

DATED

19TH DECEMBER

2007

- (1) SOUTH EAST ENGLAND DEVELOPMENT AGENCY
and
- (2) EDGMOND HOLDINGS LIMITED
and
- (3) THE COUNCIL OF THE BOROUGH OF HAVANT
and
- (4) HAMPSHIRE COUNTY COUNCIL

AGREEMENT

under Section 106 of the Town and Country Planning Act
and all other powers so enabling relating to
land at Havant Borough Council Depot, Harts Farm Way, Havant, Hampshire
PO9 1JN

P D J Griffith
Solicitor to the Council
Havant Borough Council
Civic Offices
Civic Centre Road
Havant PO9 2AX

Ref: PG/11/178/3/67
[BLTL 18.05.07]

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THIS AGREEMENT is made the 19th day of December 2007
BETWEEN:

- (1) **SOUTH EAST ENGLAND DEVELOPMENT AGENCY** whose principal office is situate at Seeda Headquarters Cross Lanes Guildford GU1 1YA (hereinafter called "the Owner" which expression where the context so admits shall include its successors in title and persons deriving title through it) and
- (2) **EDGMOND HOLDINGS LIMITED** (a company registered in Jersey Company Registration Number 92571) whose registered office is at Channel House 7 Esplanade St. Helier Jersey JE4 5UW ("Edgmond" which expression includes its successors in title and assigns) and
- (3) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Civic Offices Havant Hampshire PO9 2AX (hereinafter called "the Council" which expression shall include any successor local planning authority exercising planning powers under the 1990 Act) and
- (4) **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester Hampshire SO23 8UJ (hereinafter called "the County Council" which expression shall include any successor local highway authority exercising highway powers under the 1980 Act or any successor local planning authority exercising planning powers under the 1990 Act)

WHEREAS:

- (1) The Owner is registered at the Land Registry under Title Number SH11401 as freehold owner of the Land and Edgmond has entered into a Contract dated 31st March 2006 to buy the Land from the Owner
- (2) The Council is the local planning authority for the purposes of the 1990 Act for the area of the Borough of Havant within which the Land is situated
- (3) The County Council is the local highway authority for the purposes of the 1980 Act for the area within which the Land is situated and is also a local planning

authority for the purposes of the 1990 Act for the area within which the Land is situated

- (4) This Agreement relates to the Planning Permission granted or to be granted for the Development
- (5) The Council and the County Council consider it expedient in the interests of the proper planning of the Council's area and having regard to the provisions of its development plan that provision should be made for regulating or facilitating the Development of the Land in the manner set out in this Agreement
- (6) The Owner and Edgmond are willing to carry out and complete at their own expense (in accordance with terms agreed between the Owner and Edgmond) the Highway Junction Works referred to in this Agreement the cost of which works is estimated to exceed the developer contribution which would otherwise be required to be paid by the Owner in connection with the Development under and in accordance with the Broadmarsh Transportation Strategy

NOW THIS DEED WITNESSETH as follows:

1. Section 106 Planning Obligations

- 1.1 This Agreement is executed by the parties hereto as a deed and is made pursuant to Section 106 of the 1990 Act and Section 111 of the Local Government Act 1972 and all other powers so enabling
- 1.2 The positive and restrictive covenants on the part of the Owner and Edgmond in this Agreement shall be taken to be planning obligations for the purposes of Section 106 of the 1990 Act and so as to bind the Owner's and Edgmond's interests in the Land and shall be enforceable by the Council and the County Council
- 1.3 The obligations entered into by the Council in this Agreement are entered into by the Council pursuant to its functions as local planning authority

- 1.4 The obligations entered into by the County Council in this Agreement are entered into pursuant to its functions as local planning authority and local highway authority

2 Liability after Disposal

- 2.1 It is hereby agreed between the parties hereto that a person shall upon transferring the whole or any part of its interest in the Land be released from all obligations and duties under this Agreement in relation to the said interest or part thereof as the case may be but without prejudice to any right of action or remedy that the Council and/or the County Council might have in relation to any subsisting breach of any obligation or covenant contained in this Agreement

3 Interpretation

- 3.1 In this Agreement the following expressions shall where the context so admits have the following meanings:

1990 Act: means the Town and Country Planning Act 1990 (as amended)

Broadmarsh Transportation

Strategy: means the programme of transport infrastructure works and/or other transportation measures developed or to be developed under and in accordance with Policy EMP 2 of the Havant Borough District-Wide Local Plan or any successor or replacement policy comprised in the development plan for the Council's administrative area.

Broadmarsh Transportation

Strategy Policy Area: means the area illustrated on Plan 4

Broadmarsh Transportation Strategy

Works:

means the works and/or other measures identified in Schedule 1 and/or other or varied works and/or measures identified from time to time by the Council and/or the County Council which are intended to achieve the aims of the Broadmarsh Transportation Strategy and which are reasonably related to any development to be carried out within the Broadmarsh Transportation Strategy Policy Area

Contribution Refund:

means a sum or sums of money paid or to be paid to the Owner by the Council or by the County Council out of Relevant Contributions received in partial reimbursement of the costs expended by the Owner or Edgmond (but without prejudice to the provisions of clause 7.2) in carrying out the Highway Junction Works

Contribution Strategy:

means the scheme of proposed development contributions towards the Broadmarsh Transportation Strategy Works set out in the Table in Schedule 2 but subject to the provisions of clause 3.9 and any other relevant provisions of this Agreement and (subject to the terms of this Agreement) such amended or varied scheme of contributions as

may be determined by the Council and the County Council as highways authority from time to time.

County Director:

means the County Council's Director of Environment (including the servants agents and licensees of the County Director) or such other proper planning officer of the County Council for the time being responsible for planning and/or highways development control in the County of Hampshire

Development:

means the development of the Land pursuant to the Planning Permission

Director:

means the Council's Head of Development and Technical Services or such other proper planning officer of the Council for the time being responsible for planning and development control in the Borough of Havant

Expert:

means an independent person appointed in accordance with the provisions of Clause 12 to determine a dispute

Existing Section 278 Agreement:

means an Agreement made the 18th June 2004 between (1) the County Council (2) the Owner and (3) the Council under Section 106 of the 1990 Act and Section 278 of the Highways Act 1980 (as amended by

a Deed of Variation dated 18th August 2006 between the same parties) inter alia in respect of the Tear Drop Works

Highway Junction Works:

means the construction of a "tear drop" roundabout at the junction between the A27(T) westbound off slip and Harts Farm Way (as shown in outline on Plan 2) ("**the Teardrop Works**") and alterations to the Bedhampton ("Rusty Cutter") roundabout (as shown in outline on Plan 3) ("**the Rusty Cutter Works**")

Implementation Date:

means the date that the Planning Permission is Implemented

Implemented:

means implemented by the commencement of a material operation as defined in Section 56(4) of the 1990 Act comprised in the Development but excluding:

- (i) works of demolition or site clearance
- (ii) ground investigation and site survey work
- (iii) site reclamation and landscaping works
- (iv) construction of boundary fencing or hoardings

- (v) archaeological investigations
- (vi) works of decontamination or remediation
- (vii) the laying of services
- (viii) the carrying out of services and sewer diversion works and drainage works
- (ix) any work to or in respect of statutory utilities equipment
- (x) construction to base course of any access/egress and estate roads
- (xi) completion of stream diversion and pond alterations/formation

and the expression **Implementation and Implement** shall be construed accordingly

Index Linked:

means index linked by reference to Retail Price Index (RPI) published by Office for National Statistics (or amendment or replacement thereof)

Land:

means the land at Havant Borough Council Depot Harts Farm Way Havant Hampshire the boundaries whereof are delineated for the purposes of identification only shown edged in red on Plan 1

Maximum Contribution Refund:

means the actual cost of the Highway Junction Works (whether carried out by the Owner Edgmond or any developer claiming under or through the Owner) as evidenced by appropriate contractual payment and final Certificates issued by relevant qualified professionals) less SEEDA's notional contribution towards Items 1, 2, 3, 4, 5, 6 and 7 and less the Southmoor Park Contribution referred to in Section 5 set out in the Table in Schedule 2

New Section 278 Agreement :

means an Agreement with the County Council under Section 278 of the Highways Act 1980 in respect of the Rusty Cutter Works

Plan 1:

means the plan annexed hereto and marked "Plan 1" (the unnumbered drawing dated 15.10.2004)

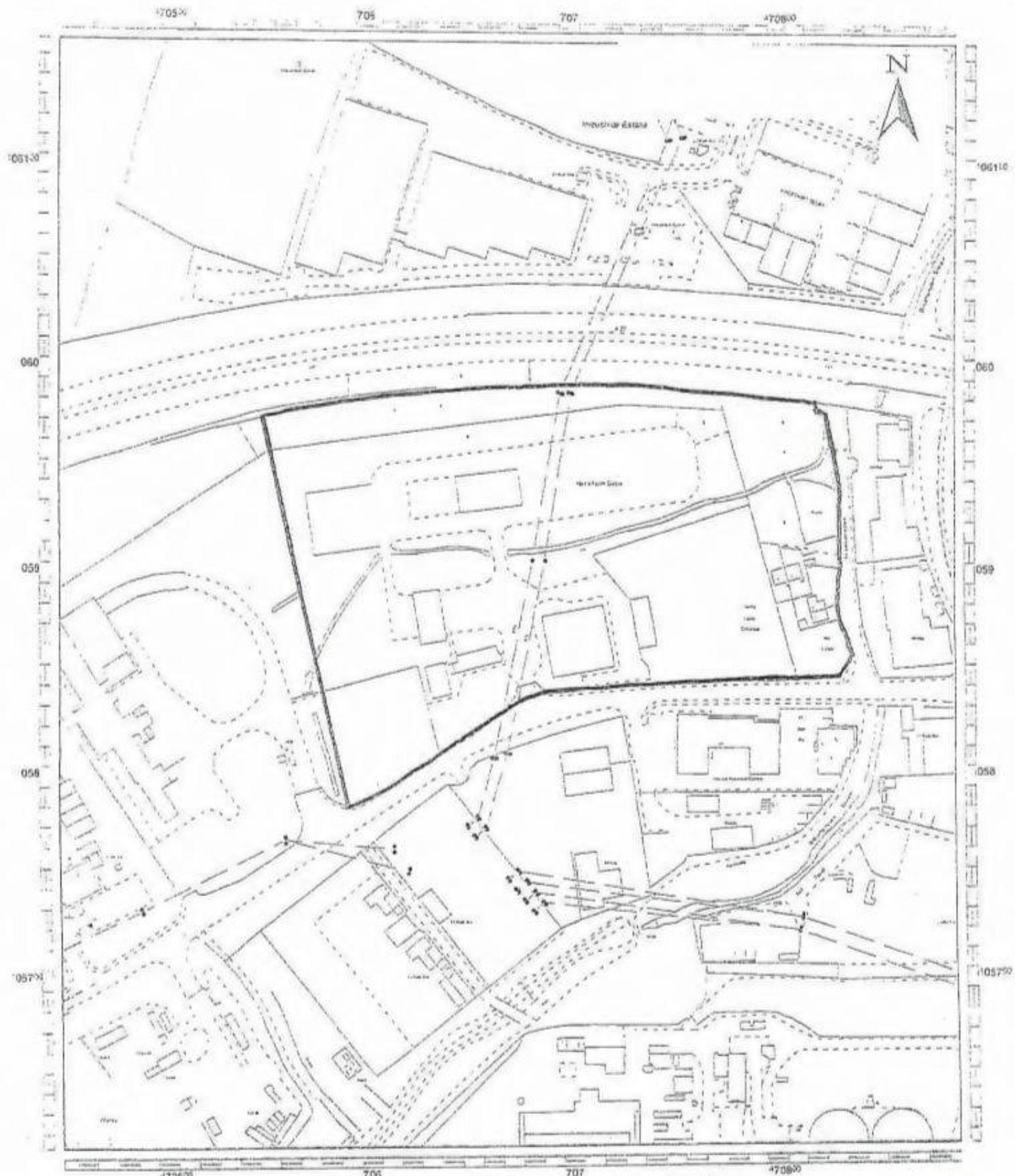
Plan 2:

means the plan annexed hereto and marked "Plan 2" (Drawing Number 1777/004/T4/200L)

Plan 3:

means the plans annexed hereto and marked "Plan 3A" and "Plan 3B" (Drawing Numbers 1005-001/C/104/03 and 1005-001/C/105/04)

Plan 4:	means the plan annexed hereto and marked "Plan 4"(and titled "Policy Area Delineated")
Planning Application:	means the application for planning permission submitted on behalf of the Owner to the Council and which was given reference number 02/52646/016 for the development of the Land by way of outline application for new business and industrial development with new access from Harts Farm Way
Planning Permission:	means the grant of planning permission by the Council in response to the Application (including any grant of approval of reserved matters thereunder
Reasonable Endeavours:	means obliging the relevant party to take all those reasonable steps in the circumstances which a prudent and a determined person company or authority anxious to achieve the stated objective (whilst in the case of either Council not exceeding its powers) would reasonably take in order to achieve that objective
Relevant Contributions:	means contributions in accordance with the Contribution Strategy (subject to the provisions of this Agreement including clause 3.9) towards the cost of carrying out the



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Frank R Campbell BA (Hons) MRTPI,
Corporate Director Regeneration Group.

Civic Offices, Civic Centre Rd,
Havant, Hants. PO9 2AX.
Havant Havant. 0233 9247 4174.



Title:

Havant Borough Council Depot
Harts Farm Way Havant
02/52646/016

Drawn By:

PW

Scale:

1:2500

Drawing No.:

Date:

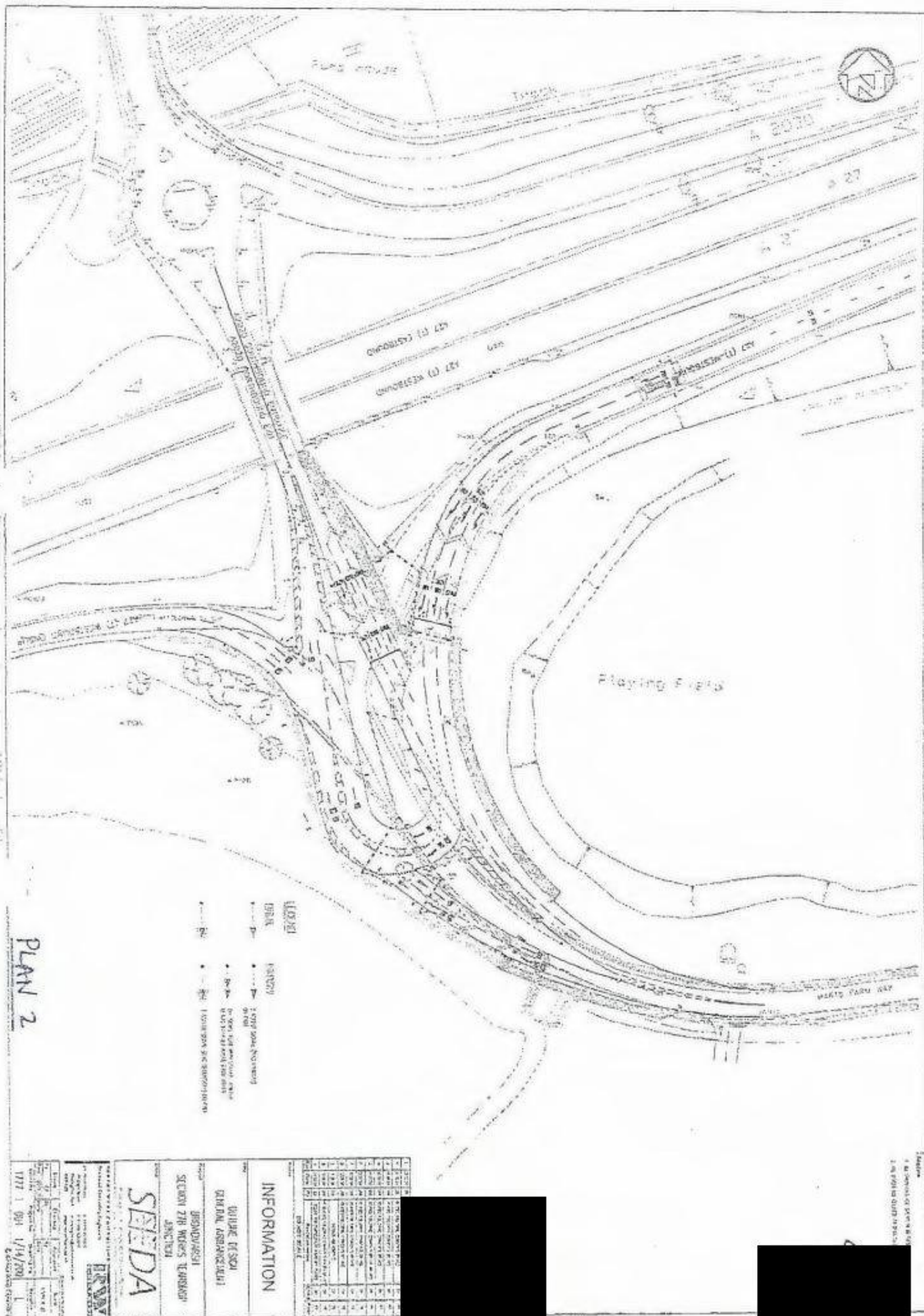
PLAN 1

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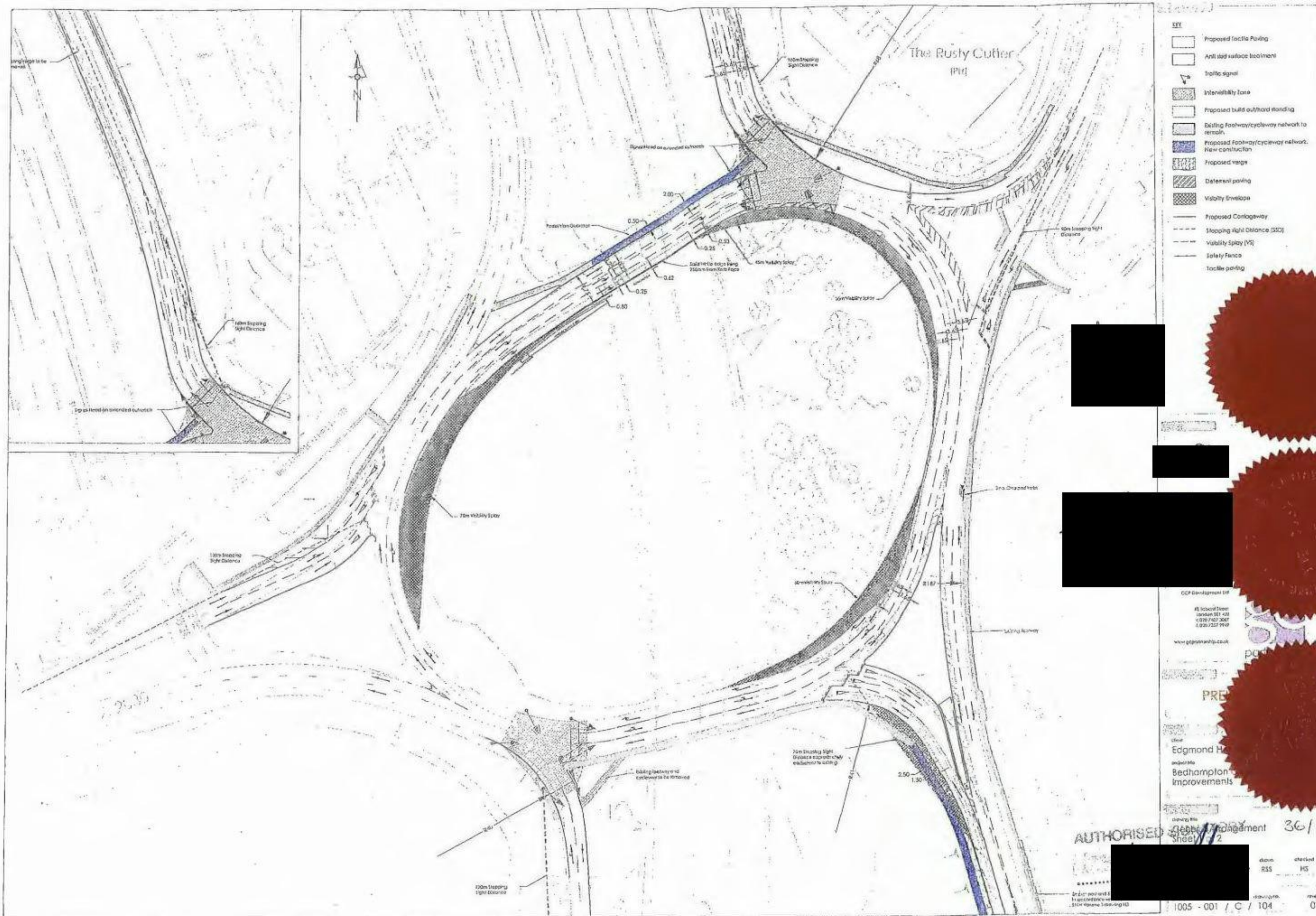
PLAN 2

- ROAD
- DRAIN
- FENCE
- UTILITY

INFORMATION	
UNIQUE DESIGN	
DRAINAGE DESIGN	
SECTION 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.	

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- KEY**
- Proposed tactile paving
 - Anti-slip surface treatment
 - Traffic signal
 - Visibility zone
 - Proposed build-out/road widening
 - Existing footway/cycleway network to remain
 - Proposed footway/cycleway network, New construction
 - Proposed verge
 - Datensil paving
 - Visibility envelope
 - Proposed Cycleway
 - Stopping sight distance (SSD)
 - Visibility Splay (VS)
 - Safety fence
 - Tactile paving

CCP Development Ltd
 45, School Street
 London SE1 4JH
 Tel: 020 7407 3007
 Fax: 020 7407 3007
 www.gapmainship.co.uk

PRE
 Edmond H
 Bedhampton
 Improvements

AUTHORISED SHEET 36/1584
 Sheet 2

drawn
 RSS

checked
 MS

1005 - 001 / C / 104 03

PLAN 3A



- KEY
- Proposed tactile paving
 - Anti-slip surface treatment
 - Traffic signal
 - Intervisibility zone
 - Proposed build out/road widening
 - Existing footway/cycleway network to remain
 - Proposed footway/cycleway network, new construction
 - Proposed verge
 - Designated parking
 - Visibility envelope
 - Proposed Carriageway
 - Stopping sight distance (SSD)
 - Visibility splay (VS)
 - Safety fence
 - Tactile paving

GCP Development Ltd
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 T: 020 8871 3047
 F: 020 8871 3048
 www.gcpdevelopment.co.uk

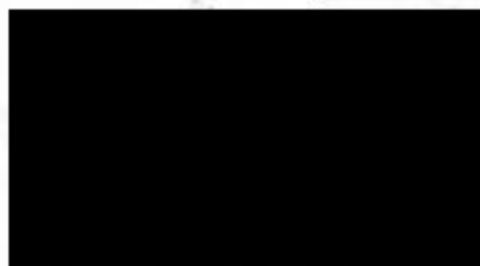
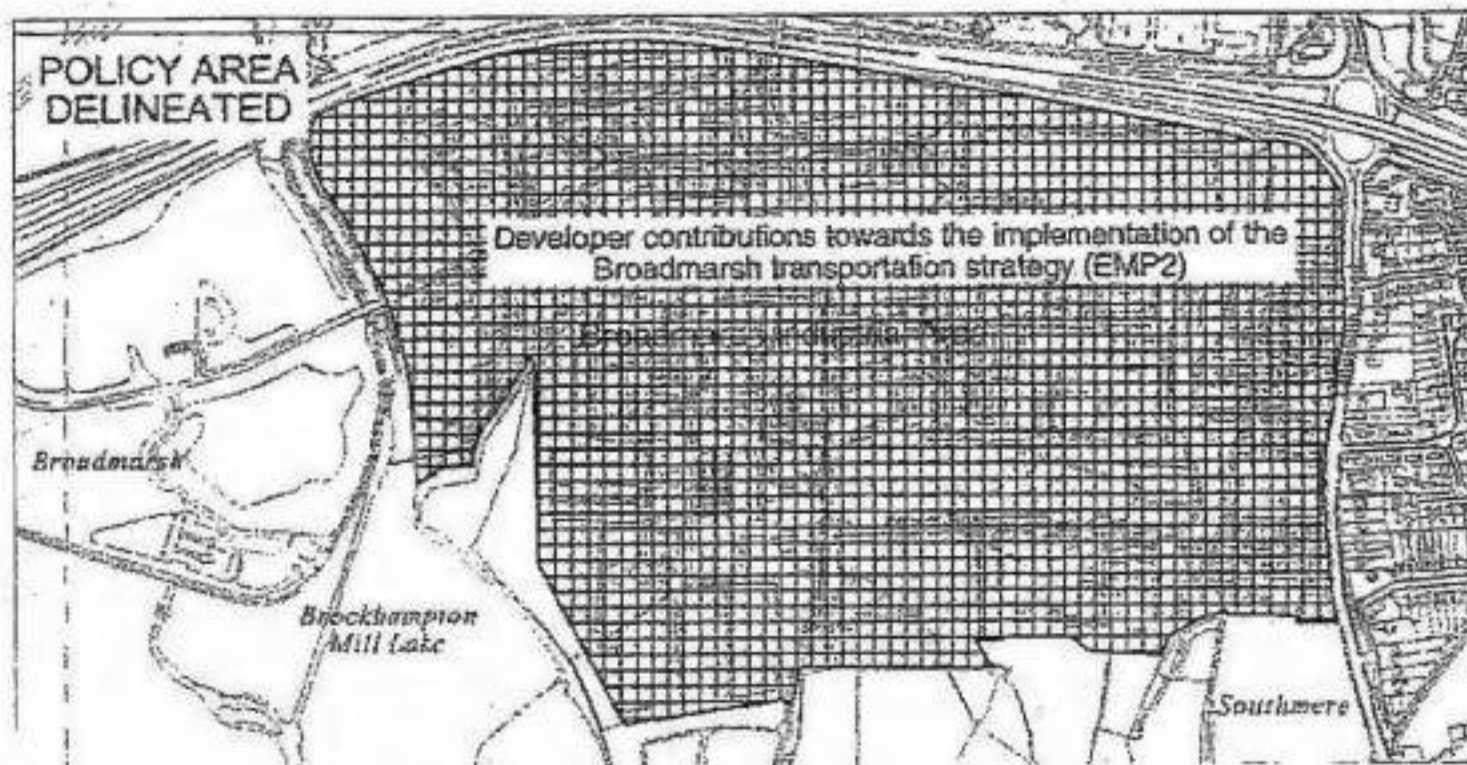
partnership

PRELIMINARY

Edmond
 project 806
 Bedhampton
 Improvement

General Arrangement
 Sheet 2 of 2

36/1584



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PLAN 4

Broadmarsh Transportation Strategy
Works to be obtained from
landowners/developers carrying out
or proposing to carry out
development on land within the
Broadmarsh Transportation Strategy
Policy Area

Section 278 Agreements:

means the Existing Section 278
Agreement and the New Section 278
Agreement together and "**Section
278 Agreement**" means either the
Existing Section 278 Agreement or
the New Section 278 Agreement as
the context may require

Southmoor Park Contribution

means the sum of six hundred and
sixty thousand pound (£660,000)

Transport Infrastructure Improvement

Works:

means the works and other matters
listed in paragraphs 3 to 11
(inclusive) of Schedule 1

- 3.2 Where in this Agreement reference is made to a Recital Clause Paragraph Schedule or Plan such reference is a reference to a recital clause paragraph or schedule in this Agreement or in the case of a Plan a plan annexed to this Agreement
- 3.3 Words in this Agreement importing the singular meaning where the context so admits include the plural meaning and vice versa
- 3.4 Words in this Agreement of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies Councils and firms and all such words shall be construed interchangeably in that manner

- 3.5 Words in this Agreement denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not knowingly to cause permit or suffer any infringement of the restriction
- 3.6 Any reference in this Agreement to an Act of Parliament shall include any modification extension re-enactment or substitution thereof for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given thereunder or deriving validity therefrom
- 3.7 Where any approval consent agreement confirmation expression of satisfaction or any other act of co-operation is required under the terms of this Agreement from any party that approval consent agreement confirmation expression of satisfaction or other act of co-operation shall be given in writing and shall not be unreasonably withheld or delayed
- 3.8 Headings contained in this Agreement are for reference purposes only and are not incorporated into this Agreement and shall not be deemed to be an indication of the meaning of the parts of this Agreement to which they relate
- 3.9 The Contribution Strategy was developed in 2004 and sets out estimated costs of the Broadmarsh Transportation Strategy Works at that time and development proposals known at that time. In deciding what Relevant Contribution should be made in considering any application for a planning permission in respect of any development within the Broadmarsh Transportation Strategy Policy Area the Council and the County Council (as appropriate) shall obtain from the Owner and Edgmond up to date details of all known and estimated costs of the Highway Junction Works and shall also consider up to date estimates or actual figures in relation to other components of the Broadmarsh Transportation Strategy Works so that the Relevant Contribution may relate properly to such up to date costs and the Council and the County Council (as appropriate) shall apply appropriate proportions of all such costs to the proposed development in question The Owner and Edgmond shall co-operate in providing appropriate cost information without

delay and in any event within 28 days. The Relevant Contributions shall be based on such known and estimated costs and shall then be Index Linked from the date upon which the Relevant Contribution shall be determined.

4 General Provisions

- 4.1 In the event of the Planning Permission expiring before the Implementation Date or in the event of the revocation or modification of the Planning Permission by the Council or any other authority having power so to do without the consent of the Owner or in the event of the quashing of the Planning Permission the planning obligations entered into by the Owner or Edgmond under this Agreement shall thereupon cease and determine absolutely.
- 4.2 It is hereby agreed between the parties hereto for the avoidance of doubt that nothing in this Agreement shall prohibit or limit the right of the Owner or Edgmond to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) that may be granted whether or not on appeal either before or after the date of this Agreement.
- 4.3 Where any of the planning obligations in this Agreement have been performed and discharged the Council and/or the County Council will if so requested by the Owner or Edgmond issue a certificate or letter to that effect and cause a certificate or a letter to that effect to be appended to this Agreement so as to be apparent to anyone considering the Agreement.
- 4.4 If any provision in this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired.

5 Commencement

- 5.1 It is hereby agreed between the parties hereto that this Agreement is conditional upon the Planning Permission being granted by the Council and where such Planning Permission is granted then this Agreement shall have

full force and effect but not otherwise save that clauses 11-17 inclusive shall have full force and effect from the date hereof

6 Prior Notice

- 6.1 The Owner and Edmond hereby covenant with the Council and the County Council that it will give to the Director on behalf of the Council and the County Director on behalf of the County Council not less than seven days prior notice in writing of the proposed Implementation Date

7. The Highway Junction Works

- 7.1 The Owner and Edmond hereby each covenant with the Council and the County Council that they will not Implement the Development or use the Land for purposes pursuant to the Planning Permission until such time as detailed proposals for the Rusty Cutter Works have been submitted to and approved in writing by the County Director and Edmond as developer and the Owner (as landowner) have entered into the New Section 278 Agreement with the County Council and that they will not without the prior written consent of the County Council as highways authority and (if required) the Highways Agency Implement the Development unless and until such time as the Highway Junction Works have been constructed and completed in accordance with the Section 278 Agreements to the reasonable satisfaction of the County Director as evidenced in writing by the issue by the County Council of a Certificate of Completion pursuant to the Section 278 Agreements ("Certificate of Completion")
- 7.2 The approved Highway Junction Works having been commenced the Owner shall be entitled to receive payment or payments by way of Contribution Refund in accordance with the provisions of this Agreement such payments to be made on production to the County Council of evidence (in the form of appropriate contractual payment and final Certificates issued by an appropriately qualified professional) that the sums claimed shall have been incurred in carrying out the Highway Junction Works (whether or not the same shall have been completed) and such payments shall be paid to the Owner notwithstanding that such sums may have been incurred by Edmond

or any third party including any developer claiming through or under the Owner)

8 The Broadmarsh Development Contribution Strategy – Covenants by the Council in favour of the Owner

8.1 The Council hereby covenants with the Owner (subject to the provisions of Clause 10) that

8.1.1 it will in good faith on and from the date of this Agreement use and continue to use all Reasonable Endeavours in the course of the proper exercise of its powers and functions under the 1990 Act to secure and collect Relevant Contributions in accordance with the Contribution Strategy towards the implementation of the Broadmarsh Transportation Strategy Works from landowners/developers carrying out or proposing to carry out development on land within the Broadmarsh Transportation Strategy Policy Area

8.1.2 it will in good faith use and continue to use all Reasonable Endeavours in securing and collecting the Relevant Contributions referred to in Clause 8.1.1 to secure and ensure that any such contribution is

- payable (and paid) to the Council before the development giving rise to the Relevant Contribution is commenced
- received and held by the Council on terms which permit the Relevant Contribution (or part of it as may be appropriate) and any interest accrued thereon to be paid to the Owner as a Contribution Refund towards or in satisfaction of the Maximum Contribution Refund

8.1.3 it will upon the Owner becoming entitled to receive payment or payments by way of Contribution Refund pay any such Relevant Contribution which is then in its possession or control or which shall subsequently come into its possession or control (or part of it as may be appropriate) and any interest accrued thereon to the Owner as a Contribution Refund towards or in satisfaction of the Maximum Contribution Refund (and whether or not such

Relevant Contribution shall have been made before or after the date on which this Agreement was completed)

8.1.4 it will use all Reasonable Endeavours to secure that contribution payable under the Broadmarsh Transportation Strategy comply with the provisions of clause 3.9 of this Agreement and in any event are not reduced below those set out in the Table in Schedule 2 and that such Schedule 2 contributions shall be Index Linked with effect from November 2004 to the date upon which such contribution is actually paid except to the extent that other arrangements for indexation or other contributions from landowners or developers shall before the date of this Agreement have been agreed or incorporated in a formal resolution of the Council's Planning Committee or decision or determination of an officer made under delegated powers in relation to an application for development within the Broadmarsh Transportation Strategy Policy Area in which case such alternative indexation method or sums shall apply to any such development which is implemented

8.1.5 the Council will keep full records of all agreements made with and all contributions payable by and received from any owners or developers of any land within the Broadmarsh Transportation Strategy Policy Area and will on request make such information available to the Owner

8.1.6 the Council will use all Reasonable Endeavours to inform the Owner of the matters referred to in clause 8.1.5 as and when they arise but shall not be liable to the Owner if the Council shall fail to have done so and the Council shall promptly on request provide all such information to the Owner

9 The Broadmarsh Development Contribution Strategy – Covenants by the County Council in favour of the Owner

9.1 The County Council hereby covenants with the Owner (subject to the provisions of Clause 10) that

9.1.1 it will in good faith on and from the date of this Agreement use and continue to use all Reasonable Endeavours in the course of the proper exercise of its powers and functions under the 1990 Act to secure and collect Relevant

Contributions in accordance with the Contribution Strategy towards the implementation of the Broadmarsh Transportation Strategy Works from landowners/developers carrying out or proposing to carry out development on land within the Broadmarsh Transportation Strategy Policy Area

9.1.2 it will in good faith use and continue to use all Reasonable Endeavours in securing and collecting the Relevant Contributions referred to in Clause 9.1.1 to secure and ensure that any such contribution is

- payable (and paid) to the County Council before the development giving rise to the Relevant Contribution is commenced
- received and held by the County Council on terms which permit the Relevant Contribution (or part of it as may be appropriate) and any interest accrued thereon to be paid to the Owner as a Contribution Refund towards or in satisfaction of the Maximum Contribution Refund

9.1.3 it will upon the Owner becoming entitled to receive payment or payments by way of Contribution Refund pay any such Relevant Contribution which is then in its possession or control or which shall subsequently come into its possession or control (or part of it as may be appropriate) and any interest accrued thereon to the Owner as a Contribution Refund towards or in satisfaction of the Maximum Contribution Refund (and whether or not such Relevant Contribution shall have been made before or after the date on which this Agreement was completed)

9.1.4 it will use all Reasonable Endeavours to secure that contribution payable under the Broadmarsh Transportation Strategy comply with the provisions of clause 3.9 of this Agreement and in any event are not reduced from those set out in the Table in Schedule 2 and that such Schedule 2 contributions shall be Index Linked with effect from November 2004 to the date upon which such contribution is actually paid except to the extent that other contributions from landowners or developers shall before the date of this Agreement have been agreed in which case such alternative sums shall apply to any such development which is implemented

- 9.1.5 the County Council will keep full records of all agreements made with and all contributions payable by and received from any owners or developers of any land within the Broadmarsh Transportation Strategy Policy Area and will on written request make such information available to the Owner (as soon as reasonably practicable and in any event within 28 days)
- 9.1.6 the County Council will use all Reasonable Endeavours to inform the Owner of the matters referred to in clause 9.1.5 as and when they arise but shall not be liable to the Owner if the County Council shall fail to have done so and the County Council shall promptly on written request provide all such information to the Owner
- 9.1.7 without prejudice to the provisions of clause 9.1.4 nothing in that clause shall be taken to fetter the ability of the County Council to seek from the date hereof future contributions from developers and/or landowners towards highway improvements/infrastructure works which are in addition to and not part of the Broadmarsh Transportation Strategy Works provided that this clause shall not mean that the County Council may require further contributions or works in respect of the Development (or any other proposed development of the Land which in the County Council's reasonable opinion does not require any additional highway improvements/infrastructure works to be undertaken beyond the Broadmarsh Transportation Strategy Works required in connection with this Development)

10 Further provisions relating to the Council's and the County Council's Covenants

- 10.1 Nothing in Clauses 8.1.1 to 8.1.6 or 9.1.1 to 9.1.6 shall oblige the Council or the County Council to do any act or thing which is beyond its powers as a local authority or which improperly exceeds restricts or fetters in any way whatsoever the exercise by and through its Members and Officers from time to time of its powers and discretion as a local planning authority
- 10.2 Nothing in Clauses 8.1.1 to 8.1.6 or 9.1.1 to 9.1.6 shall constitute or be construed as a warranty or guarantee of whatever kind that Relevant Contributions sufficient to pay to the Owner as a Contribution Refund towards

or in satisfaction of the Maximum Contribution Refund or any part thereof will be secured and/or collected by the Council or by the County Council within a specified period of time or at all

10.3.1 If in respect of development on the land or site referred to in the Contribution Strategy as 'HWS' ("the HWS Site") planning permission is granted (which as a consequence would give rise to the payment of a Relevant Contribution) and the County Council has constructed completed and provided or caused or procured the construction completion and provision of part (that is to say all of the works referred to in any one or more of paragraphs 3 – 11 (inclusive) of Schedule 1) or all of the Transport Infrastructure Improvement Works before such planning permission is Implemented the obligations of the Council or the County Council in Clauses 8.1.1 to 8.1.3 or 9.1.1 to 9.1.3 to require or seek to secure the payment of a discrete sum of money by way of Relevant Contribution under the Contribution Strategy in respect of the HWS Site ("the Said Obligations") shall be qualified as set out in the rest of this clause 10.3

10.3.2 The County Council shall keep full records (with appropriate breakdowns) of all actual expenditure directly incurred by the County Council on the construction completion and provision of the Transport Infrastructure Improvement Works or parts thereof completed before such planning permission is Implemented ("the Expenditure") and of all contributions paid or payable by any third party towards the Expenditure

10.3.3 The Expenditure less contributions paid or payable by any third party shall be referred to in this clause 10.3 as the Net Expenditure

10.3.4 The County Council shall on reasonable request promptly produce the records of the Expenditure and such contributions to the Owner and Edgmond

10.3.5 If the Net Expenditure equals or exceeds the Relevant Contribution which but for this clause 10.3 would be payable in respect of the HWS Site the Said Obligations shall cease

10.3.6 If the Net Expenditure does not exceed the Relevant Contribution which but for this clause 10.3 would be payable in respect of the HWS Site the Said

Obligations shall be limited to obtaining the amount by which the said Relevant Contribution exceeds the Net Expenditure

- 10.4 For the avoidance of doubt all sums payable by the Council or the County Council to the Owner shall be payable to the Owner and not to Edgmond or to any successor in title the Owner or other occupier or developer of the Land
- 10.5 For the avoidance of doubt the Contributions Strategy and the requirement to obtain Relevant Contributions shall relate to all land within the Broadmarsh Transportation Strategy Policy Area (and not just to the sites identified in the Table in Schedule 2) the development of which shall result increased traffic movements beyond the traffic movements currently generated by the current use of such property **PROVIDED THAT** the obligations of the Council and the County Council to obtain Relevant Contributions shall not apply in respect of any proposed development where the resolution to grant planning permission (or any resolution to refuse or any deemed refusal which was overturned by an appeal decision resulting in the grant of planning permission) was made more than seven years after the date upon which the County Director shall have issued the Certificate of Completion that the Highway Junction Works shall all have been constructed and completed to her reasonable satisfaction (but such obligations shall continue in respect of any relevant permission granted after such date where the resolution (or appeal decision was made on or before such date)
- 10.6 Nothing in Clause 8.1.3 or 9.1.3 shall oblige the Council or the County Council to pay to the Owner any Relevant Contribution (or any part thereof) the payment of which shall cause the total sum paid to the Owner by way of Contribution Refund when aggregated with all other sums paid to the Owner by way of Contribution Refund (whether paid by the Council or the County Council) to exceed the Maximum Contribution Refund

11 Service Provisions

- 11.1 Any notice or other written communication to be served upon or given by one party to any other under the terms of this Agreement shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery

post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing

11.2 The address for any notice or other written communication shall only be within the United Kingdom and is:

- (a) for the Owner Seeda Headquarters Cross Lanes Guildford GU1 1YA or such other address as the Owner shall notify to the other parties to this Agreement in writing
- (b) for Edgmond shall be the registered office in the UK of Dwyer plc or such other bona fide address in the UK as shall be notified in writing to the other parties to this Agreement from time to time
- (c) for the Council as specified above marked for the attention of the Director or such other officer as the Council shall notify to the other parties to this Agreement in writing
- (d) for the County Council as specified above marked for the attention of the County Council's Head of Corporate and Legal Services at the address stated as aforesaid or such other officer as the County Council shall notify to the other parties to this Agreement in writing

11.3 Any notice or other written communication to be given by the Council or the County Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council or the County Council by an officer who ostensibly would normally handle matters to which the communication relates or signatory duly authorised to handle matters to which the communication relates

12 Resolution of Disputes

12.1 Save for matters of construction (which shall be matters for the Court) in the event of any dispute arising between the parties hereto in respect of any matter contained in this Agreement the parties shall refer the dispute to an Expert to be agreed between them (and neither party shall unreasonably refuse to have the matter determined by an Expert) but in the event that the parties cannot agree an Expert between them within a period of fourteen days

of a request by one party to the other parties to refer the dispute to an Expert the dispute shall be referred to an Expert to be nominated at their joint expense by or on behalf of the President for the time being of the Institution of Civil Engineers who shall appoint an Expert whose qualifications or professional experience is appropriate for determining the matter in dispute

- 12.2 The Expert shall act as an expert and not as an arbitrator and whose decision shall be final and binding on the parties hereto and whose reasonable costs shall be at his discretion and the Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than forty six working days from the date of his appointment to act
- 12.3 The Expert shall be required to give notice to each of the said parties inviting each of them to submit to him within ten working days of his appointment written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further fifteen working days in respect of any such submission and material and the Expert's decision shall be given in writing within twenty-one working days from receipt of any counter submissions or in the event that there are no counter submissions within twenty-one working days of receipt of the written submissions and supporting material with reasons and in the absence of manifest error the Expert's decision shall be final and binding on the said parties
- 12.4 It is hereby agreed between the parties hereto that nothing in this Clause 12 shall be taken to fetter the ability of the Council and/or the County Council to seek redress (including injunctive or other relief from any court of competent jurisdiction) for any breach of any of the obligations entered into by the Owner in this Agreement

13 Contracts (Rights of Third Parties) Act 1999

- 13.1 It is hereby agreed between the parties hereto that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other

than the parties to this Agreement (and any successors in title or successor bodies) shall have any rights under or be able to enforce the provisions of this Agreement

14 Certificate of Ownership

- 14.1 The Owner has produced a certificate of title prepared by its property solicitors set out in Schedule 3 upon which said certificate the Council and the County Council relies that the Owner is the owner of the freehold of the Land free from any mortgage or charge and the Owner states and the solicitors as aforesaid certify with the intent that the Council and the County Council shall rely upon the statement and certificate respectively that no mortgage or charge has been concluded which affects the Land and no other person has any interest in the Land whether legal or equitable.

15 Local Land Charge

- 15.1 The Council shall as soon as reasonably practicable after the date of this Agreement register this Agreement as a local land charge
- 15.2 In accordance with the requirements of the Land Registration Act 2002 the Owner hereby consents to the noting of this Agreement in the Charges Register of title number SH11401

16 Costs

- 16.1 The Owner hereby covenants with the Council and the County Council that it will on the date hereof pay the Council's and the County Council's reasonable legal and technical costs in connection with the negotiation and completion of this Agreement

17 Edgmond Consent

Edgmond as contractual purchaser confirms that it consents to the Land being bound by the terms of this Agreement

IN WITNESS whereof these presents have been executed by the parties hereto as a deed and delivered on the day and year first before written

Schedule 1

Broadmarsh Transportation Strategy Works

1. The provision of a traffic signal controlled "tear drop" roundabout junction at the A27(T) westbound off-slip road junction with Harts Farm Way.
2. The provision of traffic signals on and alterations to the "Rusty Cutter" roundabout at Bedhampton.
3. The overlaying of the surface of Harts Farm Way (from the junction with the A27(T) westbound off-slip to the Hermitage Stream Bridge).
4. The provision of footway/cycleway and street lighting on Harts Farm Way (from the junction with the A27(T) westbound off-slip to the Hermitage Stream Bridge).
5. The provision of funding to secure a peak hour bus service between Havant Bus Station and Broadmarsh for a 3 year period.
6. The provision of 4 bus shelters and associated infrastructure.
7. The provision of a "Bus Gate" on the section of highway to be provided between the internal road network of the Langstone Technology Park and Penner Road.
8. The upgrading (to a cycle track) of that part of the existing definitive footpath No. 50 that runs along the boundary of the A27(T) and Langstone Technology Park (from the subway under the A27(T) to Brookside Road).
9. The upgrading (to a cycle track) of that part of definitive footpath No. 51b that runs from the subway under the A27(T) to the Langstone Technology Park access road from Langstone Road.
10. The provision of a prescriptive cycle route from the point where that part of the definitive footpath No. 51b that runs from the subway under the A27(T) meets the Langstone Technology Park access road from Langstone Road southwards to Penner Road utilising the Langstone Technology Park's internal road network.
11. The provision of a prescriptive bus route from Langstone Road to Penner Road utilising the Langstone Technology Park's internal road network

SCHEDULE 2

The Contribution Strategy

SEEDA
Broadmarsh Development
Contribution Strategy
Proposed Contributions
16th November 2004.

Item	Description	Amount	SEEDA's %	SEEDA's Contribution	LTP's %	LTP's Contribution	Land behind Basepoint %	Land behind Basepoint Contribution	HWS %	HWS Contribution	Allied National %	Allied National Contribution	Totals
1	Bus Service for 3 years	£60,000	45.36%	£27,216	25.89%	£15,534	6.13%	£3,678	18.40%	£11,040	4.22%	£2,532	
2	Infrastructure - 4 bus stops.	£12,800	45.36%	£5,806	25.89%	£3,314	6.13%	£785	18.40%	£2,355	4.22%	£540	
3	Bus Gate	£10,000	45.36%	£4,536	25.89%	£2,589	6.13%	£613	18.40%	£1,840	4.22%	£422	
4	Cycle Track	£55,000	45.36%	£24,948	25.89%	£14,240	6.13%	£3,372	18.40%	£10,120	4.22%	£2,321	
	Sub-total of 'Borough' requirements	£137,800		£62,506		£35,676		£8,447		£25,355		£5,815	£137,800
5	Teardrop Junction	£1,508,000											
	Southmoor Park Contribution	£660,000											
	Remaining amount to be funded from contributions.	£848,000	58.40%	£495,232	9.80%	£83,104	7.50%	£63,600	22.40%	£189,952	1.90%	£16,112	£848,000
6	Bedhampton Roundabout	£418,000	58.40%	£244,112	9.80%	£40,964	7.50%	£31,350	22.40%	£93,632	1.90%	£7,942	£418,000
7	Harts Farm Way												
	Overlay existing road	£110,000											
	Provision of footway/cycleway and street lighting	£66,500											
	Less SWS contribution	£22,000											
	Total Harts Farm Way	£154,500	58.40%	£90,228	9.80%	£15,141	7.50%	£11,588	22.40%	£34,608	1.90%	£2,936	£154,500
	Total Contributions	£1,558,300		£892,078		£174,885		£114,985		£343,547		£32,805	£1,558,300

This is not an exhaustive list

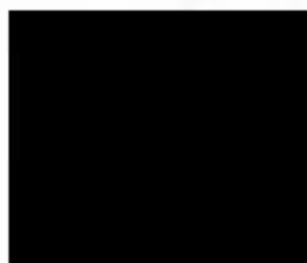
Schedule 3

Certificate of Title

As property solicitors for the Owner we hereby certify that on the date of this Agreement what is set out at Recital (1) and Clause 14 are true

Signed.....

EXECUTED as a DEED by affixing)
THE COMMON SEAL of)
SOUTH EAST ENGLAND)
DEVELOPMENT AGENCY)
in the presence of:)



Authorised Signatory

EXECUTED as a Deed by EDGMOND)
HOLDINGS LIMITED acting by:)



Director, Wm FERRY



RYSAFTE INTERNATIONAL SERVICES LIMITED

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



Solicitor to the Council

EXECUTED as a DEED by affixing)
THE COMMON SEAL of HAMPSHIRE)
COUNTY COUNCIL in the presence of:)



Authorised Signatory