

Dated

18TH DECEMBER

2015

**HAYLING ISLAND BUILDERS LIMITED**

to

**THE COUNCIL OF THE BOROUGH OF HAVANT**

**Unilateral Undertaking**

under Section 106 of the Town  
and Country Planning Act 1990

imposing planning obligations

on land at

Station Road/East of Furniss Way

West Town

Hayling Island

Hampshire

THIS UNDERTAKING is made the 18TH day of DECEMBER Two Thousand and Fifteen

BY

- (1) HAYLING ISLAND BUILDERS LIMITED (company registration number 00677957) of 2 Castle Business Village Station Road Hampton Middlesex TW12 2BX ("Owner")

TO

THE COUNCIL OF THE BOROUGH OF HAVANT of Civic Offices Havant Hampshire PO9 2AX ("Council")

### Background

- 1 The Owner is the registered proprietor of freehold land shown edged and hatched red on the plan annexed hereto ("Plan") ("Land")
- 2 The Council is the local planning authority for the area within which the Land is situated
- 3 BDW Trading Limited (acting in conjunction with the Owner) has applied to the Council for planning permission to develop the Land by the erection of 76 dwellings (including 30% affordable housing); and 1000 square metres of light industrial accommodation (use Class B1) with associated car parking, access, landscaping and surface water drainage (as amendment to approved application APP/13/00639) which has been given reference APP/15/00919 ("Application")
- 4 The Owner wishes to enter into this Undertaking in respect of the Land.

### NOW THIS DEED WITNESSES AS FOLLOWS:

#### 1. Definitions

In this Agreement:

- |                             |                                                                                                               |
|-----------------------------|---------------------------------------------------------------------------------------------------------------|
| <b>"Act"</b>                | the Town & Country Planning Act 1990 (as amended)                                                             |
| <b>"Affordable Housing"</b> | means housing that should :<br>(a) meet the needs of Eligible Persons<br>including availability at a cost low |



enough for them to afford determined with regard to the local incomes local house prices and local rents

- (b) include provisions for the housing to remain at an affordable cost for future Eligible Persons or if these restrictions are lifted for any Subsidy to be recycled for alternative Affordable Housing provision

**"Affordable Housing Land"**

means that part of the Land on which the Affordable Housing is to be situated

**"Affordable Housing Provider"**

means either one or a combination of:

- (a) a body registered as a provider of social housing with the Social Housing Regulator under Part 2 of the Housing and Regeneration Act 2008 or such other class of body approved by the Council as may be constituted under any legislation replacing that provision; or
- (b) such other body eligible to receive grant monies from the Council or the Homes and Communities Agency and able lawfully to own or manage housing for Qualifying Persons in Housing Need and approved by the Council; or
- (c) any company or organisation specialising in the delivery of Affordable Housing and approved by the Council.

**"Affordable Housing Units"**

means a minimum of 30% of the total number of the Residential Units comprising approximately 70% Affordable Rented Housing/ Social Rented Housing and 30%

Shared Ownership Homes or such other mix or tenure as shall be agreed by the Council and subject to market conditions, Subsidy and by prior written agreement with the Council which are to be made available by the Owner for Affordable Housing on the Affordable Housing Land as herein provided or any one or more of them

**"Affordable Rented Housing"**

means Rented Housing provided by Registered Providers of Social Rented Housing that has the same characteristics as Social Rented Housing except that it is outside of the national rent regime but is subject to other rent controls that require it to be offered to eligible households PROVIDED ALWAYS that rents shall not exceed 80% of the local gross open market rent at the time of each letting and do not exceed the Local Housing Allowance rates unless otherwise agreed in writing with the Council and that rents shall only be increased annually in accordance with arrangements made for such rent increases established by the Homes and Communities Agency

**"Chargee"**

means any mortgagee or chargee of the Affordable Housing Provider or the successors in title to such mortgagee or charge or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925

**"Commencement of Development"**

means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (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, ecological and tree/woodland management and "Commence Development" 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 which are intended to benefit the occupiers of the Residential Units as a whole or to enhance their occupation and shall without prejudice to the generality thereof include the unadopted roads, communal parking areas, footways, footpaths, landscaped areas, amenity spaces, drainage ditches and attenuation area

**"Company"**

means a company to be charged with the management of the Common Parts in accordance with paragraph 3 of the Schedule

|                                       |                                                                                                                                                                                                                                                                                                   |
|---------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Development"</b>                  | the development of the Land proposed in the Application or permitted by planning permission granted pursuant to the Application or carried out substantially in accordance with such planning permission                                                                                          |
| <b>"Dwelling"</b>                     | means any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission                                                                                                                                                                                   |
| <b>"Eligible Persons"</b>             | means persons with a Local Connection who are unable to afford housing accommodation on the open market (whether by renting or purchasing) within the administrative area of the Council and the expression "Eligible Person" shall be construed accordingly                                      |
| <b>"Employment and Skills Plan"</b>   | means a scheme for the improvement and benefit of the local labour market and economy, by raising skills and enabling local people to compete for the jobs generated, in a form as appended at Appendix 1 to the reasonable satisfaction of the Council                                           |
| <b>"Help to Buy Agency"</b>           | 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 |
| <b>"Homes and Communities Agency"</b> | 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

**"Local Connection"**

means a connection to the administrative area of the Council by virtue of:

- (a) existing or previous residence;
- (b) employment;
- (c) close family links through parents or siblings or offspring; or
- (d) any other connection as agreed with the Affordable Housing Provider and Council.

**"Low Cost Home Ownership"**

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

**"Monitoring Fee"**

means the sum of £5000 being a fee (and to be 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 is inter alia to monitor co-ordinate and enforce planning deeds

**"Occupation" and Occupied"**

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

|                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Open Market Housing Units"</b> | means the Residential Units available for sale on the open market but excluding the Affordable Housing Units                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>"Open Space Land"</b>           | means the land shown for identification purposes shaded blue on the Planning Layout drawing annexed hereto                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>"Planning Permission"</b>       | the planning permission which may be granted by the Council pursuant to the Application                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>"Practical Completion"</b>      | means the issue of a certificate of practical completion of the Residential Development by the Owner's architect or in the event that Residential Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect                                                                                                                                                                                                                                                                                                                            |
| <b>"Protected Tenant"</b>          | means any tenant who: <ul style="list-style-type: none"> <li>(a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;</li> <li>(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;</li> <li>(c) has been granted a shared ownership lease by an Affordable Housing Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by</li> </ul> |



| Station Road - Hayling Island |             |           |         |               | 14.10.15 |
|-------------------------------|-------------|-----------|---------|---------------|----------|
| House Type - Private          | No. of Beds | no.       | Sq. Ft. | Total Sq. Ft. |          |
| Alcester                      | 2           | 1         | 687     | 687           |          |
| Tiverton                      | 2           | 13        | 731     | 9503          |          |
| Barwick                       | 3           | 13        | 831     | 10803         |          |
| Finchley                      | 3           | 2         | 831     | 1662          |          |
| Morpeth                       | 3           | 6         | 956     | 5736          |          |
| Chesham                       | 4           | 14        | 1149    | 16086         |          |
| Thornbury                     | 4           | 1         | 1203    | 1203          |          |
| 408                           | 4           | 3         | 1409    | 4227          |          |
| <b>Total</b>                  |             | <b>53</b> |         | <b>42227</b>  |          |
| House Type - Affordable (30%) |             |           |         |               |          |
| A6345 (Maisonette)            | 1           | 2         | 489     | 978           |          |
| A6346 (Maisonette)            | 1           | 2         | 489     | 978           |          |
| T21                           | 2           | 8         | 842     | 6736          |          |
| T22                           | 3           | 8         | 926     | 7408          |          |
| T24                           | 4           | 1         | 1104    | 1104          |          |
| T28                           | 3           | 2         | 1052    | 2104          |          |
| <b>Total</b>                  |             | <b>23</b> |         | <b>2304</b>   |          |
| <b>Grand Total</b>            |             | <b>76</b> |         | <b>69215</b>  |          |



KEY  
 Ecological receptor comprising of protected habitat

| No. | Description                        | Date     | Drawn | Checked |
|-----|------------------------------------|----------|-------|---------|
| 1   | Approved to start planning process | 28.11.15 | SW    |         |
| 2   | Approved to start planning process | 02.12.15 | SW    |         |
| 3   | Approved to start planning process | 10.12.15 | SW    |         |
| 4   | Approved to start planning process | 10.12.15 | SW    |         |
| 5   | Approved to start planning process | 10.12.15 | SW    |         |
| 6   | Approved to start planning process | 10.12.15 | SW    |         |
| 7   | Approved to start planning process | 10.12.15 | SW    |         |
| 8   | Approved to start planning process | 10.12.15 | SW    |         |
| 9   | Approved to start planning process | 10.12.15 | SW    |         |
| 10  | Approved to start planning process | 10.12.15 | SW    |         |
| 11  | Approved to start planning process | 10.12.15 | SW    |         |
| 12  | Approved to start planning process | 10.12.15 | SW    |         |
| 13  | Approved to start planning process | 10.12.15 | SW    |         |
| 14  | Approved to start planning process | 10.12.15 | SW    |         |
| 15  | Approved to start planning process | 10.12.15 | SW    |         |
| 16  | Approved to start planning process | 10.12.15 | SW    |         |
| 17  | Approved to start planning process | 10.12.15 | SW    |         |
| 18  | Approved to start planning process | 10.12.15 | SW    |         |
| 19  | Approved to start planning process | 10.12.15 | SW    |         |
| 20  | Approved to start planning process | 10.12.15 | SW    |         |



Hayling Island  
 Land off Station Road  
 Hayling Island

Planning Layout

Scale:  
 1:500 @ A1  
 Date:  
 10.06.15  
 Drawn By:  
 SW



the tenant and a share is owned by the Affordable Housing Provider ) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Affordable Housing Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit

**"Registered Provider"**

means a Registered Provider as registered with the Homes and Communities Agency or any successor body

**"Rented Housing"**

means the Affordable Housing to be constructed as Affordable Rented Housing / Social Rented Housing

**"Residential Travel Plan"**

means a plan aimed at reducing the reliance on the use of the private car by occupants of the Residential Development and that encourages positively the use by the occupants of alternative means of transport which have less of an adverse impact on the environment than the use of private cars

**"Residential Travel Plan  
Co-ordinator"**

means the person appointed by the Owner as provided in the Residential Travel Plan who shall be responsible for securing the implementation of the Residential Travel Plan and the day-to-day management of the steps identified in the Residential Travel Plan

**"Residential Travel Plan  
Monitoring Fee"**

means the sum of One Thousand Two Hundred and Fifty Pounds payable in instalments over 5 years towards the costs incurred by the Council in monitoring and

evaluating submitted travel plan reports, £250 to be paid firstly prior to Occupation of the Development and then 4 further instalments of £250 once yearly payments to be paid on the 1<sup>st</sup> of April each year

**"Residential development"** means the construction pursuant to the Planning Permission of any Residential Units

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

**"Shared Ownership Homes"** means affordable housing leased to a lessee who purchases a percentage of the equity of the housing unit and pays a rent in relation to the share of the equity retained by the Registered Provider

**"Social Rented Housing"** means Rented Housing owned and managed by Local Authorities or Registered Providers for which guideline target rents are determined through the national rent regime but which may also include Rented Housing owned or managed by other persons and provided under equivalent rental arrangements to the above, as agreed with the Local Authority or with the Homes and Communities Agency as a condition of grant

**"Social Rented Housing Units"** means those Affordable Housing Units (and associated car parking spaces the number of which is to be agreed between the Owner and the Council) to be Occupied as Social Rented Housing and the expression Social Rented Housing Unit shall be construed accordingly or otherwise as agreed by the

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Council

**"Solent Mitigation Strategy Contribution"**

means the contribution in respect of the Special Protection Area avoidance and mitigation measures delivered through the Solent Interim Planning Framework

**"Staircasing Receipts"**

means monies receivable by an 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 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 Subsidy in relation to the provision of Affordable Housing Units on the Land

**"Subsidy"**

means any social housing grant or similar provided by the Council or the Homes and Communities Agency or other such body as may succeed it

**"SUDS"**

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

**"TRO Contribution"**

means the sum of Three Thousand Pounds (£3,000) to be paid by the Owner to the Council for the making of road traffic

regulation order(s) imposing parking  
restrictions at Furniss Way and Station Road

**2. Construction**

- 2.1 Words importing the masculine include the feminine and the neuter and vice versa and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner
- 2.2 Words importing the singular include the plural and vice versa
- 2.3 In this Undertaking unless the context otherwise requires the expressions "the Council" and "the Owner" and substituted words therefore shall include their respective successors in title and assigns
- 2.4 where the Owner is more than one person all covenants agreements and declarations on the part of the Owner herein contained shall be deemed to have been made jointly and severally by all such persons constituting the Owner and so that the said covenants agreements and declarations may be enforced by the Council against such persons jointly and severally as the Council shall in its absolute discretion decide or circumstances require
- 2.5 where reference is made in this Deed to clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed

**3. Enabling Provisions**

This Undertaking is made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended)

**4. Commencement**

This Undertaking shall come into effect upon the date written above but the obligations contained herein shall become effective only upon the grant of the Planning Permission and Commencement of the Development

**5. Covenant**

The Owner **HEREBY COVENANTS** with the Council that it shall observe and perform the obligations on its part contained in the Schedule

**6. Enforceability**

- 6.1 The covenants given by the Owner in this Undertaking shall (subject to the remaining provisions of this Clause 6 and of paragraph 2.11 of the Schedule) be enforceable by the Council as Local Planning Authority against the Owner and any person deriving title under him in respect of his interest or any lesser interest in the Land as if that person had also been a party to this Undertaking in respect of the interest for the time being held by him but no person or company shall be bound once he has parted with all interest in the land in accordance with Section 106(4) of the Act
- 6.2 The covenants given by the Owner in this Undertaking shall not be enforceable against:
  - 6.2.1 Owner-occupiers or tenants of a Residential Unit
  - 6.2.2 Owner-occupiers or tenants of industrial premises constructed pursuant to the Planning Permission
  - 6.2.3 Statutory undertakers taking an interest in any part of the Land to be used only as an electricity substation, gas governor or pumping station
- 6.3 For the avoidance of doubt:
  - 6.3.1 In the event that the Development shall be carried out pursuant to the Planning Permission the provisions of this Undertaking shall apply to the exclusion of the provisions of the Planning Obligation by Deed of Agreement under the said Section 106 dated 20 December 2013 and made between the Council of the one part and the Owner of the other part.
  - 6.3.2 If the part of the Development comprising the erection of 76 dwellings and the remainder of the Development comprising the erection of 1000 square metres of light industrial accommodation shall be carried out by separate owners of that part and such remainder respectively the provisions of clause 6.1 shall be construed as though they applied separately to that part and to such remainder to the intent that:
    - 6.3.2.1 No person or company shall be bound by the covenants given by the Owner in this Undertaking so far as they affect the 76 dwellings once he has parted with all interest in them; and
    - 6.3.2.2 No person or company shall be bound by the covenants given by the Owner in this Undertaking so far as they relate to the 1000 square metres of light industrial accommodation once he has parted with all interest in them

## **7. General**

The Owner agrees that:

- 7.1 the obligations contained in this Undertaking are planning obligations for the purpose of Section 106 of the Act
- 7.2 this Undertaking constitutes a Deed
- 7.3 this Undertaking is enforceable by the Council as local planning authority
- 7.4 this Undertaking shall be registrable as a local land charge by the Council
- 7.5 this Undertaking does not confer nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999

### **Schedule**

#### **Owner's Covenants**

The Owner hereby covenants with the Council as set out in this Schedule as follows:

#### **1. Solent Mitigation Strategy**

- 1.1 Prior to Occupation of any part of the Land the Owner shall pay to the Council the Solent Mitigation Strategy Contribution being the sum of £13,905.20 subject to indexation in accordance with the figures supplied to the Council by the Solent Recreation Mitigation Partnership towards the Solent Interim Mitigation Strategy such sum to be collected by the Council on behalf of the Solent Recreation Mitigation Partnership

#### **2. Affordable Housing**

- 2.1 To provide 30% (23 units) of the total number of Residential Units within the Residential Development as Affordable Housing Units. These Affordable Housing Units should subject to the provisions of this paragraph 2 of this Schedule reflect the mix of the site generally with the precise mix and tenure of the Affordable Housing Units and the plan thereof to be approved in writing by the Council prior to Commencement of the Development and prior to the start of each phase of the Development
- 2.2 To use reasonable endeavours to work with an Affordable Housing Provider to pursue Subsidy for the development of the Affordable Housing Units prior to Commencement of the Development

- 2.3 To ensure that the Affordable Housing Units within the Development will be integrated and compatible with the design of the Open Market Housing Units.
- 2.4 To ensure that no more than 50% of the Open Market Housing Units shall be constructed and available for Occupation prior to the provision of 50% of the Affordable Housing Units to an Affordable Housing Provider or Eligible Person (on either a freehold basis or long leasehold of at least 125 years) and thereafter the remaining Affordable Housing Units shall be constructed contemporaneously with any adjoining Open Market Housing Units to provide a mixed development and provided to an Affordable Housing Provider or Eligible Person (on either a freehold basis or long leasehold of at least 125 years) prior to construction and availability for occupation of the remainder of the Open Market Housing Units
- 2.5 If the Owner has been unable to comply with the provisions of paragraph 2.4 of this Schedule then no Open Market Housing Units within the Development will be Occupied until the Affordable Housing Land has been transferred (fully provided with services) to an Affordable Housing Provider and written evidence of compliance in respect of the above has been supplied to the council to its satisfaction
- 2.6 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
- 2.7 Where Subsidy has not been secured or confirmed within 6 months of the Commencement of Development 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 Subsidy and 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 paragraph 2 of this Schedule the Owner can reduce the number of Rented Housing units in favour of in the first instance an increase in the number of Low Cost Home Ownership units to figures agreed with the Council subject to the Owner providing evidence as to:
- 2.7.1 the level of any Subsidy available;

- 2.7.2 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 tenure split of the Affordable Housing to be provided with the level of Subsidy available and that this exercise seeks to ensure that the land value paid by the Owner or market value of land previously owned by the Owner and the profit margins are not compromised and that if a reduction in the overall provision of Affordable Housing is required to achieve this then the Council will act reasonably in considering the same;
- 2.7.3 the results of any financial viability assessment carried out by the Owner
- 2.8 Where the Owner intends to provide Rented Units in association with an Affordable Housing Provider they shall only be used if the Affordable Housing Provider can demonstrate to the Council:
  - 2.8.1 a good judgement by the Homes and Communities Agency or successor body; and
  - 2.8.2 acceptable sustainable management arrangements and community development policies
- 2.9 The Low Cost Home Ownership Units (including Shared Ownership) shall be let to persons nominated by the Help to Buy Agency
- 2.10 The transfer to the Affordable Housing Provider of the Affordable Housing Land shall contain the following (or such other alternative provisions as the Owner and the Council may agree in writing):
  - 2.10.1 a covenant not to use the Affordable Housing Units otherwise than for the provision of Affordable Housing; and
  - 2.10.2 a covenant not to dispose of any of the Affordable Housing Units other than for the purpose of providing Affordable Housing to Eligible Persons; and
  - 2.10.3 a covenant requiring the 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 Rented Housing units when initially let and all subsequent true voids; and
  - 2.10.4 a covenant to manage all Staircasing Receipts of Affordable Housing Units which are funded through the use of Subsidy in accordance with Homes and Communities Agency regulations, and

2.10.5 a covenant to provide the Council with details of Staircasing Receipts from non-Subsidy 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 Affordable Housing Provider and thereafter for a period of 1 year within the administrative area of Hampshire and thereafter to any Affordable Housing provision within the United Kingdom

2.11 The covenants set out in paragraph 2.10 of this Schedule are not intended to be binding or enforceable against any purchaser who purchases from the Affordable Housing Provider the entire freehold to an Affordable Housing Unit or a long leasehold interest pursuant to an equity share arrangement nor is it intended that such covenants be binding or enforceable against such a purchaser's successors in title

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

2.13 The Affordable Housing Units shall only be occupied by Eligible Persons

2.14 The provisions in this Agreement [relating to the Affordable Housing Land shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver or administrator) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security (each being hereafter referred to as a "Receiver")) of the whole or any part of the Affordable Housing Land or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- (1) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Land; and
- (2) shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Land to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- (3) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Land free from the provisions in this Agreement relating to Affordable Housing which provisions shall determine absolutely in relation to the Affordable Housing Land or the part disposed thereof (as the case may be)

2.15 The Affordable Housing Units provided on the Affordable Housing Land will be monitored in order to ensure compliance with the obligations in this paragraph 2 and the Owner will impose a covenant upon the Affordable Housing Provider which requires them at such dates to be agreed by the parties to make written returns to the Council detailing:

- 2.15.1 the affordable housing provision including
- 2.15.2 the type of dwelling,
- 2.15.3 the tenure or the dwelling
- 2.15.4 the net internal floor area of the dwelling
- 2.15.5 details of the occupiers
- 2.15.6 the Subsidy provided for the dwelling
- 2.15.7 technical information in relation to the Code for Sustainable Homes
- 2.15.8 the location of the Affordable Housing Units
- 2.15.9 any other information on the Affordable Housing Units as reasonably required by the Council.

### **3 Management Company**

3.1 prior to the expiration of six months from the Commencement of Development to supply to the Head of Legal Services for written approval by the Council:-

- 3.1.1 a draft memorandum and articles of association for the Company for the purpose of managing cleaning and maintaining the Common Parts the SUDS and the Open Space Land

- 3.1.2 proposals for arrangements to secure the future maintenance of the Common Parts the SUDS and the Open Space Land by the Company (which may include a Transfer of the Common Parts, the SUDS and Open Space Land to the Company or the granting of a long lease of the Common Parts, the SUDS and Open Space Land by the Owner in favour of the Company) so as to ensure that the Common Parts the SUDS and the Open Space Land are properly maintained such proposals to include details of how the costs of maintaining the Common Parts the SUDS and Open Space Land shall be met (by residents of the Residential Units or otherwise)
- 3.2 Any submission of documents or details to the Council pursuant to this Schedule shall include a reference to the Planning Permission the date and parties to this agreement, and the paragraph under which approval is sought, together with a statement of the date by which a decision must be given by the Council
- 3.3 The Council is requested to give notice to the Owner of its decision to either approve (with or without modifications) or to refuse to approve the details submitted by the Owner under Paragraph 3.1.1 and 3.1.2 of this Schedule above within one month of receipt of such details and in the event that the Council fails to give such notice the details as submitted shall be deemed to have been approved (provided the Owner has supplied the details fully in accordance with the provisions of this paragraph 3)
- 3.4 Forthwith after the approval by the Council of the proposed memorandum and articles of association (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 reasonable modifications required by the Council) and to notify the Council accordingly within seven days of the completion of the registration of the Company
- 3.5 Within one month of the registration of the Company at Companies House the Owner shall carry out the proposals for arrangements to secure the future maintenance of the Common Parts, the SUDS and Open Space Land and to notify the Council upon completion of such arrangements.
- 3.6 The Owner shall repair and maintain the Common Parts the SUDS and the Open Space Land:-

- 3.6.1 until such time as the Company is registered and the maintenance arrangements to be approved by the Council have been completed and the land transferred to the Company and all Residential Units on the Land have been sold or leased; and
  - 3.6.2 in the event of the Company at any time during the Perpetuity Period applicable to this Deed failing to maintain the Common Parts SUDS and Open Space land to the reasonable satisfaction of the Council
- 3.7 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, SUDS and Open Space land (such approval not to be unreasonably withheld or delayed) and in relation to any such alternative arrangements the provisions of paragraphs 3.1, 3.2, 3.2, 3.4, 3.5 and 3.6 of this Schedule shall apply to the extent that the Owner shall remain responsible for the maintenance and upkeep of the Common Parts , SUDS and Open Space and without prejudice to the generality of paragraph 3.6.2 of this Schedule above until such alternative arrangements (as approved by the Council) have been fully implemented
- 3.8 To provide to the Council a performance bond ("Bond") issued by a clearing bank or other institution (hereinafter called "the Surety") substantially in the form annexed at Appendix 2 for 10% of the cost of construction of the SUDS.
- 3.9 The Bond shall endure until the SUDS are transferred to the Company or if earlier the date of completion of construction of the Development and shall be to the effect that if the Owner shall fail to construct the SUDS in accordance with the provisions contained in this paragraph 3 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 and also the Council's reasonable legal costs properly arising from the provision of the SUDS for which sum the Surety shall bind itself and its successors and assigns to the Council.

3.10 To provide such Bond on or before Commencement of Development

#### **4 Employment and Skills**

- 4.1 Prior to Commencement of the Development to submit to the Council for written approval the Employment and Skills Plan for the construction phase of the Development using the CITB template for the outcomes and unless otherwise agreed in writing by the Council and not to commence the Development or permit Commencement of Development until an Employment and Skills Plan has been approved by the Council (a template is appended in order to provide a guide for the Plan's completion) Provided that if in place of the submission approval and implementation of an Employment and Skills Plan a level of financial contribution is agreed with the Council and is paid to the Council prior to the Commencement of Development the provisions of this paragraph 4 shall be deemed to be fully satisfied .
- 4.2 the Employment and Skills Plan shall include arrangements setting out how the Owner and to the extent they are not the same person any developer and their contractors and future occupiers will work directly with local employment training agencies as part of an employment and training consortium including but not limited to:
- 4.2.1 Jobcentre Plus and the Learning & Skills Council; and
  - 4.2.2 Voluntary and private sectors providers; and
  - 4.2.3 Sixth form colleges: colleges of further education: and universities
- 4.3 The Employment and Skills Plan shall specify the provision for training opportunities and other initiatives in respect of the vocational and employability skills required by the Owner/developer, their contractors and future occupiers, for any new jobs and business opportunities created by the Development.
- 4.4 Following approval of the Employment and Skills Plan by the Council the Owner will promote the objectives of the approved Employment and Skills Plan and ensure that so far as is reasonably practicable the objectives are met.

#### **5 Traffic Regulation Order Contribution**

5.1 Following the submission by the Owner of a traffic regulation order application form the Owner shall upon receipt of an invoice issued by the Council pay the TRO Contribution

5.2 The Owner shall at the written request of the Council at any time during the period beginning with the date of Commencement of Development and ending 5 years from Practical Completion of the Residential Development pay to the Council such sum as the Council may reasonably require for the purpose of implementing (which expression shall include all connected administration, supervision and the carrying out of) such traffic management measures as the Council considers appropriate to ensure that any overspill parking from the Residential Development does not interfere with the capacity, operation or safety of the adjoining local highway network providing such sum shall not exceed £3,000.

## **6 Full Residential Travel Plan**

6.1 Prior to commencement of the Residential Development to prepare and submit to the Council a draft of the Residential Travel Plan for approval consistent with Hampshire County Council's guidance "A Guide to Development Related Travel Plans" dated January 2009 (or amendment replacement or variation thereof)

6.2 Not to permit the Occupation of any part of the Residential Development unless and until;

6.2.1.1 The Residential Travel Plan has been approved in writing by the Council; and

6.2.1.2 the Residential Travel Plan Co-ordinator has been appointed and the details notified to the Council

and in the event that the Council fails to give approval within 28 days of the details of the Residential Travel Plan being submitted under paragraph 6.2.1 then those details shall be deemed to have been approved (provided the Owner has supplied the details fully in accordance with the provisions of this paragraph 6)

- 6.3 To submit to the Council an annual monitoring report produced by the Residential Travel Plan Co-ordinator in relation to the Residential Travel Plan on the anniversary of the first Occupation of the first Residential Unit and subsequent anniversaries and ending with the final submission on the fifth anniversary of the first Occupation of the first Residential unit
- 6.4 Not to amend the Residential Travel Plan without the prior written approval of the Council
- 6.5 Not to use the Residential Development otherwise than in accordance with the approved Residential Travel Plan (including any approved amendments to it)
- 6.6 Not to permit the Occupation of the Residential Development unless and until the first instalment of the Residential Travel Plan Monitoring Fee (£250) has been paid to the Council and thereafter to pay the remaining four annual instalments of £250 on the 1<sup>st</sup> April in each year

## **7 Hedgerow**

- 7.1 Prior to Commencement of Development to submit to the Council for approval a management plan in respect of the long term maintenance of the hedgerow shown on the adapted drawing numbered 1435/P03 annexed hereto ("the Hedgerow").
- 7.2 to ensure the Hedgerow is maintained and that any gaps in the Hedgerow are filled in accordance with the management plan submitted under paragraph 7.1 above and as approved by the Council.
- 7.3 In the event that the Council fail to approve the management plan submitted under paragraph 7.1 above within 28 days of submission then the plan shall be deemed to have been approved (provided the Owner has prepared the plan fully in accordance with the provisions of this paragraph 7)

## **8 MONITORING FEE**

To pay to the Council the Monitoring Fee on or before Commencement of Development

IN WITNESS of which this Undertaking has been executed as a Deed the day and year first before written

EXECUTED AS A DEED on by  
HAYLING ISLAND BUILDERS  
LIMITED



acting by

Director

in the presence of;



14 THE BLAIRBURNES  
TOTTEN  
HANTS  
SOHO 80P.

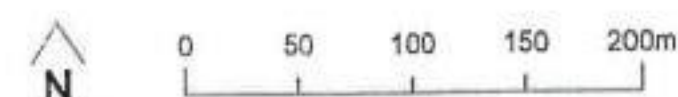


SIGN

HERE



Uncontrolled access to F4 from Billy Trail prevented to reduce disturbance to birds  
Additional damage to fence noted 23/06/2015



The Pavilion, 1st Floor  
Botleigh Grange Office Campus  
Hedge End  
Southampton Tel: 02382 023800  
Hants email: ecology@wyg.com  
SO30 2AF  
WYG Planning & Environment

Station Road, Hayling Island

Updated Brent Goose Mitigation Strategy

Adapted From Tyler Grange Drawing 1435/PO3

|              |                 |                   |                    |
|--------------|-----------------|-------------------|--------------------|
| Scale at A3: | Drawn by: Date: | Checked by: Date: | Approved by: Date: |
|              | FS 01/07/15     | DW 01/07/15       | CM 01/07/15        |
| Project No:  | Office Type:    | Drawing No.       | Revision           |
| A092944      | 45 94           | Figure 07         |                    |

Base map provided by...

## APPENDIX 1

## EMPLOYMENT AND SKILLS PLAN

## Employment and Skills Plan Template

|                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Site</b>                                                                                                                                                                                                                                                      |
| <b>Landowner/developer</b>                                                                                                                                                                                                                                       |
| <b>Planning application number</b>                                                                                                                                                                                                                               |
| This document forms the developer's response to sections XX of the Section 106 Agreement between XX and XX dated XX.                                                                                                                                             |
| <b>Development</b><br><br>Please give a brief description of the proposed development including identifying what is being built, the estimated construction cost, the start date, the period of construction and what the end use(s) of the development will be. |
| <b>Opportunities</b><br><br>Please state the appropriate number and type of jobs that will be created during the construction stage of the development. Please provide a copy of the labour forecasting tool if available.                                       |
| <b>Opportunities</b><br><br>Please state the approximate number and type of jobs that will be created during the occupation stage of the development. Please provide a copy of the labour forecasting tool if available.                                         |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p><b>Contact details</b></p> <p>Please provide full contact details for the developer's project team.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p><b>Delivery</b></p> <p>Please complete the employments and skills matrix at the end of this document with details of the following employment and training measures that will be provided for local people during the construction phase of the development.</p> <p>Please provide a method statement to support the employment and skills plan.</p> <ul style="list-style-type: none"> <li>• Recruitment through Job Centre Plus and other local employment vehicles</li> <li>• Work trials and interview guarantees</li> <li>• Pre-employment training</li> <li>• Apprenticeships</li> <li>• Vocational training (NVQ)</li> <li>• Work experience (14-16 years, 16-19 years and 19+ years)</li> <li>• School, college and university site visits</li> <li>• Construction Skills Certification Scheme (CSCS) cards</li> <li>• Supervisor training</li> <li>• Leadership and management training</li> <li>• Support with transport, childcare and work equipment</li> <li>• Any further details of in-house training schemes</li> </ul> |

Please complete the employment and skills matrix at the end of this document with details of the following employment and training measures that will be provided for local people during the occupation phase of the development.

Please provide a method statement to support the employment and skills plan.

- Recruitment through Job Centre Plus and other local employment vehicles
- Work trials and interview guarantees
- Pre-employment training
- Apprenticeships
- Vocational training (NVQ)
- Work experience (14-16 years, 16-19 years and 19+ years)
- School, college and university site visits
- Construction Skills Certification Scheme (CSCS) cards
- Supervisor training
- Leadership and management training
- Support with transport, childcare and work equipment
- Any further details of in-house training schemes

#### Monitoring

Please provide details on how the Employment and Skills Plan will be monitored.

#### Employment and Skills Matrix

| Category                        | NSAFC-<br>CBA<br>benchmark | Activity | Number of<br>people | Supervision | Dates | Notes |
|---------------------------------|----------------------------|----------|---------------------|-------------|-------|-------|
| Work placement<br>(14-16 years) |                            |          |                     |             |       |       |
| Work placement<br>(16-19 years) |                            |          |                     |             |       |       |
| Work placement<br>(19+ years)   |                            |          |                     |             |       |       |

|                                                                   |     |  |  |  |  |  |
|-------------------------------------------------------------------|-----|--|--|--|--|--|
| Curriculum support activities – individual engagement             |     |  |  |  |  |  |
| Graduates persons                                                 |     |  |  |  |  |  |
| Apprentice starts + persons                                       |     |  |  |  |  |  |
| Existing apprentices persons                                      |     |  |  |  |  |  |
| Apprentice completions persons                                    |     |  |  |  |  |  |
| Jobs advertised through local employment vehicles – number        |     |  |  |  |  |  |
| NVQ starts for sub-contractors                                    |     |  |  |  |  |  |
| NVQ completions for sub-contractors                               |     |  |  |  |  |  |
| Training plans for sub-contractors – number                       |     |  |  |  |  |  |
| Supervisor training for sub-contractors – persons                 |     |  |  |  |  |  |
| Leadership and management training for sub-contractors – persons  |     |  |  |  |  |  |
| Advanced health and safety training for sub-contractors – persons |     |  |  |  |  |  |
| Construction Skills Certification Scheme (CSCS) cards             | n/a |  |  |  |  |  |
| Support with transport, childcare and work equipment              | n/a |  |  |  |  |  |

|                                                     |     |  |  |  |  |  |
|-----------------------------------------------------|-----|--|--|--|--|--|
| Recruitment through Job Centre Plus                 | n/a |  |  |  |  |  |
| Recruitment through other local employment vehicles | n/a |  |  |  |  |  |
| Work trials and interview guarantees                | n/a |  |  |  |  |  |
| Pre-employment training                             | n/a |  |  |  |  |  |
| In-house training schemes                           | n/a |  |  |  |  |  |

## APPENDIX 2

### Form of Bond

**The Guarantee Bond** is made as a deed between the following parties whose names and addresses are set out in the Schedule to this Bond (the 'Schedule'):-

- (1) The 'Contractor' as principal
- (2) The 'Guarantor' as guarantor, and
- (3) The 'Employer'

### Whereas

- (1) By a contract (the 'Contract') entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works (the 'Works') upon and subject to the terms and conditions therein set out.
- (2) The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in clause 2.

**Now this deed witnesses** as follows:-

- 1 The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor the Guarantor shall subject to the provisions of this Guarantee Bond satisfy and discharge any damages sustained by the Employer ("the Damages") which relate to the obligation to carry out the works.
- 2 The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the sum set out in the Schedule (the 'Bond Amount') but subject to such limitation and to clause 4 the liability of the Guarantor to pay the Bond Amount shall be co-extensive with the liability of the Contractor to pay the Damages under the Contract.
- 3 The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Guarantee Bond.
- 4 Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach and stating that the amount being demanded has been established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and takes into account all sums due or to become due to the Contractor has been made upon and received by the Guarantor before Expiry.
- 5 The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.
- 6 The Guarantee Bond and the benefit thereof shall not be transferred or assigned without the prior written consent of the Guarantor and the Contractor.

- 7 The parties to this Guarantee Bond do not intend that any of its terms will be enforceable, by virtue of The Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it.
- 8 This Guarantee Bond shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.

### The Schedule

|                  |                                                                                                                                                                                                                                                                                                                                                                                        |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The Contractor:  | <b>Developer's details</b>                                                                                                                                                                                                                                                                                                                                                             |
| The Guarantor:   | <b>Bank's details</b>                                                                                                                                                                                                                                                                                                                                                                  |
| The Employer:    | <b>THE COUNCIL OF THE BOROUGH OF HAVANT</b> of Public Service<br>Plaza Civic Centre Road Havant Hampshire PO9 2AX                                                                                                                                                                                                                                                                      |
| The Contract:    | details of the S106 Agreement                                                                                                                                                                                                                                                                                                                                                          |
| The Works        | the construction of a Sustainable Urban Drainage in accordance with<br>paragraphs xxx of Schedule xxxxx to the Contract                                                                                                                                                                                                                                                                |
| The Bond Amount: | The sum of (£xxxxxxx) xxxxxxxx pounds sterling only                                                                                                                                                                                                                                                                                                                                    |
| The Expiry Date: | This Bond will expire for receipt of demands upon the Issue of a certificate<br>of Practical Completion by the Council upon presentation to the Guarantor,<br>by the Contractor of a certified true and correct copy of the Practical<br>Completion Certificate purporting to have been signed under the Contract<br>which shall be conclusive for the purposes of this Guarantee Bond |

**In witness** whereof the Contractor and the Guarantor have executed and delivered this Guarantee Bond as a Deed this \_\_\_\_\_ day of \_\_\_\_\_ 2015

EXECUTED as a DEED by DEVELOPER)  
in the presence of:- )

Director

Director/Secretary

EXECUTED as a DEED by affixing the )  
COMMON SEAL of xxxxxxxxxxxx )  
BANK )  
in the presence of:- )

Director

Director/Secretary

**MOORE BLATCH**  
solicitors

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