

DATED 29 NOVEMBER 2017

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) HAMPSHIRE COUNTY COUNCIL

and

(3) PERBURY DEVELOPMENTS LIMITED

---

**AGREEMENT**

Under Section 106 Town and Country Planning Act 1990

relating to land at Godbey House, 380 Sea Front, Hayling Island, PO11 0BD

---

THIS AGREEMENT is made on

29 NOVEMBER

2017

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**)
2. **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UJ (**Owner**)
3. **PERBURY DEVELOPMENTS LIMITED** incorporated and registered in England and Wales with company number 00733312 whose registered office is at 3 West Links, Tollgate, Chandlers Ford, Eastleigh, Hampshire, SO53 3TG (**Developer**)

#### 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 Owner is the freehold Owner of the whole of the Land.
- (C) The Application has been submitted by the Developer with the consent of the Owner for permission to develop the Land in accordance with the Planning Permission.
- (D) The Owner enters into this Agreement in anticipation of the grant of Planning Permission being made subject to the Owner entering into this Agreement which makes provision for regulating the Development and securing the matters referred to in this Agreement.
- (E) 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 Owner and the Developer and the Owner's 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:

|                                   |                                                                                                                                                                                                                                                                   |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "the Act"                         | the Town and Country Planning Act 1990                                                                                                                                                                                                                            |
| "Affordable Housing Contribution" | the sum of £274,228 (two hundred and seventy four thousand, two hundred and twenty eight pounds) as a contribution towards the provision of off-site affordable housing in accordance with Policies CS9 and CS21 of the Havant Borough Local Plan (Core Strategy) |
| "Application"                     | the application submitted by the Owner to the Council for planning permission to carry out the Development and given the Council's reference number APP/17/00529                                                                                                  |
| "Common Parts"                    | 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 Dwellings 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, street lighting, amenity spaces, drainage ditches and trees as identified on drawing number 16054-P15 Rev A

**"Development"**

the construction of 13 (thirteen) Dwellings including the provision of parking and landscaping together with other associated works following the demolition of the existing building on the Land

**"Disposal"**

in relation to each Dwelling means:

(a) the first occupation by anyone permitted or suffered to occupy the Dwelling whether by:

I. a person who has acquired 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;

and for the avoidance of doubt, such occupation shall not include occupation for the purpose of constructing fitting out decoration or marketing of or display or occupation in relation to security operations for the Development; or

(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 "Disposed Of" shall be construed accordingly

**"Dwelling"**

means a self-contained unit of residential accommodation (and for the avoidance of doubt this definition shall include houses flats and sheltered apartments as appropriate) comprised within the Development and "Dwellings" shall be construed accordingly

**"Implementation of Development"**

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, formation and erection of site construction compound, on site car parking areas, erection of tree

|             |                              |
|-------------|------------------------------|
| Project No. | 10054                        |
| Client      | Barbican Estate              |
| Location    | Barbican Estate, Bournemouth |
| Site Area   | 1.250 @ A3                   |
| Scale       | 1:100                        |
| Author      | PLS                          |
| Check       | PLS                          |
| Date        | 10/05/17                     |
| Drawn by    | PLS                          |
| Check       | PLS                          |
| Date        | 10/05/17                     |

# PLANNING

1. This plan shows the proposed development and its location within the site.

2. The site is shown in its context, with the surrounding area and the sea front.

3. The details shown are for design information only and are subject to further design development with the relevant authorities.

4. All drawings are subject to local authority consent.

5. All drawings are subject to planning and building regulations consent.

6. All dimensions to be confirmed on site.

7. All drawings are subject to planning and building regulations consent.

8. The survey data drawn by and received from Barrell Tree Consultancy on 08.04.2017.

9. Ordnance Survey data received from client on 04.07.2016, drawn by Hampshire County Council in May 2014.

10. General Notes

11. The site is shown in its context, with the surrounding area and the sea front.

12. The details shown are for design information only and are subject to further design development with the relevant authorities.

13. All drawings are subject to local authority consent.

14. All drawings are subject to planning and building regulations consent.

15. All dimensions to be confirmed on site.

16. The survey data drawn by and received from Barrell Tree Consultancy on 08.04.2017.

17. Ordnance Survey data received from client on 04.07.2016, drawn by Hampshire County Council in May 2014.

18. General Notes

19. The site is shown in its context, with the surrounding area and the sea front.

20. The details shown are for design information only and are subject to further design development with the relevant authorities.

21. All drawings are subject to local authority consent.

22. All drawings are subject to planning and building regulations consent.

23. All dimensions to be confirmed on site.

24. The survey data drawn by and received from Barrell Tree Consultancy on 08.04.2017.

25. Ordnance Survey data received from client on 04.07.2016, drawn by Hampshire County Council in May 2014.

26. General Notes

27. The site is shown in its context, with the surrounding area and the sea front.

28. The details shown are for design information only and are subject to further design development with the relevant authorities.

29. All drawings are subject to local authority consent.

30. All drawings are subject to planning and building regulations consent.

31. All dimensions to be confirmed on site.

32. The survey data drawn by and received from Barrell Tree Consultancy on 08.04.2017.

33. Ordnance Survey data received from client on 04.07.2016, drawn by Hampshire County Council in May 2014.

34. General Notes

35. The site is shown in its context, with the surrounding area and the sea front.

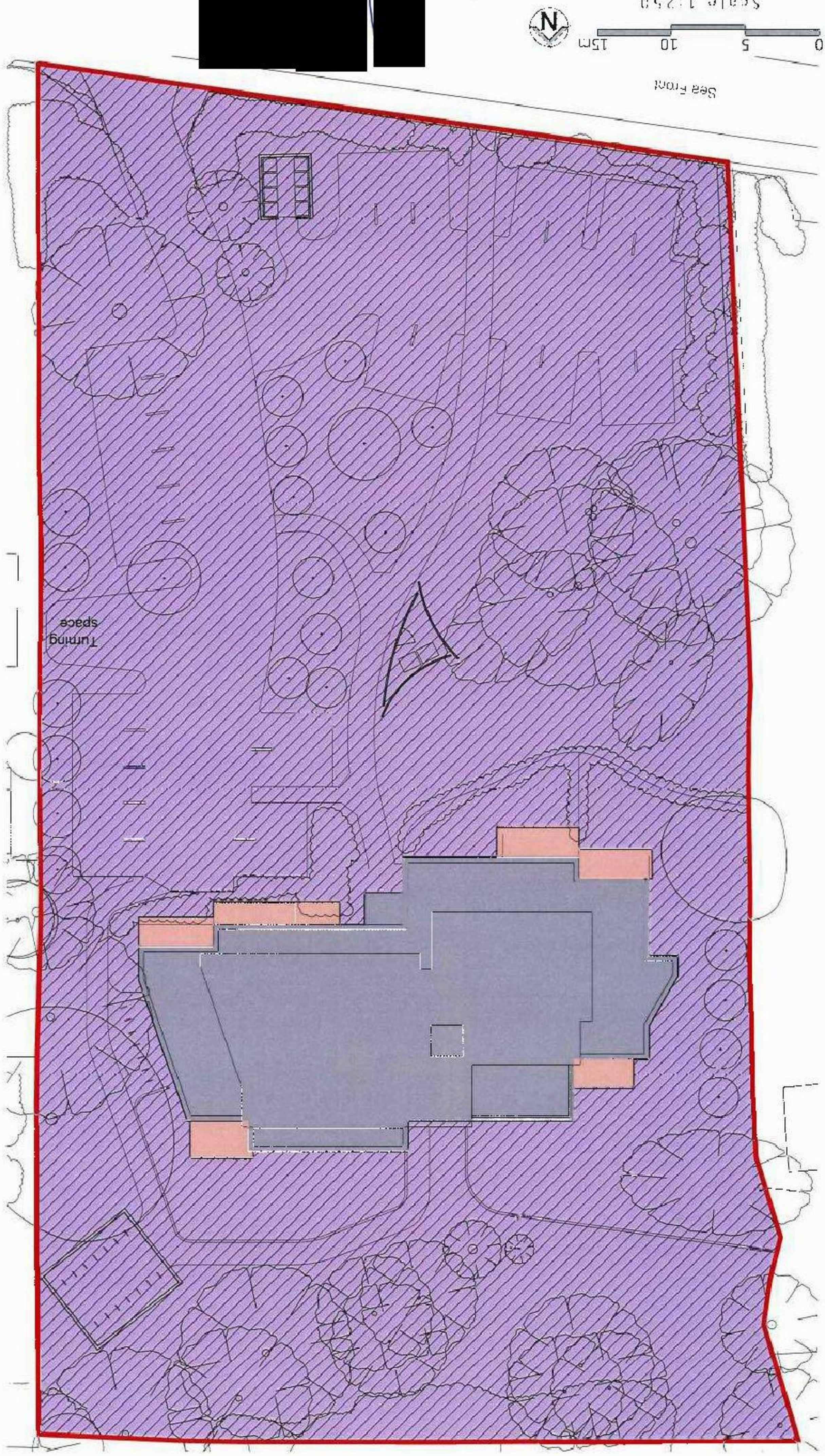
36. The details shown are for design information only and are subject to further design development with the relevant authorities.

37. All drawings are subject to local authority consent.

38. All drawings are subject to planning and building regulations consent.

39. All dimensions to be confirmed on site.

40. The survey data drawn by and received from Barrell Tree Consultancy on 08.04.2017.



36/8913

MacLennan

1592

|                               |                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                               | protection fencing and all associated H&S and directional signage and "Implement" and similar expressions shall be construed accordingly                                                                                                                                                                                                                                                                    |
| <b>"Index Linked"</b>         | <p>Amount payable = the payment specified in this deed x (A/B) where:</p> <p>A= the last figure published for the CPI that applied immediately prior to the grant of Planning Permission</p> <p>B= the last figure published for the CPI that applied immediately prior to Implementation of the Development.</p>                                                                                           |
| <b>"Interest"</b>             | means interest at 4% above the base lending rate of the Barclays Bank PLC from time to time                                                                                                                                                                                                                                                                                                                 |
| <b>"Land"</b>                 | means the freehold property being land known as Godbey House, 380 Sea Front, Hayling Island PO11 0BD, shown edged red on the Plan and registered at the Land Registry with title number SH44293                                                                                                                                                                                                             |
| <b>"Management Agreement"</b> | an agreement made between the Owner 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                                                                                                   |
| <b>"Management Company"</b>   | a company limited by guarantee or by shares and established in accordance with the provisions of the Schedule 1 to be charged with the management of the Common Parts and SuDs;                                                                                                                                                                                                                             |
| <b>"Management Plan"</b>      | a plan for the maintenance and management of the Common Parts and SuDs for the lifetime of the development with particular provision included for the future management and maintenance of the trees falling within the Common Parts to be proposed by the Owner and Developer and approved by the Council in accordance with the provisions of the Schedule 1                                              |
| <b>"Monitoring Fee"</b>       | the sum of £1,458 (one thousand four hundred and fifty eight pounds) as a contribution towards the costs incurred by the Council in the provision of a suitably qualified and experienced person(s) whose function is to monitor, coordinate and enforce the obligations contained within this Agreement                                                                                                    |
| <b>"Occupation"</b>           | 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 the formation and erection of site construction compound, on site car parking areas, erection of tree protection fencing and all associated H&S |

|                                                            |                                                                                                                                                                                                                                                                                                                             |
|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                            | and directional signage and "Occupy" shall be similarly construed.                                                                                                                                                                                                                                                          |
| <b>"Plan "</b>                                             | the location plan attached to this Agreement with drawing number P20                                                                                                                                                                                                                                                        |
| <b>"Planning Permission"</b>                               | the conditional planning permission that may be granted in pursuance of the Application                                                                                                                                                                                                                                     |
| <b>"Solent Recreation Mitigation Project Contribution"</b> | the sum of £2,172 (two thousand, one hundred and seventy two pounds) (subject to indexation in accordance with the figures supplied to the Council by the Solent Recreation Mitigation Partnership) in respect of the Special Protection Area mitigation measures delivered through the Interim Solent Recreation Strategy. |
| <b>"SuDs"</b>                                              | means a sustainable drainage system for the Development in accordance with a specification agreed in writing by the Council                                                                                                                                                                                                 |
| <b>"Working Day"</b>                                       | a day other than a Saturday or Sunday or public holiday in England.                                                                                                                                                                                                                                                         |

## 2 INTERPRETATION

- 2.1 The clause 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 Owner or the Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

# Location Plan

1:1250@A3



## General Notes

Ordinance Survey data received from client on 04.07.2016, drawn by Hampshire County Council in May 2014

Tree Survey Data drawn by and received from Barrel Tree Consultancy on 03.04.2017.

All dimensions to be confirmed on site. All drawings subject to planning and building regulations consent.

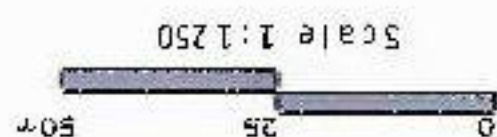
All drawings are subject to Local Authority consent.

The details shown are for design intent purposes only and are subject to further design development with suppliers and sub-contractors.

Do not scale off drawings, if in doubt ask.

## Key

- Site Boundary
- Existing Building
- Neighbouring Properties

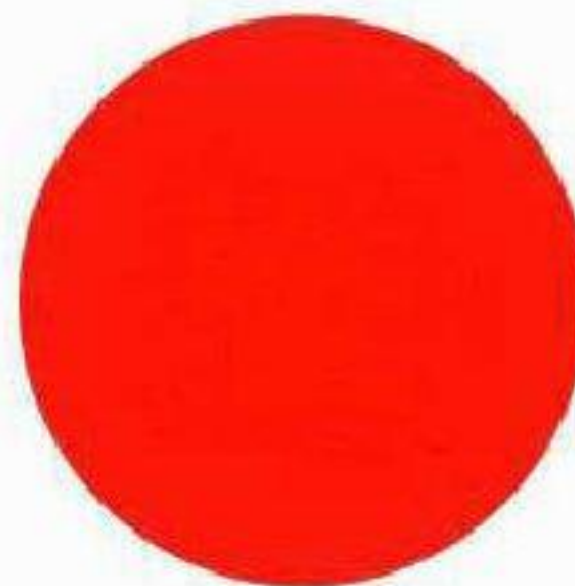
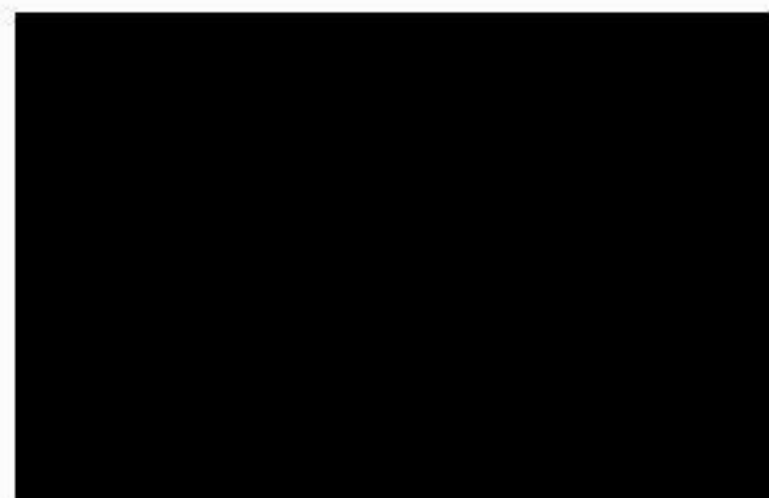


## Planning

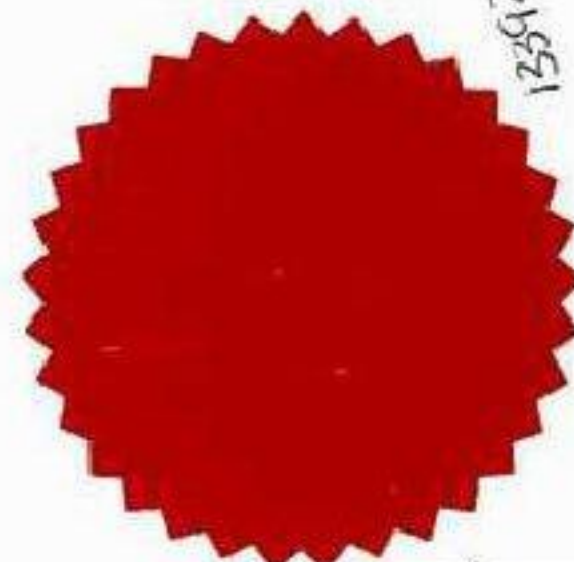
|               |              |
|---------------|--------------|
| Project Name: | Geobey House |
| Drawn by:     | P20          |
| Check by:     | Planning     |
| Location:     | Geobey House |
| Area:         | 1.1250 Ha    |
| Scale:        | 1:1250       |
| Date:         | 27.04.17     |
| Client:       | DC           |
| Project Ref:  | 17/002/17    |

**BrightSpace architects**

47 Christchurch Road, Christchurch, Dorset, BH1 1JY  
Tel: 01425 655609/655633



36/8913



13592

- 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 sections 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**

- 4.1 This Agreement shall have effect from the date hereof.

### **5 OBLIGATIONS OF THE PARTIES**

- 5.1 The Owner and the Developer covenant with the Council to comply observe and perform the obligations as set out in this Agreement.

### **6 REGISTRATION**

- 6.1 This Agreement shall be registered by the Council as a Local Land Charge in the Register of Local Land Charges maintained by the Council.
- 6.2 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

### **7 RELEASE**

- 7.1 No party (except with respect to paragraph 4.3 of Schedule 1) shall be liable for any breach of a covenant, restriction or obligation contained in this Agreement after parting with all or part thereof of its interest in the Land except in respect of any breach subsisting prior to parting with such interest.

### **8 NOTICES**

- 8.1 The Owner and the Developer agree with the Council to give the Council immediate written notice 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

8.1.1 registered office where the transferee Owner is a company

8.1.2 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:

8.4.1 if delivered by hand, at the time of delivery; or

8.4.2 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**

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

## **10 DETERMINATION OF DISPUTES**

10.1 If any dispute arises out of this Agreement the dispute shall be referred to an arbitrator appointed jointly by the parties if the parties cannot agree on the arbitrator's Identity the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors.

10.2 The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction then equally).

## **11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

11.1 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## **12 INDEXATION**

12.1 All financial contributions payable to the Council 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 Owner in writing.

### **13 INTEREST**

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

### **14 INDEMNITY**

- 14.1 The Developer indemnifies the Owner in respect of any liability under this Agreement PROVIDED THAT the Owners dispose of their legal interest in the Land to the Developer and for the avoidance of doubt this shall include all liabilities, costs, expenses, damages and losses (excluding any indirect or consequential losses) and all interest, penalties and legal costs and all other reasonable professional costs and expenses suffered or incurred by the Owner under this Agreement.

### **15 TERMINATION**

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

15.1.1 expires;

15.1.2 is varied or revoked other than at the request of the Owner; or

15.1.3 is quashed following a successful legal challenge.

### **16 FUTURE PERMISSIONS**

- 16.1 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 but 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 (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 14.1.2 arise.

### **17 JURISDICTION**

- 17.1 This Agreement shall be governed by and interpreted in accordance with the law of England and Wales.
- 17.2 The Courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement and this clause operates for the benefit of the Council which retains the right to sue the Owner and enforce any judgment against the Owner in the courts of any competent jurisdiction.

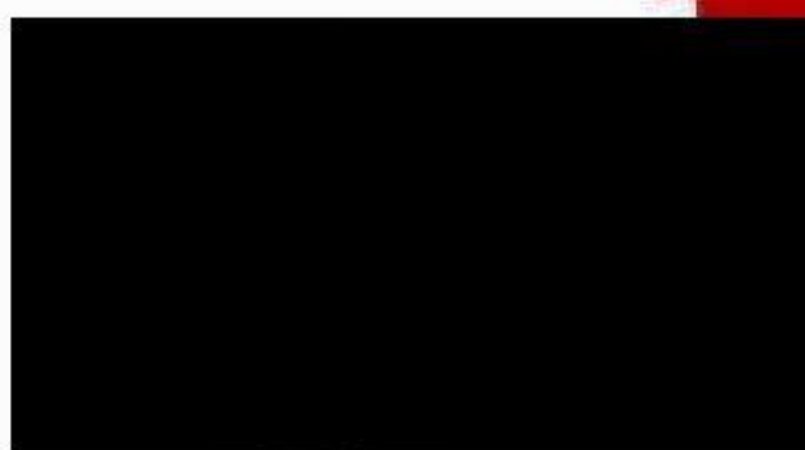
IN WITNESS of which this document has been duly executed as a deed and delivered on the date stated at the beginning of this document.

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

in the presence of:



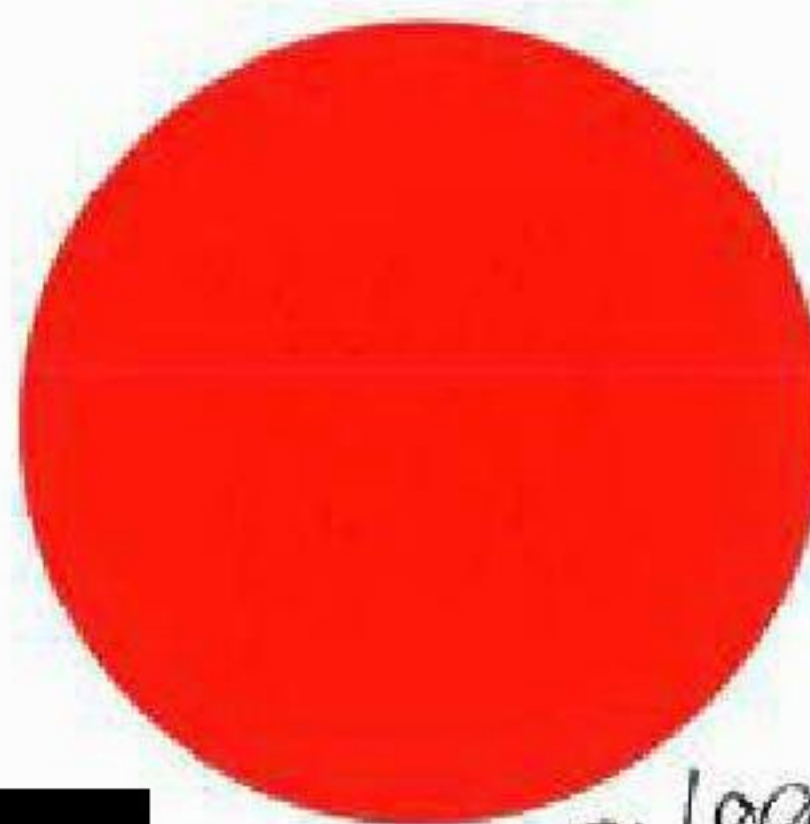
13392



\_\_\_\_\_  
Authorised Signatory

**EXECUTED** as a **DEED** by affixing  
**THE COMMON SEAL** of  
**HAMPSHIRE COUNTY COUNCIL**

in the presence of



36/8913



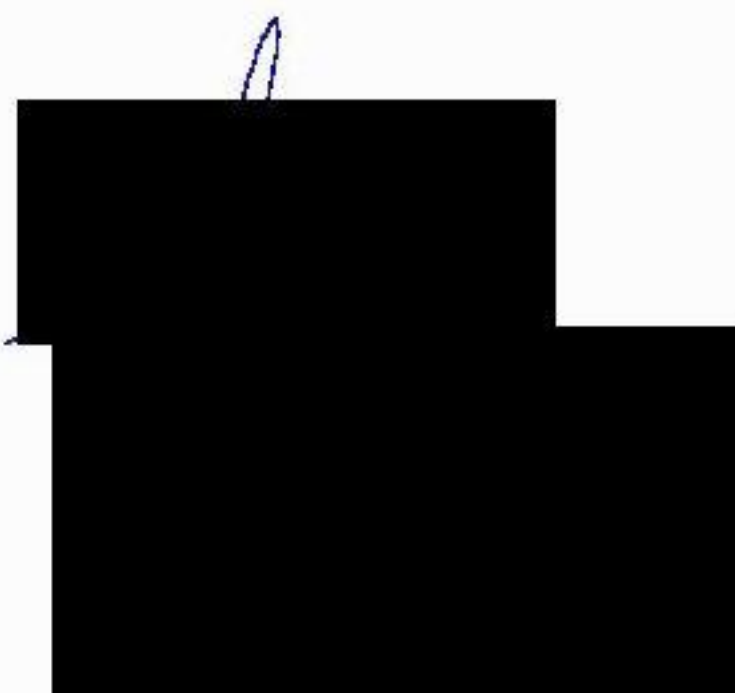
\_\_\_\_\_  
Authorised Signatory

**Executed** as a deed by

**PERBURY DEVELOPMENTS LIMITED**

acting by two directors or

By a Director and its secretary



## **SCHEDULE 1**

### **Owner's covenants**

The Owner, the Developer and the Council (where relevant) covenant:

#### **1. Implementation**

- 1.1 to give to the Council not less than 14 days written notice of their intention to Implement the Development

#### **2. Contributions**

- 2.1 not to Implement or to cause or permit Implementation of the Development until it has paid or caused to be paid to the Council the Solent Recreation Mitigation Project Contribution
- 2.2 not to Dispose or to cause or permit the Disposal of more than 8 Dwellings until it has paid or caused to be paid to the Council the Affordable Housing Contribution which must be applied by the Council only for the purposes of providing off-site affordable housing and in the event that the Council have not expended or committed for expenditure the Affordable Housing Contribution within a period of ten years from the date of receipt by the Council of such payment, the Council covenants to refund the Affordable Housing Contribution to the payer of the same promptly.
- 2.3 not later than Implementation of Development to pay or cause to be paid to the Council the Monitoring Fee.

#### **3. Management and Maintenance of the Common Parts**

- 3.1 not to Implement the Development unless and until the Council has approved in writing the Owner's proposal for the formation of the Management Company and such proposals shall include full details of the proposed structure and voting rights of the Management Company.
- 3.2 The Council covenants that it will notify the Owner that it either approves or rejects the proposal referred to in 3.1 above within 28 days of receipt. In the event that notification is not received within that time, the proposal/s will be deemed to be approved for the purposes of 3.1 above and 3.3 below. In the event that notification of a refusal is received by the Owner within the aforementioned time period, the Owner shall continue to comply with the obligation at 3.1 above until such time as the Council approves the proposal or deemed approved applies.
- 3.3 not later than 6 months following Implementation of the Development to submit to the Council in writing the Owner's proposal for the Management Plan.
- 3.4 not to Dispose of a Dwelling until:
- 3.4.1 the Management Company has been formed in accordance with the approved proposal; and
- 3.4.2 the Management Plan has been approved in writing by the Council.

#### **4. Management Company**

- 4.1 not later than six months from Implementation of the Development the Owner 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 seven days of the completion of the registration of the Company.

4.2 shall secure the proper maintenance of the Common Parts and SuDs to the reasonable satisfaction of the Council until such time as:

4.2.1 the Management Company is registered and the Management Plan has been approved by the Council; and

4.2.2 the maintenance arrangements for the Common Parts and SuDs in accordance with the Management Plan have been fully implemented; and

4.2.3 the transfer of the Common Parts and SuDs to the Management Company is completed.

4.3 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 Plan and/or Management Agreement then the Owner or Developer shall (without prejudice to any other right or remedy of the Owner or Developer against the Management Company or any other person) perform the said covenants and obligations until the appointment by the Owner or Developer of a successor to the Management Company.