

Bond Pearce

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31st October 2012

Deed of Variation to a Section 106 Agreement dated 7 October 1992
relating to
Land to the North East of Bartons Road,
Havant

Havant Borough Council ⁽¹⁾
Southern Co-operative Properties Limited ⁽²⁾ and
Richard Charles Kirby and Philip Dymoke
White ⁽³⁾

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DATED 31st October 2012

PARTIES

- (1) **RICHARD CHARLES KIRBY** c/o Speechley Bircham LLP of 6 New Street Square, London, EC4A 3LX and **PHILIP DYMOKE WHITE** Chidden Farm House, Hambledon, Hampshire, PO7 4TD ("**Owner**")
- (2) **SOUTHERN CO-OPERATIVE PROPERTIES LIMITED** (Co. Regn. No. 5016485) of 1000 Lakeside, Weston Road, North Harbour, Portsmouth, PO6 3FE ("**the Developer**"); and
- (3) **HAVANT BOROUGH COUNCIL** of Public Service Plaza, Civic Centre Road, Hampshire, PO9 2AX ("**the Council**").

WHEREAS:

- (A) The Owner is the freehold owner of land to the north east of Bartons Road, Havant which is shown edged red on the plan annexed to this Agreement ("**the Site**").
- (B) The Developer made an application to the Council in connection with the proposed development of a Crematorium Building, Memorial Gardens, landscaping, access, parking, nature conservation works and associated matters (Planning Application Reference: APP/11/01561). On 29 March 2012 the Council granted planning permission for the formation of new access and approach road and related off site highway works to serve a new Crematorium Building and associated features.
- (C) The Site is currently bound by the terms of an agreement entered into under Section 106 of the Town & Country Planning Act 1990 dated 7 October 1992 and made between (1) Richard Charles Kirby and Peter Richard Wingate Pemberton and (2) the Council ("**the Section 106 Agreement**").
- (D) Clause 2 of the Section 106 Agreement prohibits new buildings being constructed on the Site together with other land and restricts the use to open use and for the first 25 years the Site can only be used for the purposes agricultural, horticultural, silvicultural or equestrian pursuits.
- (E) The Developer has submitted a planning application to the Council for a variation to the Section 106 Agreement in order to exempt the land included in the Site from the provisions of the Section 106 Agreement (Planning Application Reference: APP/12/00485).
- (F) The Owner, Developer and Council have agreed to vary the Section 106 Agreement so that the Site is excluded from the Section 106 Agreement.
- (G) The parties have therefore agreed for this Deed of Variation to be entered into to vary the Section 106 Agreement.

1 Definitions and interpretations

- 1.1 In this Deed references to defined terms have the same meaning as set out in clause 1 of the Section 106 Agreement.
- 1.2 In this Deed unless the context requires otherwise:
 - 1.2.1 the rules of interpretation in this clause apply in this Deed
 - 1.2.2 a person includes a corporate or unincorporated body
 - 1.2.3 unless otherwise specified, a reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it

- 1.2.4 a reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them
- 1.2.5 writing or written does not include e-mail
- 1.2.6 except where a contrary intention appears, a reference to a clause is a reference to a clause of this Deed
- 1.2.7 clause headings do not affect the interpretation of this Deed
- 1.2.8 words importing the singular include the plural and vice versa
- 1.2.9 words importing persons include the firms, companies and corporations and vice versa
- 1.2.10 any obligation on any party not to do or omit to do anything shall be deemed to include an obligation not to allow that thing to be done or omitted to be done by any person under its control
- 1.2.11 references in this Deed to clauses schedules and annexures are to clauses schedules and annexures to this Deed
- 1.2.12 references to any party shall be deemed to include a reference to such party's successors in title
- 1.2.13 the headings to the clauses and paragraphs and schedules shall not affect the interpretation of this deed
- 1.2.14 any references (whether specific or general) to any Act of Parliament or other legislation or decree include any statutory modification or re-enactment of it for the time being in force and any order instrument plan regulation permission or direction made or issued under it or under any Act of Parliament or other legislation or decree replaced by it or deriving validity from it
- 1.2.15 this Deed gives no rights under the Contracts (Rights of Third Parties) Act 1999 but does not affect any rights which are available apart from that Act

2 Variation of the Section 106 Agreement

- 2.1 From and including the date of this Deed the Section 106 Agreement shall be read and construed as varied by the provisions set out in Schedule 1 to this Deed
- 2.2 The Section 106 Agreement shall remain fully effective as varied by this deed and the terms of this Deed have effect as though the provisions contained in this Deed had been originally contained in the Section 106 Agreement.

3 Owner and Developer Covenants

- 3.1 The Owner and Developer covenant with the Council to observe and perform the obligations on the part of the Owner contained in the Section 106 Agreement as varied by this Deed.

4 Council's Covenant

- 4.1 The Council covenants with the Owner and Developer to observe and perform the obligations on the part of the Council contained in the Section 106 Agreement as varied by this Deed.

5 Memorandum

- 5.1 As soon as reasonably possible following completion of this Deed the Owner, Developer and Council will endorse a memorandum on the Section 106 Agreement in the following terms:

"This Section 106 Agreement has been varied by a Deed of Variation dated [●] and made between Richard Charles Kirby and Philip Dymoke White (1) Southern Co-operative [Properties] Limited (2) and Havant Borough Council (3)"

6 Proper Law

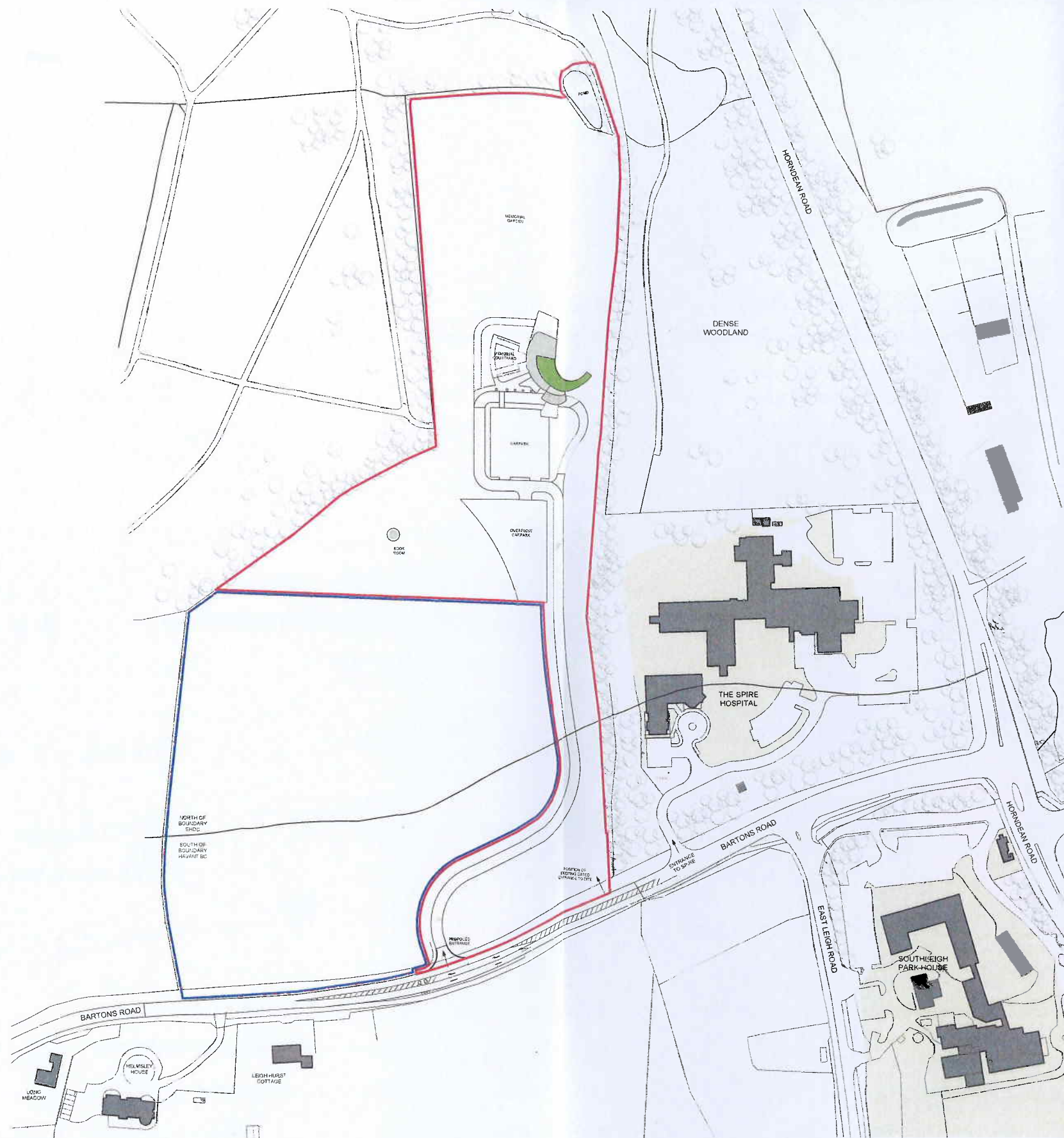
- 6.1 This deed shall be governed by English law

SCHEDULE 1

Variation to the Section 106 Agreement

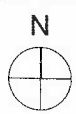
- 1 The definition of "Plan 1" in the Section 106 Agreement shall remain as drafted however the land shown edged red on the plan annexed to this deed given drawing reference no. 4830_1100_Rev A and marked "Plan 1" shall be excluded from the land to be included in Plan 1 of the Section 106 Agreement and excluded from the definition of Restricted Land in the s106 Agreement

PLAN 1



Location Plan

1:1250



revisions & notes A : 12.10.11 : HB : Issued for Planning

0

100mm @A1

Note: All dimensions to be checked on site by the contractor before fabrication and erection. Figured dimensions to be taken in reference to scaled dimensions. This drawing is the copyright of the architects and must not be reproduced or used without their express consent, except for the purposes of a planning application. Electronic issue of this drawing to be confirmed by paper hard copy only.

project Southern Co-operative
Land at Barton's Road
Havant, Hampshire

drawing name Site Location

status PLANNING

date September 2011

scale 1:1250 @A1

drawn HB

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Project No **4830** drawing No **1100** rev **A**

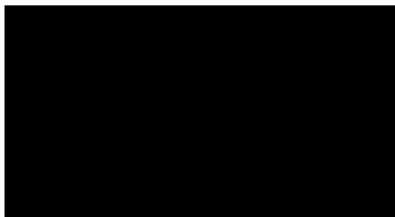
Plan 1

IN WITNESS whereof the parties hereto have executed this Deed (but not delivered it until)
the day and year first before written

SIGNED as a **DEED** by)

RICHARD CHARLES KIRBY in the)

Presence of:)

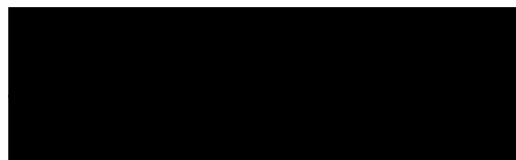


Witness *Mr M White*

Witness Address



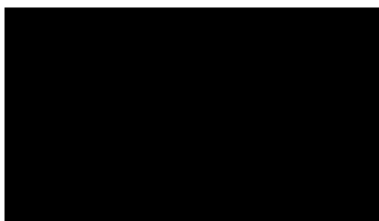
Witness Signature



SIGNED as a **DEED** by)

PHILIP DYMOKE WHITE in the)

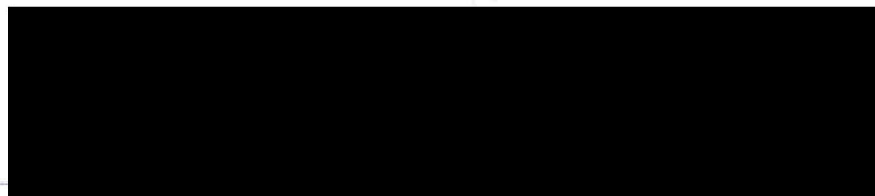
Presence of:)



Witness

MRS P A CREW .

Witness Address



Witness Signature

[Handwritten signature]

EXECUTED as a **DEED** by affixing **THE**)

COMMON SEAL of **HAVANT BOROUGH**)

COUNCIL)



Authorised Signatory



12759

EXECUTED as a **DEED** by)

SOUTHERN CO-OPERATIVE)

PROPERTIES LIMITED)

In the presence of:)

Director

Director/Secretary

