

DATED *25th October* 2002

(1) UBS GLOBAL ASSET MANAGEMENT (UK) LTD

- and -

(2) THE DISTRICT COUNCIL OF NEW FOREST

**PLANNING AGREEMENT PURSUANT
TO SECTION 106 OF THE
TOWN & COUNTRY PLANNING ACT 1990
RELATING TO DEVELOPMENT OF
SITE A
AMPRESS PARK
SOUTHAMPTON ROAD LYMINGTON**

THIS DEED OF AGREEMENT is made the *25th* day of *October* Two thousand and two

PARTIES

- (1) **UBS GLOBAL ASSET MANAGEMENT (UK) LTD** whose registered office is at 21 Lombard Street, London EC3V 9AH (company registration no 1546400) ("the Owner")
- (2) **THE DISTRICT COUNCIL OF NEW FOREST** of Appletree Court Lyndhurst Hampshire SO43 7PA ("the Council")

RECITALS

- A Words and phrases used in this Deed are defined in Clause 2.1
- B.1 The Owner is the freehold owner of the Site under title number HP395520 free from charges of a financial nature and the Commercial Site under title numbers HP395521, HP524077, HP523037 and HP561125
- B.2 On 8 April 2002 the Owner changed its name from UBS Asset Management Limited to UBS Global Asset Management (UK) Ltd
- C The Council is the Local Planning Authority for the purposes of Section 106 of the Act for the area within which the Site and the Commercial Site are situated
- D The Owner submitted the Application to the Council in respect of the Site and of the Commercial Site
- E The Council resolved to grant the Permission subject (inter alia) to the completion of this Agreement
- F That part of the Development comprising the Affordable Housing Units will be constructed on the Site

1 OPERATIVE PROVISIONS

- 1.1 This Deed is made pursuant to section 106 of the Act section 111 of the Local Government Act 1972 and all other statutory and other enabling powers as shall be enforceable accordingly but without prejudice to all and any other means of enforcing them at all or in equity or by statute

- 1.2 Subject to Clause 3 the covenants contained within this Deed on the part of the Owner shall be enforceable by the Council against the Owner and its successors in title to the Site

2 INTERPRETATION

- 2.1 In this Deed the following expressions (arranged in alphabetical order) shall unless the context otherwise requires have the following meanings:

<i>"the Act"</i>	the Town & Country Planning Act 1990 (as amended)
<i>"the Affordable Housing Land Cost"</i>	that part of the Affordable Housing Land Total Scheme Cost which represents the acquisition cost of the Affordable Housing Land the calculation of which shall be carried out by the Council acting reasonably and in accordance with the Housing Corporation's Total Cost Indicator (and in the event of any dispute as to the calculation of the said amount by the Council the matter may at the election of either the Owner or the Council be referred to Dispute Resolution for determination)
<i>"the Affordable Housing Land Total Scheme Cost"</i>	the estimated total cost of making available for rent to Eligible Persons the Affordable Housing Units the calculation of which shall be carried out by the Council acting reasonably and in accordance with the Housing Corporation's Total Cost Indicator (and in the event of any dispute as to the calculation of the said amount by the Council the matter may at the election of either the Owner or the Council be referred to Dispute Resolution for determination)
<i>"Affordable Housing Purposes"</i>	available for rent to Eligible Persons who are not able to meet their own housing needs through buying or renting on the open market

<i>"the Affordable Housing Units"</i>	the residential units forming part of the Development and which are to be constructed on the Site
<i>"the Application"</i>	the planning application for the Development submitted on behalf of the Owner on 17 September 2001 and allocated reference number "73046 Outline" by the Council
<i>"the Commercial Site"</i>	the development land near to the Site comprising Sites B, C, D, E, F, G, J and N Ampress Works Southampton Road Lymington shown edged red on Plan 2 for identification only
<i>"Completion Date"</i>	means the 20 th working day after the date of service of the Option Notice
<i>"the Conditions Precedent"</i>	the conditions precedent set out in Clause 3
<i>"Deed"</i>	this Deed of Agreement
<i>"Deed of Covenant"</i>	the Deed of Covenant in the form set out in Fourth Schedule of this Agreement
<i>"the Development"</i>	development on the Site and on the Commercial Site comprising mixed development for business, industrial and storage (classes B1, B2 and B8) petrol filling station and ancillary roadside uses (including ancillary A3 takeaway) public house/hotel/leisure use (classes A3, C1, D1), housing, parking and access
<i>"Dispute Resolution"</i>	the mechanism for resolving disputes set out in Clause 12 of this Deed
<i>"Eligible Person"</i>	any person who satisfies at least one of the criteria below namely that they are:

	<p>(a) on the Council's housing register; or</p> <p>(b) on the housing waiting list or register of an Registered Social Landlord operating in the Council's administrative area; or</p> <p>(c) certified by the Council as being homeless; or</p> <p>(d) a person whom the Council is under a statutory obligation to re-house; or</p> <p>(e) a person who is employed by or who has received an unconditional offer of employment from a key worker employer for the purposes of this Agreement namely:</p> <ul style="list-style-type: none"> • an NHS Trust • a local education authority • a public transport provider • one of the emergency services • a local authority <p>any other category of employer agreed by the Council from time to time for the purposes of this Agreement; or</p> <p>(f) a person who is a co-habitee, child or other dependant of any person referred to in paragraphs (a) to (e) above and who has been living with that person for at least one year prior</p>
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	to the date of Occupation of any of the Affordable Housing Units
<i>"the General Conditions"</i>	the Standard Commercial Property Conditions First Edition
<i>"the Housing Corporation Document"</i>	the document or any substitution for or replacement of it prepared and published by the Housing Corporation annually and titled "Total Cost Indicators, Grant Rates and Administrative Allowances 2002/03 Guidance Notes" and references in this Deed to that document shall be deemed to mean references to the current version of the Housing Corporation Document such document being reviewed and updated each year
<i>"the Housing Corporation's Total Costs Indicator"</i>	the calculation of the same as set out in the Housing Corporation Document
<i>"Implementation"</i>	commencement of the Development by the carrying out of a "material operation" as defined by Section 55 of the Act within the meaning of Section 56(4) of the Act (and "implement" and "implemented" shall be construed accordingly) PROVIDED THAT for the purposes of this Deed works of demolition site clearance the laying removal or diversion of services or the erection of fences or hoardings shall not be taken to be a material operation for the purposes of this Deed
<i>"the Obligations"</i>	the covenants to the Council on the part of the Owner set out in Clauses 4 to 8

<i>"Occupation"</i>	occupation other than for the purposes of marketing fitting out or site security (and the words "Occupy" and "Occupied" shall be construed accordingly)
<i>"the Open Space Contribution"</i>	the financial contribution payable by the Owner referred to in Clause 8
<i>"Option"</i>	the option means the option granted by the Owner to the Council by clause 5
<i>"Option Notice"</i>	the notice served by the Council pursuant to clause 5
<i>"Option Period"</i>	the period commencing on and including the second anniversary of the date of Implementation and expiring on and including the third anniversary of Implementation
<i>"the Permission"</i>	planning permission for the Development pursuant to the Application
<i>"Plan 1 "</i>	the plan annexed hereto marked "Plan 1"
<i>"the Purchase Price"</i>	the Affordable Housing Land Cost
<i>"Registered Social Landlord"</i>	a landlord registered as such under the provisions of the Housing Act 1996 (which definition shall for the purposes of this Agreement include any company that has contracted with such a registered social landlord to provide affordable housing units for them on the Site)
<i>"the Site"</i>	the land more particularly described in the First Schedule

<i>"Third Party"</i>	any person or body who by purchase or some other event shall during the Option Period become entitled to the interest of the Owner in the Site
<i>"Working Days"</i>	any day(s) upon which banks in the City of London are open to the general public

- 2.2 Where in this Deed reference is made to a Clause it is a reference to a Clause in this Deed
- 2.3 A reference to the Council includes a reference to the Council's successor as Local Planning Authority
- 2.4 A reference to the Owner shall include its successors in title and assigns
- 2.5 References to the singular shall include the plural and vice versa
- 2.6 References to any statutory provision shall include any replacement re-enactment or consolidation of the same

3 **CONDITIONALITY**

The Obligations are subject to and are conditional upon satisfaction of the following conditions precedent:-

- 3.1 the grant of the Permission by the Council; and
- 3.2 Implementation of the Permission:
- 3.2.1 on either the Site or the Commercial Site (in the case of the obligations in Clause 4 to 7); and
- 3.2.2 on the Site (in the case of the obligation in Clause 8)
- by or on behalf of the Owner

4 **AFFORDABLE HOUSING OBLIGATIONS**

The Owner **HEREBY COVENANTS** with the Council as follows:

- 4.1 Not to permit the Affordable Housing Units to be Occupied otherwise than for Affordable Housing Purposes
- 4.2 Within twenty four months after the date of satisfaction of the last of the Conditions Precedent to use all reasonable endeavours to procure a transfer of the freehold of the Site to a Registered Social Landlord on terms now following:
 - 4.2.1 the Registered Social Landlord shall not be required to pay more than the Purchase Price as consideration for the transfer; and
 - 4.2.2 the transfer or disposal shall be on terms that the Affordable Housing Units are not to be used otherwise than for Affordable Housing Purposes

5 **CALL OPTION**

- 5.1 In consideration of One pound (£1) the Owner grants to the Council the Option to buy the freehold interest in the Site at the Purchase Price
- 5.2 The Option shall be exercisable by the Council serving on the Owner at any time during the Option Period notice in writing in the form set out in the Third Schedule accompanied by or preceded by payment of the deposit in accordance with clause 5.4
- 5.3 On the valid exercise of the Option the Owner shall sell and the Council shall buy the Site at the Purchase Price on the terms of this Agreement
- 5.4 The Council shall on or before service of the Option Notice pay a deposit of One pound (£1.00) to the Owner as stakeholder
- 5.5 Completion of the sale and purchase and payment of the balance of the Purchase Price shall take place on the Completion Date at the Council's offices or where it may direct

6 **INDEMNITY AND TITLE PROVISIONS**

A transfer of the freehold of the Site pursuant to this Agreement shall be subject to the following:

- 6.1 The Owner sells with full title guarantee

- 6.2 The Site is sold with a vacant possession on completion
- 6.3 Title to the Site is registered at HM Land Registry with absolute freehold title under Title Number HP395520 and title shall be deduced in accordance with the Land Registration Act 1925 Section 110
- 6.4 Except as provided by Clause 6.5 the Site is sold subject to and where appropriate with the benefit of the matters contained and referred to in the Registers of Title Number HP395520 save for any financial charges
- 6.5 In the event that the Owner transfers the Site to the Council or an RSL pursuant to this Deed it shall indemnify the transferee against any liability incurred as a result of the Restrictions at entries 3 and 4 of the Proprietorship Register of HP395520 and the Owner shall indemnify the Council or an RSL (as the case may be) in such transfer of the Site against all liabilities costs claims proceedings or demands in respect of the provisions of a Deed dated 22 May 2001 referred to at entry 6 of the Charges Register of HP395520
- 6.6 The General Conditions shall apply to this Agreement insofar as they are not varied by or inconsistent with the terms of this Agreement
- 6.7 The Owner shall not otherwise than pursuant to the provisions of this Deed create or dispose of any legal or equitable interest (including without limitation any easement right or covenant) in on over or under nor create any right or licence to occupy or use the Site or any part of it except in favour of the Council
- 6.8 The Owner may sell its interest in the Site with the consent of the Council if the Owner complies with the provisions of the Third Schedule (save that the Council's consent shall not be required for a transfer to a Registered Social Landlord pursuant to the terms of this Deed)
- 6.9 The Owner shall within 3 working days after the date of this Agreement deposit the Owner's Land Certificate(s) relating to its title to the Site at HM Land Registry
- 6.10 The Owner consents to registration of a notice of this Agreement in the Charges Register of the Owners title to the Site and shall do all things necessary to enable a notice under the Land Registration Act 1925 Section 49(1) to be registered
- 6.11 If the Option expires the Council shall forthwith cancel any registrations made by it at HM Land Registry to protect this Agreement

- 6.12 The provisions of this Agreement shall not merge on completion of the transfer of the Site insofar as they remain to be performed
- 6.13 The Purchase Price shall be deemed to be inclusive of VAT
- 6.14 It is hereby certified that the transaction hereby effected does not form part of a transaction or series of transactions in respect of which the consideration or aggregate consideration exceeds sixty thousand pounds (£60,000)
- 6.15 The Owner and the Council hereby apply to the Chief Land Registrar for the entry of a restriction in the Registers of Title Number HP395520 that no dealing or disposition of the Site shall be registered unless the Third Party has entered into the Deed of Covenant and delivered the completed Deed of Covenant to the Council and that the Council has confirmed receipt of the same to the Chief Land Registrar

7 **DETERMINATION OF OPTION**

In the event the Owner has transferred the Site to a Registered Social Landlord pursuant to and in accordance with the terms of this Agreement and shall have supplied evidence to the Council of the same then it is hereby deemed that the Option shall be of no further effect and in this event the Council hereby consents to the cancellation of any entry pursuant to this Agreement made at HM Land Registry

8 **OPEN SPACE CONTRIBUTION**

- 8.1 The Owner **HEREBY COVENANTS** with the Council that it will pay the Open Space Contribution on the terms now following:
- 8.1.1 the Open Space Contribution shall be paid at a rate of seven hundred and fifty pounds (£750.00) for each bedroom comprised within the Affordable Housing Units once completed; and
- 8.1.2 the Open Space Contribution shall be paid within twenty Working Days after the date on which the last of the Affordable Housing Units has been completed to a state where it is ready for Occupation
- 8.2 The Council **HEREBY COVENANTS** with the Owner as follows:

8.2.1 it will not use any part of the Open Space Contribution otherwise than for the purposes of acquiring laying out improving and maintaining formal open space in the vicinity of the Site;

8.2.2 if any part of the Open Space Contribution shall remain unexpended within twenty years after the date on which it is received then it will forthwith on written demand be returned to the Owner

9 RELEASE AND LAPSE

9.1 No person or company shall be liable for any breach of this Agreement after he or it shall have parted with all interest in the Land provided that the person or company shall have given not less than 7 days prior notice in writing to the Council's Director of Environment Services of the dealing with the Land and without prejudice to liability for any subsisting breach of covenant prior to parting with such interest

9.2 This Deed shall be deemed to have been revoked and be of no further effect (without any further act or deed on the part of the Council or the Owner) if:

9.2.1 the Permission having been granted shall lapse without first having been Implemented or shall be revoked or modified other than at the request of the Owner; or

9.2.2 the Permission shall be quashed following a successful legal challenge.

10 GENERAL AND ADMINISTRATIVE CLAUSES

10.1 Where in this Deed agreement is required between the Owner and the Council such agreement shall not be unreasonably withheld or delayed by either of them.

10.2 Nothing in this Deed shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act or any other Act (unless legally or equitably permitted).

10.3 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Deed shall be enforceable by a third party who is not a party to the Deed and for the avoidance of doubt the terms of this Deed may be varied by agreement between the parties without the consent of any such third party.

10.4 This Deed is (inter alia) a local land charge and will be registered as such by the Council.

10.5 Any notice or other written communication to be served or given by one party upon or to any other under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by registered or recorded delivery post to the party upon whom it is to be served or to whom it is to be given at the address given for them below or as otherwise notified for the purpose by notice in writing:

10.5.1 for the Council the address for service is the address shown marked above; and

10.5.2 for the Owner the address for service is UBS Global Asset Management (UK) Limited 21 Lombard Street London EC3V 9AH

11 **LEGAL COSTS**

The Owner covenants to pay the Council's reasonable legal costs incurred in respect of this Agreement upon completion of it

12 **DISPUTE RESOLUTION**

12.1 If agreement cannot be reached on any matters specified as being capable of reference to Dispute Resolution then that matter may at the election of either party to the dispute be referred to and settled by a Chartered Surveyor acting as a single expert to be agreed upon between the parties to the dispute or (in default of agreement within five Working Days) nominated by the President for the time being of the Royal Institution of Chartered Surveyors

12.2 The person to be appointed pursuant to Clause 12.1 shall be a person having ten years or more post qualification experience of matters such as those in dispute

12.3 The reference to the expert shall be on terms that determination shall take place within ten Working Days of the expert accepting his instructions

12.4 The expert shall have the power to award the cost of the determination in favour of either party at the expense of the other but in the absence of such determination the costs shall be borne equally by the parties to the dispute

12.5 The expert shall be limited in his findings to the proposal put by either party or a proposal falling between both of them and shall provide written reasons for his decision

- 12.6 The findings of the expert shall (other than in the case of manifest material error) be final and binding on the parties to the dispute

FIRST SCHEDULE

The Site

Site A Ampress Works Southampton Road Lymington Hampshire shown for the purposes of identification only edged red on Plan 1

SECOND SCHEDULE

Form of Option Notice

To: (Seller's Name & Address)

From: (Buyer's Name & Address)

Property: (Insert details)

In accordance with the terms of the Option Agreement dated made between the Owner (1) and the Council (2) relating to the Site I give notice to you that I exercise my option to buy the Site at the Purchase Price.

I enclose the deposit of one pound (£1.00)

SIGNED: DATE:

Duly Authorised Signatory of the Council

THIRD SCHEDULE

Sale of Owners Interest

- 1 If the Owner shall sell or otherwise dispose of its freehold interest in the Site it shall procure that the Option shall continue to be enforceable by the Council against the Third Party
- 2 The Owner shall take all necessary steps having regard to the provisions of the Law of Property (Miscellaneous Provisions) Act 1989 Section 2 as shall be required by the Council to ensure that upon the subsequent exercise of the Option an enforceable agreement will be created between the Council and the Third Party and so that upon any

sale of disposal by the Third Party the same obligations as are contained in this Agreement shall apply and that the Option shall be binding upon and capable of enforcement against all Owners of the freehold interest during the Option Period

- 3 The Owner shall give not less than 10 working days notice to the Council of the Owner's intention to sell or otherwise dispose of its interest to the Third Party
- 4.1 The Owner shall procure that immediately upon completion of any sale of other disposal and prior to the grant of any other interest in the Site the Third Party shall execute and deliver to the Council a Deed under which the right of the Council to exercise the Option shall be preserved during the remainder of the Option Period
- 4.2 The Owner's obligation under paragraph 4 shall be discharged by the Third Party executing and delivering to the buyer a Deed in the form of this Agreement containing all the terms and conditions of this Agreement except only that the Option Period shall be redefined and shall be such period as equals the unexpired residue of the Option Period at the date the Deed is completed and delivered to the Council
- 4.3 Provided that if by virtue of an amendment or variation of the Law of Property (Miscellaneous Provisions) Act 1989 Section 2 or judicial decision or from some other cause or event occurring during the Option Period the exercise of the Option in the form provided in the Second Schedule shall be sufficient to create a binding contract between the parties and between any successors or assigns to the burden and benefit of the Option then the terms and conditions of this paragraph shall cease to apply and have effect

FOURTH SCHEDULE

Deed of Covenant

This Deed of Covenant is made the day of BETWEEN

- 1 (Person to whom the Site is transferred) of (Address) ("the Transferee") and
- 2 (the Council or person to whom the benefit of the Option has been lawfully assigned) of (Address) ("the Buyer")

NOW THIS DEED WITNESSETH as follows

1

- 1.1 This Deed is entered into pursuant to the obligations contained in the Agreement ("the Agreement") dated and made between the Owner (1) and the Council (2) by which the Buyer is entitled to purchase the Site upon and subject to the terms and conditions contained in the Agreement

- 1.2 The Transferee has become the owner of the freehold interest in the Site

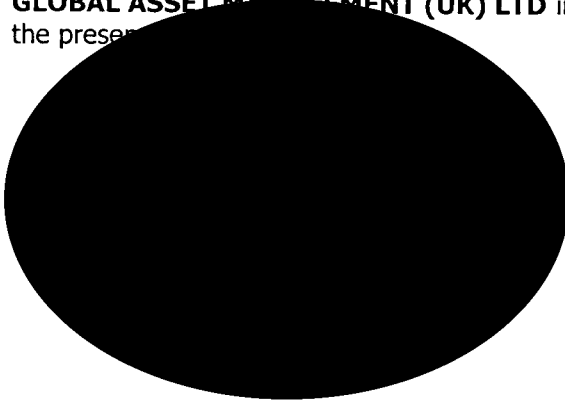
2 **COVENANT**

- 2.1 The Transferee covenants with the Council in respect of the Site that the Transferee will at all times after the date of this deed observe and perform all of the covenants conditions and obligations on the part of the Owner contained in the Agreement whether running with the land or of a personal or collateral nature and will do and perform all acts and things as shall be necessary or appropriate to enable the Council to exercise its right to purchase the Site in accordance with the terms and conditions of the Agreement

IN WITNESS whereof

EXECUTED AS A DEED AND DELIVERED by the parties on the date written above

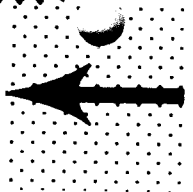
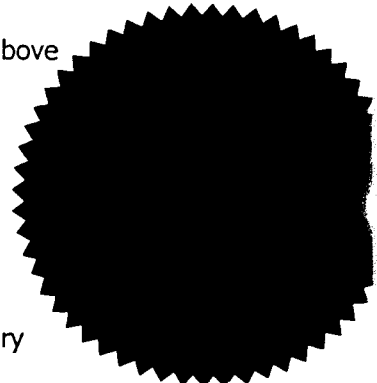
EXECUTED under the Common Seal of **UBS**
GLOBAL ASSET MANAGEMENT (UK) LTD in
the presence of



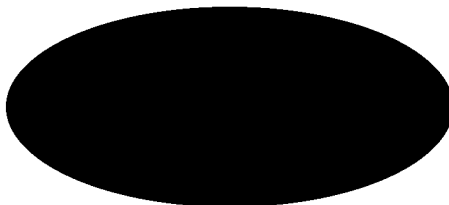
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~~Director~~/Authorised Signatory

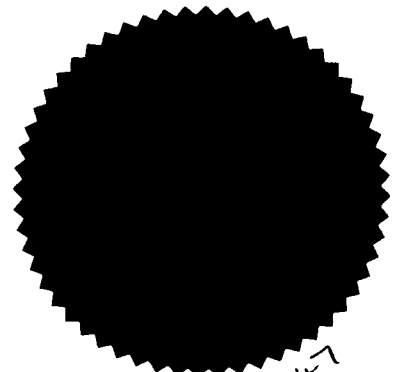
~~Director/Secretary~~/Authorised Signatory



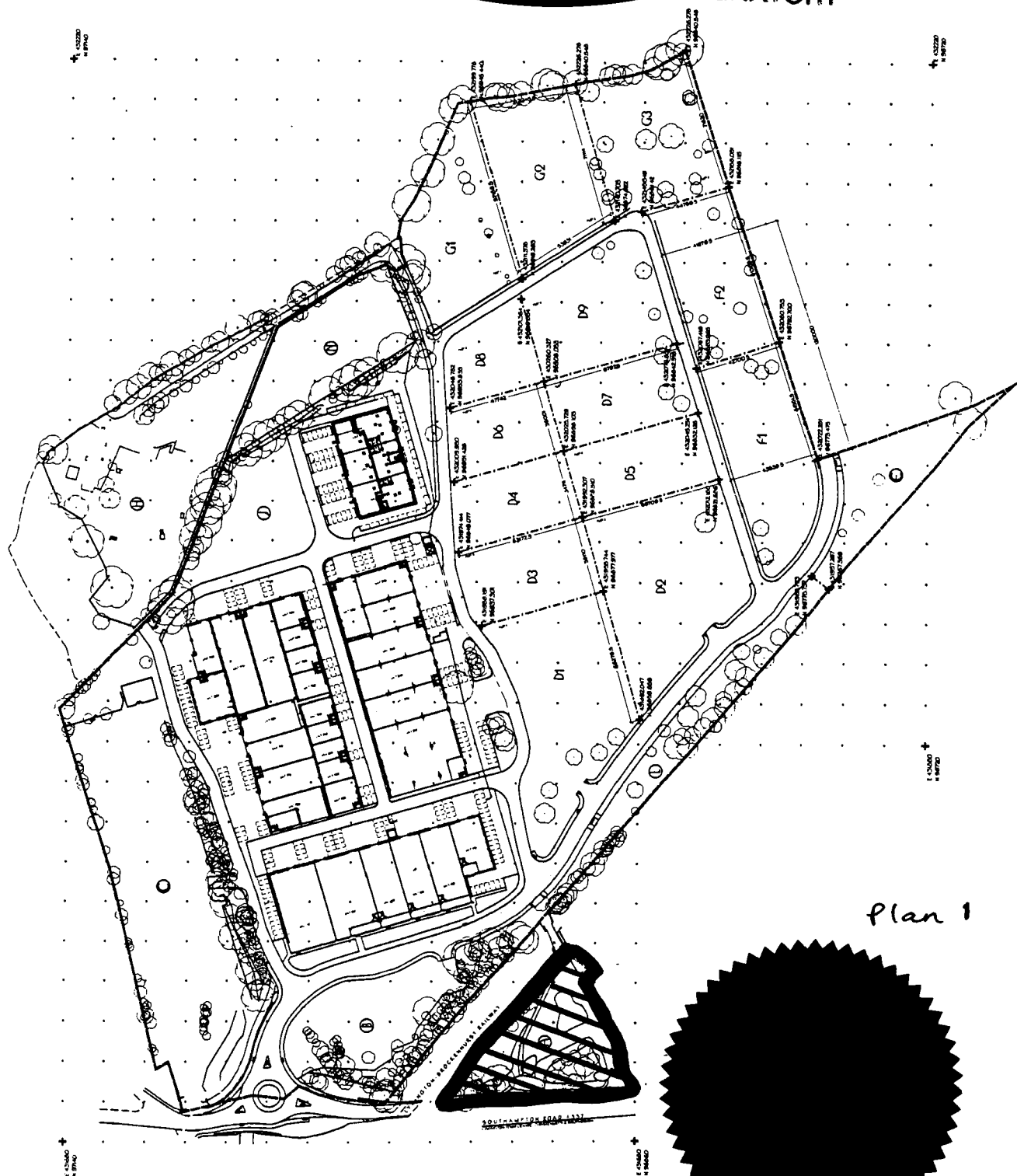
THE COMMON SEAL of **THE DISTRICT**
COUNCIL OF NEW FOREST was hereto affixed
in the presence of:



Authorised Signatory



20767



Plan 1

REF.	DATE	DESCRIPTION
		DO NOT SCALE THESE RELAYING LINE WE ALL MEMBERSHIP TO BE CHECKED ON THIS COMPLETION OF WORK.
		THIS DRAWING IS THE PROPERTY OF THE UNITED STATES AND MAY NOT BE REPRODUCED IN ANY WAY WITHOUT WRITTEN PERMISSION.



**SIMPSON HI
ASSOCIATES**

[illegible]

Plot Setting C
Site A

AMPRESS PARK
SOUTHAMPTON ROAD
LYMINGTON
HAMPSHIRE

DATE	JUNE 2008	DELIVERY	ONE
SCALE	1:1000	CHECKED	
DRAWN BY		REVISION	
3644.164		STATUS	
		APPROVAL	
		DATE	25/06/2008