

DATED

2024

(1) CHURCHILL LIVING LIMITED

(2) CHURCHILL PROPERTY HOLDINGS (No. 17) LIMITED

(3) HSBC UK BANK PLC

(4) TEST VALLEY BOROUGH COUNCIL

AGREEMENT

Under section 106 of the Town and Country Planning Act 1990

relating to land at Edwina Mountbatten House, Broadwater Road, Romsey, Hampshire SO51 8GH

PLANNING APPLICATION REF: 23/01700/FULLS

PLANNING APPEAL REF: APP/C1760/W/24/3342514

SHOOSMITHS

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Ref. MYP/M-01091512

THIS AGREEMENT is made on

2024

BETWEEN:

1. **CHURCHILL LIVING LIMITED** (Company Regn No. 06260373), of Churchill House, Parkside, Ringwood, Hampshire, BH24 3SG (the **“Applicant”**);
2. **CHURCHILL PROPERTY HOLDINGS (No. 17) LIMITED** (Co. Regn. No. 10861765) of Churchill House, Parkside, Ringwood BH24 3SG (the **“Owner”**);
3. **HSBC UK BANK PLC** (Co. Regn. No. 09928412) of 1 Centenary Square, Birmingham B1 1HQ (the **“Mortgagee”**); AND
4. **TEST VALLEY BOROUGH COUNCIL** of Beech Hurst, Weyhill Road, Andover, SP10 3AJ (the **“Council”**)

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and by whom the obligations set out in this Agreement are enforceable.
- (B) The Owner is the freehold owner of the Site registered at the Land Registry under Title Numbers HP771827, HP773024 and HP869688 free from encumbrances that would prevent the Applicant and the Owner from entering into this Agreement subject to a registered charge dated 30 June 2023 in favour of the Mortgagee.
- (C) Pursuant to the Planning Application the Applicant applied to the Council for full planning permission for the Development.
- (D) By notice of refusal dated 25 March 2024 the Council refused to grant the Planning Permission for the reasons set out in the notice and the Applicant has since made the Planning Appeal.
- (E) The parties hereto have agreed to enter into the provisions of this Agreement in order to secure the obligations hereinafter set out

The parties agree as follows:

1 DEFINITIONS

In this Agreement, unless the context otherwise requires, the following definitions apply:

- | | |
|---|--|
| “1990 Act” | the Town and Country Planning Act 1990; |
| “Additional Affordable Housing Contribution” | a financial contribution towards the provision of Off-Site Affordable Housing as set out in the Revised Viability Appraisal calculated on substantially the same basis as set out in the Viability Appraisal less the Affordable Housing Contribution which, in any event, shall not exceed the Cap; |
| “Administration Fee” | the sum of £100.00 (one hundred pounds) to be paid to the Council as a contribution towards its costs in administering and/or monitoring arrangements for the purchase of nitrate credits; |

“Affordable Housing Contribution”	the sum of £164,940,00 (one hundred and sixty-four thousand nine hundred and forty pounds) (Index Linked) to be paid to the Council towards the provision of Off-Site Affordable Housing;
“Allocation Fee”	has the same meaning as in the Mitigation Land Agreement;
“Cap”	£863,304 (eight hundred and sixty-three thousand three hundred and four pounds);
“Capacity”	has the same meaning as in the Mitigation Land Agreement;
“Charge Holder”	any mortgagee or chargee of the Site (or any part of the Site) from time to time or the successors in title to such mortgagee or chargee or any receiver or manager appointed by such mortgagee or chargee;
“Commencement Date”	<p>the date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act other than (for the purposes of this Agreement and no other);</p> <p>(a) site investigations or surveys;</p> <p>(b) archaeological works;</p> <p>(c) site decontamination;</p> <p>(d) the demolition of any existing buildings or structures;</p> <p>(e) excavation works;</p> <p>(f) the clearance or re-grading of the Site;</p> <p>(g) the erection of hoardings and fences;</p> <p>(h) works connected with infilling;</p> <p>(i) works for the provision or diversion of drainage or mains services to prepare the Site for development; or</p> <p>(j) the construction of access and service roads;</p> <p>and “Commence” and “Commenced” shall be construed accordingly;</p>
“Committed”	subject to a contract or other legally binding obligation;
“Contributions”	the Affordable Housing Contribution, the Public Health Contribution, the Informal Open Space Contribution, the Outdoor Sports Recreation Contribution, the New Forest SPA Contribution and the Southampton and Solent Water Contribution and “Contribution” shall be construed accordingly;

“Development”	redevelopment for retirement living accommodation comprising 47 retirement apartments including communal facilities, access, car parking and landscaping as detailed in the Planning Application;
“Direct Allocation Agreement”	has the same meaning as in the Mitigation Land Agreement;
“Dwelling”	a unit of residential accommodation comprised within the Development and “Dwellings” shall be construed accordingly;
“Expert”	a person having appropriate qualifications and local knowledge and experience in the matters in dispute as agreed by the Relevant Parties or failing agreement such person as is nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of the Relevant Parties;
“Index Linked”	Index Linked in accordance with clause 14;
“Informal Open Space Contribution”	the sum of £55,315.00 (fifty-five thousand three hundred and fifteen pounds) (Index Linked) to be paid to the Council towards the provision of informal open space at Romsey Sports Centre comprising the provision of trails and walking routes, improved access arrangements, provision of outdoor gym equipment and measures to promote healthy walks;
“Interest”	interest at 2 per cent above the base lending rate published by HSBC Bank Plc from time to time or if such rate shall not be published at any time such other comparable rate of interest as the Council may then in writing specify having regard to interest rates current at such time;
“Inspector”	the inspector appointed by the Secretary of State to determine the Planning Appeal;
“Mitigation Land”	the land at Roke Manor Farm Salisbury Lane Roke Romsey Hampshire shown edged in red on the site plan attached at Appendix 1 to the Mitigation Land Agreement;
“Mitigation Land Agreement”	the agreement dated 14 th June 2021 made between (1) Roke Manor Limited and (2) the Council pursuant (inter alia) to s106 of the 1990 Act and relating to the Mitigation Land;
“New Forest SPA Contribution”	the sum of £61,100 (sixty-one thousand one hundred pounds) (Index Linked) to be paid to the Council towards the cost of measures to mitigate the impacts of the Development on the New Forest Special Protection Area;
“Occupation”	occupation of the Development for the purposes permitted by the Planning Permission but not occupation for the purposes of construction, fitting out or decoration for marketing or display purposes or in connection with site security during construction of the Development and “Occupy” and “Occupied” shall be construed accordingly;

“Off-Site Affordable Housing”	social rented housing, affordable rented housing and intermediate housing, provided to eligible households whose needs are not met by the market and as defined in the National Planning Policy Framework December 2023 or any such successor national planning policy and eligibility being determined with reference to local incomes and local house prices;
“Outdoor Sports Recreation Contribution”	the sum of £76,916.00 (seventy-six thousand nine hundred and sixteen pounds) (Index Linked) to be paid to the Council towards the provision of outdoor sports recreation facilities comprising enhancement of bowls facilities at Romsey Memorial Park and tennis facilities at Romsey Sports Centre;
“Planning Application”	the application for full planning permission for the carrying out of the Development made by the Applicant on 3 July 2023, validated on 7 July 2023 and allocated reference 23/01700/FULLS by the Council;
“Planning Appeal”	the planning appeal submitted by the Applicant under Section 78 of the 1990 Act in respect of the Council’s refusal of the Planning Application which has been given reference APP/C1760/W/24/3342514;
“Planning Permission”	the full planning permission that may be granted for the Development in pursuance of the Planning Application following the completion of this Agreement;
“Public Health Contribution”	the sum of £16,829 (sixteen thousand eight hundred and twenty-nine pounds) (Index Linked) to be paid to the Council towards the costs of providing increased capacity at doctor’s surgeries with Romsey namely Abbeywell Surgery Nightingale Surgery and Alma Road Surgery;
“Relevant Parties”	the parties to this Agreement;
“Revised Viability Appraisal”	a viability appraisal to be carried out at the expense of the Owner by an independent Valuer to be agreed and appointed jointly by the Owner and the Council and submitted to the Council using substantially the same methodology, parameters and general assumptions as agreed for the Viability Appraisal;
“RPI”	the “All Items” Index of Retail Prices published by the Office for National Statistics;
“Secretary of State”	the Secretary of State for Housing, Communities and Local Government (or such successor Secretary of State or minister of state who shall assume the same decision-making powers from time to time);
“Shell and Core Finish”	the stage when the buildings comprising the Development have been constructed to include all structural works with all external walls and roofs completed and ready to be fitted out internally for use in accordance with the Planning Permission;

“Site”	the land at Edwina Mountbatten House Broadwater Road Romsey Hampshire SO51 8GH shown edged in red on the Site Plan against which the obligations at Schedule 1 to this Agreement may be enforced;
“Site Plan”	the plan attached to this Agreement labelled “Site Plan”;
“Southampton and Solent Waters Contribution”	the sum of £25,151 (twenty-five thousand one hundred and fifty-one pounds) (Index Linked) to be paid to the Council towards the costs of measures to mitigate the impacts of recreational disturbance of birds within the Solent and Southampton Water Special Protection Area which result from the Development;
“Valuer”	a Member or Fellow of the Royal Institution of Chartered Surveyors acting in an independent capacity;
“Viability Appraisal”	the document entitled “Agreed Viability Position” prepared by Planning Issues Limited, dated July 2024 and submitted with the Planning Appeal;
“Working Days”	any Monday, Tuesday, Wednesday, Thursday and Friday except bank or public holidays and except any day between 25 December and 02 January (inclusive) in each year and “Working Day” shall be construed accordingly.

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 Site include any part of it.
- 2.8 References to any party in this Agreement include the successors in title of that party and in the case of the Council include any successor local planning authority exercising planning powers under the 1990 Act.
- 2.9 References to “including” means “including, without limitation”.

- 2.10 Any covenant by the Applicant and/or the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 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 this Agreement shall be unaffected.

3 LEGAL EFFECT

- 3.1 This Agreement constitutes a Deed and is made pursuant to section 106 of the 1990 Act and section 2 of the Localism Act 2011 and all other enabling powers and enactments that are relevant.
- 3.2 The obligations contained in Schedule 1 to this Agreement are planning obligations for the purposes of section 106 of the 1990 Act with the intent that they bind the Site and the Owner and any person deriving title to the Site through or under the Owner and such obligations are enforceable by the Council.
- 3.3 The Council is the local planning authority having the power to enforce the planning obligations contained in this Agreement against the Owner and/or the Mortgagee subject to clause 6.1 below but without prejudice to all and any other means of enforcing them at law or in equity or by statute and a planning obligation not to do any act or thing includes an obligation not to cause or permit or suffer that act or thing to be done by any other person.
- 3.4 No party shall be liable for breach of a covenant restriction or obligation contained at Schedule 1 to this Agreement after they have parted with all the interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 3.5 This Agreement shall be registered as a local land charge by the Council.
- 3.6 No Charge Holder shall have any liability under or in connection with this Agreement unless and until it takes possession of the Site or the relevant part of it (and it shall not be liable for any pre-existing breach arising prior to the date it enters into possession nor for any breach after it has parted with or released its interest in the Site).
- 3.7 Nothing in this Agreement:
 - 3.7.1 prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning Application, granted after the date of this Agreement, whether or not pursuant to an appeal;
 - 3.7.2 shall be construed as restricting the exercise by the Council of any powers exercisable by it under the 1990 Act or under any other Act in the exercise of its functions as a local authority.
- 3.8 The obligations in this Agreement will not be enforceable against:
 - 3.8.1 the individual owners or occupiers or mortgagees of any Dwellings constructed on the Site pursuant to the Planning Permission nor anyone deriving title from such owners, occupiers or mortgagees nor against anyone whose only interest in the Site is in the nature of the benefit of an easement or covenant; or

- 3.8.2 a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated or is to be situated) by the Owner to that statutory undertaker.
- 3.9 This Agreement shall cease to have effect if in determining the Planning Appeal, the Secretary of State or the Inspector expressly states in their decision letter that this Undertaking does not comply with regulation 122 of the Community Infrastructure Levy Regulations 2010.
- 3.10 If in determining the Planning Appeal, the Secretary of State or the Inspector expressly states in their decision letter that any individual obligation within this Agreement does not comply with regulation 122 of the Community Infrastructure Levy Regulations 2010 that/those obligations(s) shall cease to have effect but without prejudice to the remainder of this Agreement and the obligations covenants and restrictions contained therein which shall continue to have full effect.
- 3.11 If in determining the Planning Appeal, the Secretary of State or the Inspector expressly states in their decision letter that any part or all of any of the Public Health Contribution, the Informal Open Space Contribution and/or the Outdoor Sports Recreation Contribution does not constitute a reason for granting Planning Permission in line with Regulation 122 of the Community Infrastructure Levy Regulations 2010 and should be applied by the Council towards the provision of Off-Site Affordable Housing in lieu of the relevant purpose or purposes specified in Clause 1 then the Owner nonetheless covenants to comply with its obligations in the Schedule relating to the payment of the relevant Contribution and the Council covenants apply it towards the provision of Off-Site Affordable Housing in lieu of its specified purpose.

4 COMMENCEMENT

- 4.1 This Agreement will take effect on the Commencement Date save for clause 13 which shall take effect immediately upon completion of this Agreement.

5 OBLIGATIONS OF THE PARTIES

- 5.1 The Owner covenants to comply with the obligations expressed to be on their part set out in Schedule 1 in relation to the Development.
- 5.2 The Council covenants to comply with the obligations expressed to be on its part set out in Schedule 2.
- 5.3 Within 28 (twenty-eight) days of a request from the Owner the Council will certify whether or not an obligation under this Agreement has been satisfied and if not the steps that are required to be taken in order to secure its satisfaction provided that where such obligation is an ongoing obligation this clause shall not apply.
- 5.4 The Council agrees that upon all the Owner's obligations under this Agreement being satisfied and upon receipt of a written request by the Owner the Council will remove all relevant entries relating to this Agreement from the Local Land Charges Register.

6 MORTGAGEE'S CONSENT

- 6.1 The Mortgagee acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the mortgage over the Site shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall otherwise have no liability under this Agreement unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner (save that it shall not be liable for any pre-existing breach arising prior to the date it enters into possession nor for any breach after it has parted with or released its interest in the Site).

7 TERMINATION OF THIS AGREEMENT

7.1 This Agreement will come to an end if:

7.1.1 the Planning Permission is quashed or revoked before the Commencement Date; or

7.1.2 the Planning Permission expires without having been implemented;

7.1.3 the Planning Appeal is dismissed; or

7.1.4 in determining the Planning Appeal, the Secretary of State or the Inspector states in their decision letter that this Agreement is not a material planning consideration or that no weight can be attached to the deed in determining the Planning Appeal.

8 NOTICES

8.1 Any notice, consent, demand or any other communication served under this Agreement shall be effective only if in writing and delivered by hand or sent by first class post, pre-paid or recorded delivery.

8.2 Any notice, consent, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Agreement (and in the case of the Council marked for the attention of the Head of Planning and Building) or to such other address as one party may notify in writing to the others at any time as its address for service.

9 DETERMINATION OF DISPUTES

9.1 Any dispute relating to or arising out of the terms of this Agreement shall be referred to the Expert for determination of that dispute provided that the provisions of this clause shall be without prejudice to the right of any party to seek the resolution of any matter relating to this Agreement by the courts and/or in accordance with Section 106(6) of the 1990 Act.

9.2 The Expert shall be appointed jointly by the Relevant Parties who are in dispute.

9.3 The decision of the Expert shall be final and binding upon the Relevant Parties who are in dispute and subject to the following provisions:

9.3.1 the charges and expenses of the Expert shall be borne equally between the Relevant Parties who are in dispute unless the Expert shall otherwise direct;

9.3.2 the Expert shall give the Relevant Parties who are in dispute an opportunity to make representations and counter representations to them before making their decision;

9.3.3 the Expert shall make their decision within the range of any representations made by the Relevant Parties who are in dispute themselves;

9.3.4 where there is a dispute as to the amount of any contribution the Owner shall pay its estimate of such contribution to the Council at the time specified in this Agreement and shall pay any difference between that figure and the amount determined by the Expert within 20 Working Days of the Expert's decision together with Interest thereon calculated (in accordance with this Agreement) from the date the payment was required until the date it is made.

10 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

10.1 The parties to this Agreement do not intend that any of its terms shall be enforceable by virtue

of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it provided that the exclusion of the said Act shall not prevent all or any future successors in title to any of the parties to this Agreement from being able to benefit from or to enforce any of the provisions of this Agreement.

11 JURISDICTION

11.1 This Agreement shall be governed by the laws of England and the Courts of England shall have sole jurisdiction in respect of the construction of this Agreement and as to the respective rights and liabilities of the parties.

12 INTEREST

12.1 If any sum due under this Agreement is paid late Interest shall be payable from the date the payment is due to the date of payment.

13 FEES

13.1 The Applicant covenants with the Council to pay to the Council prior to the date hereof the Council's reasonable legal fees for the preparation, negotiation and completion of this Agreement together with the Administration Fee.

14 INDEXATION

14.1 For the purposes of this Agreement any reference to any Contribution as being "Index Linked" shall mean such Contribution as adjusted in accordance with the following formula namely:

$$A \times B$$

$$C$$

where

A is the Contribution specified in this Agreement

B is the figure at which the RPI stands when such Contribution is paid to the Council

C is the figure at which the RPI stood at 1st April 2024

14.2 If the RPI is re-based or replaced an appropriate alternative index shall be substituted by agreement between the parties hereto and any dispute concerning that substitution shall be resolved pursuant to clause 9.

14.3 It is hereby declared and agreed between the parties hereto that indexation shall only be applied in circumstances where the RPI at the date of payment stands at a higher level than it did at 1st April 2024.

15 s73 PERMISSIONS

15.1 Unless otherwise agreed between the parties if a planning permission pursuant to s73 of the Act ("a s73 Permission") is granted by the Council in relation to the Development then with effect from the date that each such s73 Permission is granted:

15.1.1 the obligations in this Agreement shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind each such s73 Permission and the Site itself without any further act by the parties; and

15.1.2 the definition of “the Planning Application” “the Development” and “the Planning Permission” in this Agreement shall be construed to include reference to any application under Section 73 of the Act the s73 Permission granted pursuant to any such application and the development permitted by such s73 Permission.

PROVIDED THAT

15.1.3 nothing in this clause shall fetter the discretion of the Council in determining any application under Section 73 of the Act; and

15.1.4 to the extent that any of the obligations of this Agreement have already been discharged at the date that any s73 Permission is granted they shall remain discharged for the purposes of the s73 Permission.

16 VALUE ADDED TAX

16.1 Any Contribution or other sum specified in this Agreement is exclusive of Value Added Tax and any such Contribution or other sum shall be increased by the amount of any Value Added Tax properly payable in relation to such Contribution or other sum and Value Added Tax shall be paid by the person liable for payment of the relevant Contribution or other sum.

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.

SCHEDULE 1

Obligations relating to the Site

1 CONTRIBUTIONS

- 1.1 The Owner agrees with the Council to pay the Contributions to the Council on or before Occupation of 50% of the Dwellings.
- 1.2 The Owner agrees with the Council not to Occupy more than 50% of the Dwellings prior to paying the Contributions to the Council.

2 ADDITIONAL AFFORDABLE HOUSING CONTRIBUTION

- 2.1 In the event that development has not reached Shell and Core Finish within 36 months from the date of issue of the Planning Permission the Owner shall provide the Council with a Revised Viability Appraisal and in that event no further development shall be carried out beyond Shell and Core Finish until such time as the Revised Viability Appraisal has been provided to the Council.
- 2.2 The Owner shall agree and obtain written approval from the Council for the Revised Viability Appraisal and any Additional Affordable Housing Contribution and for the avoidance of doubt if the Revised Viability Appraisal and/or Additional Affordable Housing Contribution sum cannot be agreed then either the Owner or the Council may at any time refer the matter to an Expert in accordance with Clause 9 of this Agreement.
- 2.3 No more than 50% of the Dwellings shall be occupied until the Owner has paid to the Council any Additional Affordable Housing Contribution as appropriate.
- 2.4 In the event that the Development has reached Shell and Core Finish within 36 months from the date of issue of the Planning Permission then paragraphs 2.1 to 2.3 of this Schedule shall not apply and shall have no further effect.

3 NUTRIENT NEUTRALITY

Not to Commence the Development until the Owner:

- 3.1 has pursuant to the Mitigation Land Agreement entered into a Direct Allocation Agreement in respect of the Development for the purchase of sufficient Capacity in the Mitigation Land so as to mitigate the impact of nitrate deposition resulting from the Development; amounting to 41.98 kg TN/yr;
- 3.2 has paid the Allocation Fee as specified in the said Direct Allocation Agreement; and
- 3.3 has produced to the Council a copy of the said Direct Allocation Agreement together with evidence of payment of the Allocation Fee.

4 GENERAL

- 4.1 To notify the Council in writing of the date of Commencement of the Development not later than ten (10) Working Days after such event shall have occurred.

SCHEDULE 2

Council's Obligations

1.1 The Council agrees to use any Contribution including the Additional Affordable Housing Contribution (if payable under this Agreement) towards the relevant purpose or purposes as set out herein and for no other purposes within the period of ten (10) years of the date of receipt.

1.2 The Council agrees to repay to the party that pays any Contribution and/or the Additional Affordable Housing Contribution (if payable) any part of such Contribution and/or the Additional Affordable Housing Contribution (if payable) that have not been spent or Committed in accordance with this Agreement within 50 days of the end of the ten (10) year period referred to in paragraph 1.1 of this Schedule 2.

Signed as a deed by)

CHURCHILL LIVING LIMITED)

acting by:)

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Director

)

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Director/Secretary

Signed as a deed by)

**CHURCHILL PROPERTY)
HOLDINGS (No. 17) LIMITED)**

acting by:)

.....

Director

)

.....

Director/Secretary

SIGNED as a DEED by)

[Attorney])

As Attorney of)

HSBC UK BANK PLC)

in the presence of:-)

.....

(Full name of witness)

.....

(Signature of witness)

.....

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.....

.....

Address

.....

Occupation

Sealed as a DEED by affixing the)
COMMON SEAL of)

**TEST VALLEY BOROUGH)
COUNCIL)**

in the presence of:)

)

Authorised Signatory