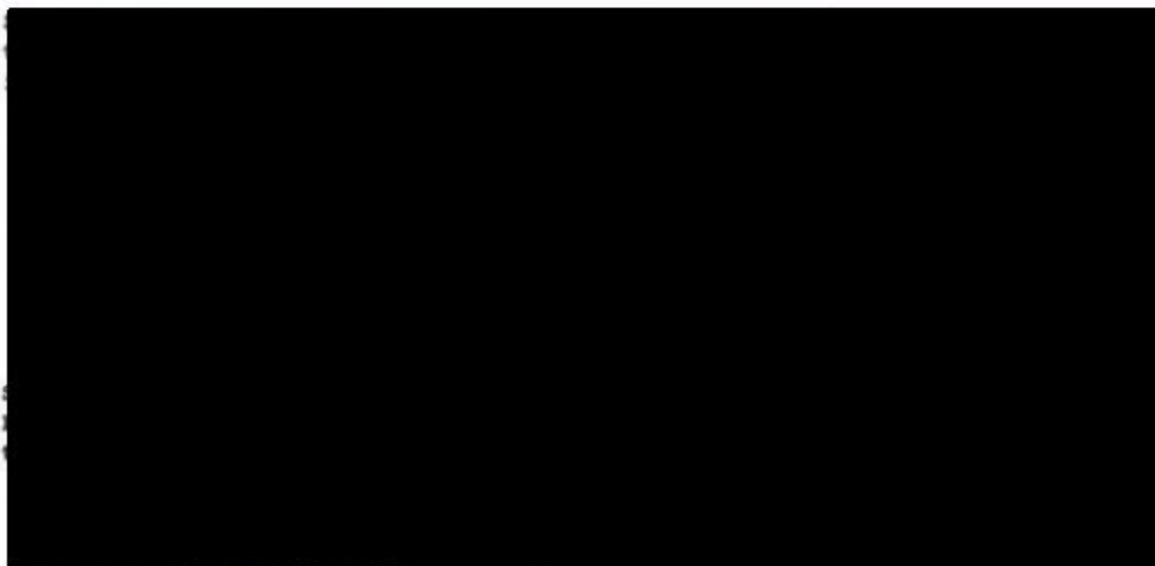
10. COUNCIL SITE

- 10.1 The Trustees hereby covenant with the Council that they will within six months from the grant of the Planning Permission complete the conveyance of the Council Site to the Council (or such other person or body as shall be properly engaged in the provision of low cost housing as the Council may direct) such conveyance to be in the form annexed hereto with such variations as the parties may agree and the Council hereby covenants with the Trustees that they will upon completion of such conveyance pay to the Trustees the consideration agreed or fixed pursuant to Clause 10.2 below ("the Consideration")
- 10.2 The Consideration shall be one quarter of the price at which the Council Site could reasonably be expected to be sold in the open market as a single lot on the date of the issue of the Planning Permission by a willing Vendor to a willing Purchaser subject to and with the benefit of the Planning Permission but without taking account of any highway infrastructure or servicing costs or any on-site or off-site works which are to be undertaken by the Owners pursuant to this Agreement or the Planning Permission (or pursuant to any agreement with any local authority or service undertaker including for the avoidance of doubt the water and sewerage companies serving the Council Site or pursuant to any further planning permission or approval of details in respect of the Council Site) and without taking into account any restriction on the type of housing to be provided or the circumstances of the prospective occupiers thereof
- 10.3 The Owners and the Council shall agree the Consideration but if it has not been agreed within five working days after the grant of the Planning Permission then the Consideration shall be determined by the District Valuer and in default of the parties accepting the District Valuer's determination within five working days of notification thereof the question shall be referred to an expert agreed between the parties or if they cannot agree his identity he shall be appointed on the application of either party by the President for the time being (or other senior officer with power to make such appointment) of the Royal

Institution of Chartered Surveyors

10.4 In the event that determination of the Consideration falls to be dealt with by such expert then the time limits referred to in this Clause 10 (except for the periods of five working days referred to in Clause 10.3 above) shall not commence to run until he has released his determination to the parties

IN WITNESS whereof the parties hereto have executed this instrument as a Deed



(THE COMMON SEAL of THE COUNCIL OF
(THE BOROUGH OF HAVANT was hereunto
ce of:-



bc/106552/005

Borough Secretary -