LA979

DATED 8th January 2003

FAREHAM BOROUGH COUNCIL

and

SHIRLETT AND TUDOR ESTATES LIMITED

and

PORTSMOUTH HOUSING ASSOCIATION LIMITED

AGREEMENT

relating to land at

Bishopsfield Road/Broadlaw Walk

Fareham

Hampshire

Mrs L V Ingram

Solicitor to the Council

TP4/9/1190
10/7/02

THIS DEED BY WAY OF AGREEMENT is made the 8 day of January Two thousand and ~~two~~ three **BETWEEN** FAREHAM BOROUGH COUNCIL (hereinafter called "the Council") of the first part SHIRLETT AND TUDOR ESTATES LIMITED whose registered office is at Triumph House 189 Regent Street London W1 (hereinafter called "the First Owner") of the second part and PORTSMOUTH HOUSING ASSOCIATION LIMITED of 247 Fratton Road Portsmouth PO1 5PA (hereinafter called "the Second Owner") of the third part

WHEREAS

(1) The Council is the Local Planning Authority in respect of the land hereinafter mentioned for the purposes of the Town and Country Planning Act 1990 (hereinafter called "the Act")

(2) The First Owner is the registered leasehold proprietor together with other land under title HP254662 with the benefit of the residue of the term of a one hundred and thirty year lease from 15 March 1971 of the land situate and known as the Petrol Filling Station Bishopsfield Road Fareham in Hampshire (hereinafter called "the First Land") which land is for the purpose of identification only edged with a thickened black line on the plan annexed hereto (hereinafter called "the Plan")

(3) The Second Owner is the freehold owner and entitled to registration as proprietor at H M Land Registry of the land at Broadlaw Walk Fareham which land is for the purpose of identification only edged with a thickened broken black line on the Plan (hereinafter called "the Second Land")

(4) Application has been made under reference number P/02/0639/FP to the Council for planning permission for the redevelopment of the First and Second Land (hereinafter together called "the Application Site") by the demolition of the petrol filling station the erection of eighteen (18) flats and the construction of a forty two (42) space public car park

(5) The Application Site lies within the Fareham District Local Plan area which requires that all new dwellings built therein must make appropriate provision for public open space

(6) Where developers do not or are unable to make provision for all or any of the public open space so required on the Application Site they are required to make a payment to meet the cost of providing or improving the public open space within the Ward of the Borough of Fareham in which the Application Site is located or in an

adjoining ward or wards if the Council can demonstrate that provision in an adjoining ward or wards satisfies the needs of the Application Site and/or within the catchment area in which the Application Site is located as shown on Map 1 in the SPG referred to below or in an adjoining catchment area if the Council can demonstrate that provision in an adjoining catchment area satisfies the needs of the Application Site

(7) The methods of assessing the amount of public open space or the amount payable by developers in lieu thereof are set out in the contribution scales in the Council's document entitled Supplementary Planning Guidance: Open Space dated March 2002 (hereinafter called "the SPG") or any amendment revision or replacement thereof

(8) The Council is disposed to grant planning permission subject to conditions for the development referred to in recital (4) above (hereinafter called "the Permission") subject to the First and Second Owners entering into the covenants hereinafter contained

NOW THIS DEED WITNESSETH as follows:-

1. This Agreement is a planning obligation made in pursuance of Section 106 of the Act and is enforceable by the Council

2. The First Owner hereby covenants (but not so as to be liable for any future breach or failure to observe and perform the covenant after the First Owner has disposed of its interest in the First Land) with the Council with the intention of binding the First Land and each and every part thereof that:-

i. the forty-two (42) space public car park shown on the Plan (hereinafter called "the Car Park") shall following its completion by the Second Owner be retained as a public car park unless and until the Council shall have granted planning permission for an alternative use of the Car Park

ii. the Car Park shall not be used for the storage and/or parking of hire vehicles whilst they are not on hire

PROVIDED THAT the First Owner shall not be liable for any breach of the covenants contained in this Clause during any period during which there is a management agreement in effect between the First Owner and the Council for the management of the Car Park by the Council and shall in addition not be liable for any breach of Sub-Clause ii of this Clause following the termination of any such management agreement by the Council

3. The Second Owner hereby covenants with the Council with the intention of binding the Second Land and each and every part thereof that:-

i. no development as defined in S.56 of the Act shall take place upon the Application Site pursuant to the Application unless and until a sum ("the Contribution") calculated in accordance with the contribution tables contained in the SPG or any revision amendment or replacement thereof applicable at the date the Contribution is due has been paid to the Council towards the provision by the Council of off-site outdoor recreational facilities

ii. none of the flats to be erected pursuant to the Permission shall be occupied unless and until the Car Park has been completed to the Councils reasonable satisfaction and made available as a public car park in accordance with a specification approved in writing by the Council

4. The Council hereby covenants with the Second Owner that the contribution mentioned in Clause 2 hereof shall be used for no other purpose than for the provision and/or improvement of outdoor recreational and/or ancillary facilities in accordance with the SPG or any revision amendment or replacement thereof PROVIDED THAT if the Contribution is not used by the Council within five years of the date of its receipt it shall on demand be repaid to the Second Owner with interest calculated at the same rate as set out in Clause 5 hereof

5. If the Contribution shall be unpaid at the date of the commencement of development on the Application Site the Second Owner shall pay interest at the rate of 2% above the base lending rate of the National Westminster Bank plc from time to time in force on the Contribution in respect of the period from the date of the commencement of development until the date of the payment of the Contribution

6. The parties hereto do not intend that the covenants contained herein should be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999

6. In this Agreement the expressions "the Council" "the First Owner" and "the Second Owner" shall include their respective successors in title and assigns

7. This Agreement hereby expresses itself as executed as a Deed

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed

THE COMMON SEAL of
FAREHAM BOROUGH COUNCIL
was hereunto affixed
in the presence of:-

[redacted]

Authorised signatory

THE COMMON SEAL of
SHIRLETT AND TUDOR ESTATES LIMITED
was hereunto affixed
in the presence of:-

[redacted]

THE COMMON SEAL of
PORTSMOUTH HOUSING ASSOCIATION LIMITED
was hereunto affixed
in the presence of:-

[redacted]