

DATED

7th June

2023

- (1) THE COUNCIL OF THE BOROUGH OF HAVANT;
- (2) CRAIG SMITH and CAROLINE NAOMI GERAGHTY

AGREEMENT

Under Section 106 Town and Country Planning Act 1990
relating to land at 186 Sea Front, Hayling Island, PO11 9HT

THIS AGREEMENT is made on

7th June

2023

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza, Civic Centre Road, Havant PO9 2AX (**Council**);
2. **CRAIG SMITH and CAROLINE NAOMI GERAGHTY** of The Woodlands, Wood Lane, Wickersley, Rotherham, S66 1JT (**Owners**); and

BACKGROUND

- (A) For the purposes of the Act, the Council is the local planning authority for the area within which the Land is situated.
- (B) The Owners are the registered freehold owners of the whole of the Land, which is registered with HM Land Registry under title number SH11225 (the 'Owners Land').
- (C) Santander UK PLC (Co.Regno.2294747) of 101 Midsummer Boulevard, Milton Keynes MK9 1AA (the "**Chargee**") has a registered charge dated 12 November 2007 under title number SH11225 in respect of the Owners Land.
- (D) The Owners have submitted the Application to the Council for permission to develop the Land in accordance with the Planning Permission.
- (E) The Owners enter into this Agreement in anticipation of the grant of Planning Permission being made subject to the Owners having entered into this Agreement which makes provision for regulating the Development and securing the matters referred to in this Agreement.
- (F) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owners and their successors in title.

The parties agree as follows:

1 DEFINITIONS

From the date of this Agreement unless the context otherwise requires, the following definitions apply to this Agreement:

"Act"	means the Town and Country Planning Act 1990.
"Agreement"	means this deed of Agreement.
"Application"	means the application submitted by the Developer to the Council for planning permission to carry out the

Development and given the Council's reference number APP/22/00161.

"Bond"	means a bond issued by a Surety in the form annexed at Appendix B to this Agreement for the Bond Amount.
"Bond Amount"	means 10% of the open book construction costs for the SuDs as approved in accordance with Schedule 1.
"Cash Deposit"	means a lump sum payment in cash of a sum being 10% of the open book construction costs for the SuDs as approved in accordance with Schedule 1.
"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 is begun other than (for the purposes of this Agreement 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, and "Commence" and similar expressions shall be construed accordingly.
"Common Parts"	means the parts of the Land which are intended to benefit the Occupiers of the Dwellings as a whole or to enhance their Occupation and shall without prejudice to the generality thereof include the Permissive Paths, communal parking areas, any landscaped areas, amenity spaces, street lighting, street furniture, boundary treatments and the SuDs but not including: (a) a Dwelling or the curtilage of a Dwelling; or (b) communal areas forming part of any residential block of flats, such as stairwells, lifts, lighting etc; or (c) any other buildings or structure to be transferred with a Dwelling; or (d) any communal parking areas, street lighting, street furniture and boundary treatments or other areas that are adopted by agreement made pursuant to the Highways Act 1980; or (e) any SuDs adopted by a statutory undertaker.
"CPI"	means the consumer prices index published by the Office of National Statistics.
"Development"	means the demolition of existing house and replacement with 7 unit apartment development [Use Class C3].
"Disposal"	means in relation to each Dwelling: (a) the first Occupation by anyone permitted or suffered to Occupy the Dwelling whether by:

I. a person who has acquired or has contracted to acquire any of the estates further defined in this definition at (b) (c) and (d) below in the Dwelling; or

II. who otherwise Occupies the Dwelling;

(b) the creation of a legal term of years in respect of the Dwelling; or

(c) the transfer of a freehold interest in respect of the Dwelling; or

(d) the creation of a freehold interest in the Dwelling by constituting the Dwelling as commonhold land for the purposes of the Commonhold and Leasehold Reform Act 2002; and/or whichever shall first occur;

and "Dispose" and "Disposed of" shall be construed accordingly

"Dwelling"

means a self-contained unit of residential accommodation (including houses, flats and maisonettes) constructed on the Land pursuant to the Planning Permission and "Dwellings" shall be construed accordingly.

"Expert"

means an independent and suitable person holding appropriate professional qualifications and of at least 10 years' post qualification experience in the area of expertise relevant to the dispute and appointed in accordance with the provisions of clause 10 to determine a dispute

"Index"

means CPI in respect of the Nutrient Mitigation Contribution payable to the Council, and RPI in respect of the SRMS Contribution payable to the Council

"Index Linked"

means increased in accordance with the following formula:

Amount payable = the payment specified in this Agreement x (A/B) where:

A = the last figure published for the Index that applied immediately preceding the date that payment was due.

B = the last figure published for the Index that applied immediately prior to the date of this Agreement.

"Interest"

means interest at 5% above the base lending rate of the Barclays Bank PLC from time to time.

"Land"

means the freehold property known as land at 186 Sea Front, Hayling Island (PO11 9HT) shown edged red on the Plan and registered at the Land Registry with title number SH11225

"Management Agreement"	means an agreement made between the Owners and the Management Company setting out the terms of appointment of the Management Company with respect to the Development, including the Management Company's responsibilities in implementing and performing the obligations as contained within the Management Plan
"Management Company"	means a company limited by guarantee or by shares and established or appointed in accordance with the provisions of Schedule 1 to be charged with implementing and performing the obligations as contained within the Management Plan.
"Management Plan"	means a plan for the maintenance and management of all of the Common Parts and SuDs for the lifetime of the Development including details of how the costs of maintenance and management shall be met by owner-occupiers of the Dwellings to be proposed by the Owners and approved by the Council in accordance with the provisions of Schedule 1 and includes any variation to the approved Management Plan as may be agreed in writing between the Owners and the Council from time to time.
"Monitoring Fee"	means the sum of £3192 payable by the Owners to the Council as a contribution towards the costs incurred by the Council in the provision of a suitably qualified and experienced person whose function is to monitor, coordinate and enforce the obligations contained within this Agreement.
"Nutrient Mitigation Contribution"	means the sum of £5,765.12 payable by the Owners to the Council towards the costs to be incurred by the Council in providing measures to offset the nutrient load of the Development as mitigation against the water quality impacts arising from the Development on the Solent European Protected Sites.
"Occupation"	means 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 and "Occupy" shall be similarly construed.
"Permissive Paths"	means any unadopted road, footpath, footway or other means of access constructed on the L3 and to serve the Development and the public.
"Plan"	means the plan titled "location plan" attached at Appendix A to this Agreement.
"Planning Permission"	means the planning permission that may be granted in pursuance of the Application.

"RPI"	means the retail price index published by the Office of National Statistics.
"Solent's European Sites"	means are the following sites where wastewater from Havant Borough would drain (via a wastewater treatment works): • Chichester and Langstone Harbour Special Protection Area • Chichester and Langstone Harbour Ramsar Site • Solent Maritime Special Area of Conservation • Solent and Dorset Coast Potential Special Protection Area
"Solent Recreation Mitigation Partnership"	means the partnership of local planning authorities bordering the Solent formed to develop the Solent Recreation Mitigation Strategy.
"Solent Recreation Mitigation Strategy (SRMS)"	means the framework to mitigate potential impacts on the Solent Special Protection Area from increased visitor pressure arising from housebuilding adopted by the Solent Recreation Mitigation Partnership in December 2017.
"Solent Special Protection Areas"	means the Special Protection Areas (designated under the Wildlife and Countryside Act 1981) in the Solent covered by the Solent Recreation Mitigation Strategy.
"SRMS Contribution"	means the sum of £3,569.90 payable to the Council as a contribution towards measures to mitigate against the impact of the Development to the Solent Special Protection Areas in accordance with the Solent Recreation Mitigation Strategy.
"SuDs"	means a sustainable drainage system for the Development in accordance with the specification agreed in writing by the Council.
"Surety"	means a bank or other financial institution as may be nominated by the Owners and approved by the Council for the Bond.
"Working Day"	means a day other than a Saturday, Sunday or public holiday in England.

2 INTERPRETATION

- 2.1 The clause and paragraph headings in this Agreement are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Agreement, unless stated otherwise.

- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department, or other body and vice versa.
- 2.6 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment, or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Land include any part of it.
- 2.8 References to any party in this Agreement include the successors in title of that party and any references to the Council include any successor local planning authority exercising planning powers under the Act.
- 2.9 References to “including” mean “including, without limitation”.
- 2.10 Any covenant by the Owners and the Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.11 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement shall be unaffected.

3 STATUTORY PROVISIONS

- 3.1 This Agreement is made by deed pursuant to section 106 of the Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.
- 3.2 To the extent that they fall within the terms of section 106 of the Act, the obligations contained in this Agreement are planning obligations for the purposes of those sections of the Act and are enforceable by the Council.
- 3.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.
- 3.4 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.

4 COMMENCEMENT OF AGREEMENT

This Agreement shall have effect from the date hereof.

5 FUTURE MORTGAGES

Notwithstanding any other provision of this Agreement, no obligation in this Agreement shall be binding on or enforceable against any other chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part or parts of the Land or any receiver appointed by such chargee or mortgagee or any person deriving title through such charge, mortgage or receiver unless and until such chargee, mortgagee, receiver or person has entered into possession of the Land or part thereof to which such obligation relates.

6 COVENANTS

- 6.1 The Owners covenant with the Council to comply, observe and perform the obligations as set out in this Agreement and at Schedules 1, 2 and 3.
- 6.2 The Council covenants with the Owners to comply, observe and perform the obligations as set out in this Agreement including those listed at Schedules 1 and 4.

7 REGISTRATION

This Agreement shall be registered by the Council as a Local Land Charge in the Register of Local Land Charges maintained by the Council.

8 NOTICES

- 8.1 The Owners agree to give the Council written notice within 10 Working Days of any change in Ownership of any of its interests in the Land occurring before all the obligations under this Agreement have been discharged and such notice shall give details of the transferee's full name and

- i. registered office where the transferee Owner is a company
- ii. usual address where the transferee is not a company

together with details of the area of the Land or unit of occupation transferred by reference to a plan.

- 8.2 Any notice, demand or any other communication to be given under or in connection with this Agreement shall be in writing and will be effective only if delivered by hand or sent by recorded delivery to the party due to receive the notice, demand or communication.
- 8.3 Any notice, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service and in the case of service upon the Council shall be marked for the attention of the Head of Legal.
- 8.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:
 - i. if delivered by hand, at the time of delivery; or
 - ii. if sent by recorded delivery, at the time delivery was signed for.

- 8.5 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served on the next Working Day.
- 8.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

9 COSTS OF THIS AGREEMENT

Upon completion of this Agreement the Owners shall pay to the Council their reasonable and proper legal costs, in connection with the preparation, negotiation and completion of this Agreement.

10 DETERMINATION OF DISPUTES

- 10.1 Subject to clause 10.6 ., if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other not less than ten Working Days' written notice requiring the dispute to be determined under this clause. The notice shall propose an appropriate Expert and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 10.2 Any dispute over the appointment of the Expert appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society of England and Wales who will have the power, with the right to take such further advice as he may require, to determine the appropriate Expert and to arrange his nomination.
- 10.3 The Expert shall act as an independent expert and:
- i. each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;
 - ii. each party shall have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;
 - iii. the Expert shall be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
 - iv. the Expert shall not take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;
 - v. the Expert shall have regard to all representations and evidence before him when making his decision, which shall be in writing, and shall give reasons for his decision; and

10.4 Responsibility for the costs of referring a dispute to an Expert under this clause, including costs connected with the appointment of the Expert and the Expert's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Expert.

10.5 This clause 10 does not apply to disputes touching or concerning the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

10.6 The provisions of this clause 10 shall not affect the ability of the Council to apply for and be granted declaratory relief injunction specific performance payment of any sum damages or any other means of enforcing this Agreement and consequential and interim orders and relief.

11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not made for the benefit of nor shall any of its provisions be enforceable by any person other than the parties to this Agreement and their successors in title.

12 INDEXATION

12.1 All sums payable pursuant to this Agreement shall be Index Linked.

12.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owners in writing.

13 INTEREST

If any sums due under this Agreement is paid late Interest will be payable from the date payment is due until the date of payment.

14 VAT

The parties to this Agreement acknowledge and agree the sums payable under this Agreement are not subject to VAT and no VAT should be charged or recoverable in addition to the amount of the sums specified in the Agreement.

15 WAIVER

No failure or delay by the Council to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver (whether express or implied) for any breach or default by the Owners in performing or observing any of the covenants, restrictions or obligations contained in this Agreement. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16 TERMINATION

16.1 The obligations in this Agreement (with the exception of clause 10) shall cease to have effect if before the Commencement of Development, the Planning Permission:

i. expires;

ii. is varied or revoked other than at the request of the Owners; or

16.1 The obligations in this Agreement (with the exception of clause 9) shall cease to have effect if before the Commencement of Development, the Planning Permission:

- i. expires;
- ii. is varied or revoked other than at the request of the Owners; or
- iii. is quashed following a successful legal challenge.

17 FUTURE PERMISSIONS

17.1 Subject to clause 17.2, nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

17.2 This Agreement shall apply to any planning permission subsequently granted under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission and any other planning permission granted under such powers (a "Subsequent Permission") and the Planning Permission shall be construed to include the development as stated in the Subsequent Permission unless otherwise required by the Council or the circumstances in clause 16.1(ii) arise.

18 JURISDICTION

18.1 This Agreement shall be governed by and interpreted in accordance with the laws of England.

18.2 The Courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

19 EXCLUSIONS OF LIABILITY

19.1 No person shall be liable for any breach of any of the obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Land, or such part of the Land to which the breach relates, but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

19.2 This Agreement shall not be enforceable against any owner, occupier or tenant of any Dwelling constructed pursuant to the Planning Permission, or their mortgagees, nor against those deriving title from them.

19.3 The obligations in this Agreement shall not bind or be enforceable against any statutory undertaker or any other person engaged in the provision of any water, electricity, gas, drainage and telecommunication services who has or takes in the future an interest in the Land for the purpose of the supply of any of the aforementioned services.

19.4 IN WITNESS of which this document has been duly executed as a deed and delivered on the date stated at the beginning of this document.

SCHEDULE 1

MANAGEMENT OF THE DEVELOPMENT

The Owners covenant with the Council (and where relevant the Council covenants with the Owners) as follows:

1 ADDITIONAL INTERESTS

1.1 The Owners shall not permit Commencement of Development unless and until one of the following requirements have been satisfied:

1.1.1 the Owners have provided to the Council a registered conveyancer's certificate confirming that the Chargee's interest has been discharged and that there are no further chargees or leasehold or freehold interests in the Land that are not already bound by this Agreement; or

1.1.2 a confirmatory deed (in a form satisfactory to the Council) has been entered into which binds all legal and equitable interests in the Land to the obligations covenants and undertakings secured by this Agreement.

2 MANAGEMENT COMPANY AND MANAGEMENT PLAN

2.1 Not permit Commencement of the Development until the Council has approved in writing the Owners proposal for the formation of the Management Company and such proposal shall include full details of the proposed structure and voting rights of the Management Company.

2.2 The Council covenants that it will notify the Owners that it either approves or rejects the proposal referred to in paragraph 2.1 of Schedule 1 within one month of receipt. If notification is not received within that time, the proposals will be deemed to be approved. If notification of a refusal is received by the Owners within the aforementioned time period, the Owners shall continue to comply with the obligation at paragraph 2.1 of Schedule 1 and submit a further proposal or proposals until such time as the Council approves the proposals for the Management Company.

2.3 In the event that the Council fails to notify the Owners in accordance with paragraph 2.2 of this Schedule 1, the proposal for the formation of the Management Company as submitted in accordance with paragraph 2.1 of this Schedule 1 (or as resubmitted) will be deemed approved for the purposes of paragraph 2.1.

2.4 Not later than three months prior to Commencement of Development to submit to the Council in writing the Owner's proposal for the Management and Maintenance Plan.

2.5 Prior to Commencement of the Development the Owners shall take all necessary steps to secure the formation and registration of the Management Company at Companies House (taking into account any modifications reasonably required by the Council) and to notify the Council accordingly within fourteen days of the completion of the registration of the Company

2.6 Not to Dispose or permit Disposal of any Dwellings until:

2.6.1 the Management Company has been formed in accordance with the approved proposal; and

2.6.2 the Management and Maintenance Plan has been approved in writing by the Council.

- 2.7 To secure the proper maintenance of the Common Parts and SuDs to the reasonable satisfaction of the Council until such time as:
- 2.7.1 the Management Company is registered and the Management Plan has been approved by the Council; and
 - 2.7.2 the maintenance arrangements for the Common Parts and SuDs in accordance with the Management Plan have been fully implemented; and
 - 2.7.3 the transfer or the granting of a long leasehold interest of the Common Parts to the Management Company is completed; and
 - 2.7.4 in respect of the SuDs:
 - (a) the transfer of the SuDs to the Management Company is completed; or
 - (b) the SuDs is adopted by a statutory undertaker.
- 2.8 That if the Management Company ceases to exist as a company or if the Management Company at any time defaults in the performance of any of its covenants or obligations on its part as contained in the Management and Maintenance Plan and/or Management Agreement then the Owners shall (without prejudice to any other right or remedy of the Owners against the Management Company or any other person) perform the said covenants and obligations until the appointment by the Owners of a successor to the Management Company.

3 SuDs

- 3.1 Not less than two months prior to Commencement of Development to submit to the Council for its approval a bill of quantities detailing the open book construction costs for the SuDs.
- 3.2 The Council covenants that it shall within ten Working Days' notify the Owners that it either approves the bill of quantities for the SuDs as submitted or proposes such reasonable amendments as are considered necessary.
- 3.3 Where reasonable amendments to the open book construction costs for the SuDs are proposed by the Council, the Owners shall not more than ten Working Days' after receiving the Council's proposed amendments revise the bill of quantities for the SuDs in accordance with the proposed amendments.
- 3.4 Before Commencement of Development to:
- 3.4.1 provide to the Council a Bond for the Bond Amount; or
 - 3.4.2 pay the Cash Deposit.
- 3.5 The Bond shall endure, or the Cash Deposit shall be retained by the Council until the earlier of:
- 3.5.1 the SuDS being adopted by a statutory undertaker; or
 - 3.5.2 the date of completion of construction of the SuDS to the reasonable satisfaction of the Council.
- 3.6 The Council shall within 10 Working Days of the event in paragraph 3.5 occurring either:
- 3.6.1 release the Owners and the Surety from the Bond; or

3.6.2 repay the Cash Deposit (or if the Council has realised part of the Cash Deposit in accordance with paragraph 3.7 the unexpended amount) to the Owners.

3.7 If the Owners:

3.7.1 fail to construct the SuDs in accordance with the details approved by the Council in writing; or

3.7.2 prior to completion of the SuDs are adjudicated bankrupt or go into liquidation voluntarily or otherwise; or

3.7.3 have executed a deed of assignment for the benefit of or otherwise compound with their creditors (except for the purpose of reconstruction or amalgamation),

the Council may (without prejudice to the Council's other rights remedies and powers against the Owners):

3.7.4 by written notice, require the Surety to pay for; or

3.7.5 require the Cash Deposit be applied to,

any reasonable and proper expenditure (including legal costs) which the Council may incur in carrying out the construction of the SuDs to serve the Development its own design or the Owners design to return the Land to the level of hydrological response as existed before Commencement.

SCHEDULE 2
CONTRIBUTIONS

The Owners covenant with the Council as follows:

1 MONITORING FEE

Not to Commence or permit Commencement of Development until the Monitoring Fee has been paid to the Council.

2 SRMS CONTRIBUTION

Not to Commence or permit Commencement of Development until the SRMS Contribution has been paid to the Council.

3 NUTRIENT MITIGATION CONTRIBUTION

Not to Commence or permit Commencement of Development until the Nutrient Mitigation Contribution has been paid to the Council.

SCHEDULE 3
MISCELLANEOUS COVENANTS

The Owners covenant with the Council as follows:

1 COMMENCEMENT OF DEVELOPMENT

- 1.1 To give to the Council not less than fourteen Working Days written notice of Commencement of Development.

2 SUBMISSION OF DOCUMENTS

- 2.1 To provide when submitting documents or details to the Council pursuant to the Schedules of this Agreement a reference to the Planning Permission, the date and parties to this Agreement, and the paragraph and Schedule under which approval is sought, together with a statement of the date by which a decision must be given by the Council.

3 SUDS AND COMMON PARTS

- 3.1 To provide the Council with details and specification of the SuDS and Common Parts prior to Commencement of Development and such details shall include a timetable for delivery of the SUDS and Common Parts.
- 3.2 To construct and layout the Common Parts, SuDS to the reasonable satisfaction of the Council in accordance with the details, specification and timetable submitted pursuant to paragraph 3.1 above.

SCHEDULE 4

COUNCIL COVENANTS

The Council covenants with the Owners as follows:

1. Not to use any part of the Contributions listed in Schedule ²~~2~~ of this Agreement other than for the purposes for which it was paid (whether by the Council or another party).

**EXECUTED as a DEED by affixing
THE COMMON SEAL of the COUNCIL OF THE
BOROUGH OF HAVANT**

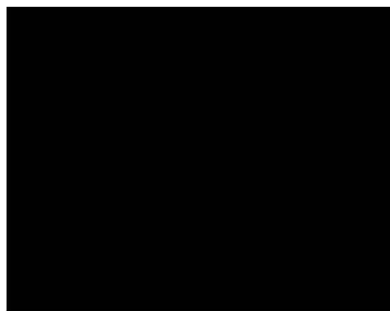
13477

in the presence of:



Authorised Signatory

**EXECUTED as a DEED by CRAIG)
SMITH in the presence)
of:)**



Owner

Witness

Name: Alexandra GERAGHTY

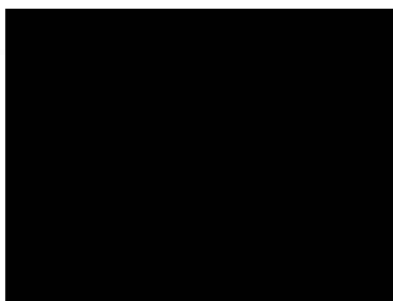
Address:



Occupation:

ADMIN ASSISTANT

**EXECUTED as a DEED by CAROLINE)
NAOMI SMITH (PREVIOUSLY)
CAROLINE NAOMI GERAGHTY) in the)
presence of:**



Owner

Witness

Name: ALEXANDRA GERAGHTY

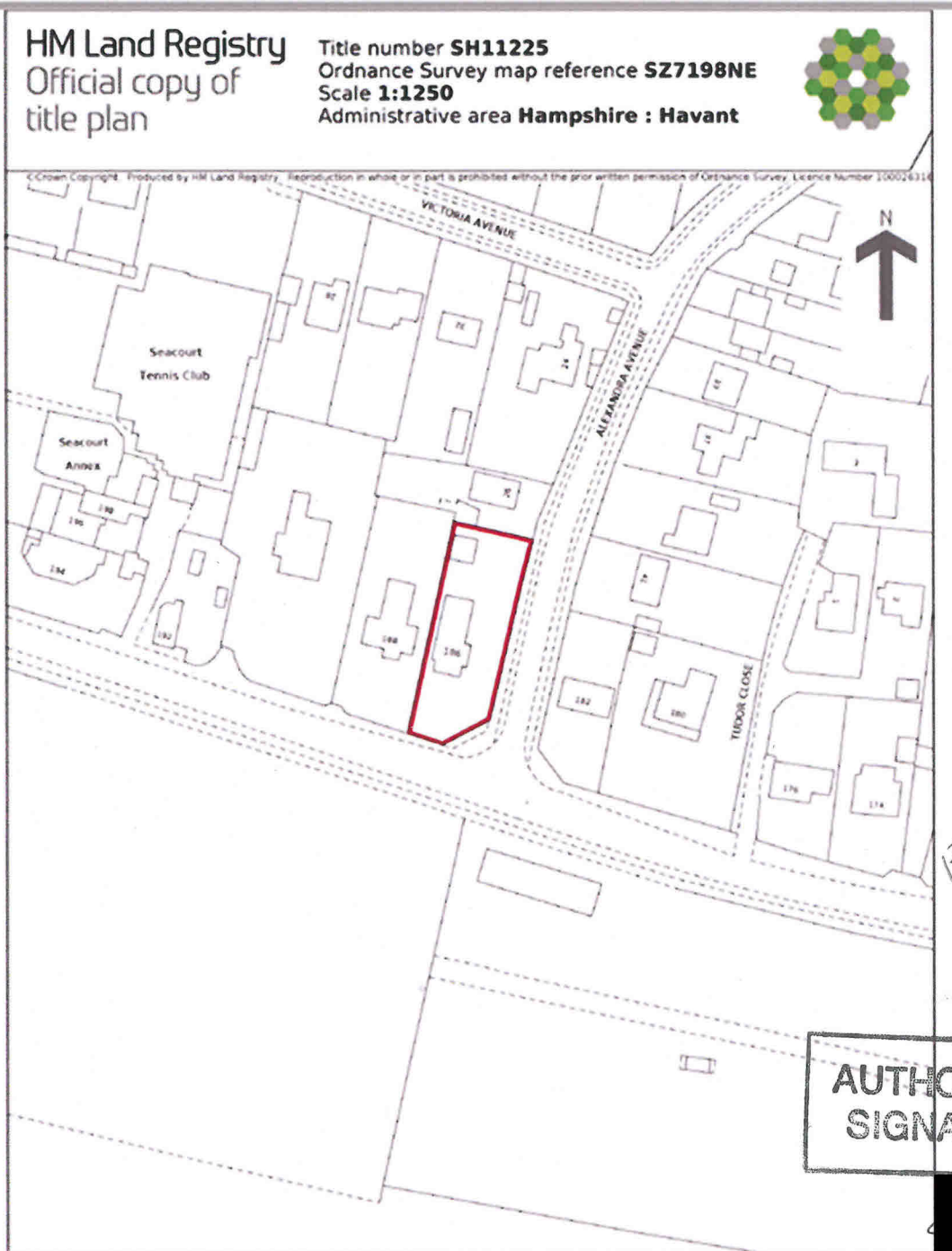
Address:



Occupation: ADMIN ASSISTANT

Witness

APPENDIX A
LOCATION PLAN



APPENDIX B
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: **Developer's details**

The Guarantor: **Bank's details**

The Employer: **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service
Plaza Civic Centre Road Havant Hampshire PO9 2AX

The Contract: *insert details of the S106 Agreement*

The Works the construction of a Sustainable Drainage system in accordance with 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 of Practical Completion by the Council upon presentation to the Guarantor, by the Contractor of a certified true and correct copy of the Practical Completion Certificate purporting to have been signed under the Contract 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 _____, 201x

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