

THE PARTIES:

(1)	ARUN DISTRICT COUNCIL ("The Council")		
(2)	CHRISTIAN BRIAN and SAMANTHA JANE BRIAN ("the Owners");		
(3)	NATIONAL WESTMINSTER BANK PLC ("the Mortgagee").		
	Agreement pursuant to Section 106 of the Town and Country Planning Act 1990 relating to 26 Burnham Avenue Bognor Regis West Sussex Address 4 PO21 2JU Planning ref: BR/70/22/OUT DPS 8635		
	Arun District Council Maltravers Road Littlehampton West Sussex BN17 5LF DX 57406 LITTLEHAMPTON		

THIS DEED is made the <u>17</u> day of <u>August</u> 2022
BETWEEN:
THE PARTIES:

1.	ARUN DISTRICT COUNCIL of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("the Council")
2.	CHRISTIAN BRIAN and SAMANTHA JANE BRIAN of 26 Burnham Avenue Bognor Regis Address West Sussex PO21 2JU ("the Owners")
3	NATIONAL WESTMINSTER BANK PLC (Reg No. 929027) whose registered office is Mortgage Centre PO Box 123 Greenock PA15 1EF ("the Mortgagee")

WHEREAS

1.	The Council is the Local Planning Authority, and the Local Authority responsible for Leisure and Open Spaces for the area in which the Land is situated
2.	The Owners are registered proprietors of the freehold Land registered with Title Absolute at HM Land Registry with title number WSX371845
3.	The Owners have made the Application and are proposing to carry out the Development
4.	The Mortgagee is the proprietor of a charge registered on 14 December 2017 under title number WSX371845
5.	The Council has resolved that subject to the completion of this Agreement, Planning Permission be granted subject to the conditions for the Development
6.	This Agreement is made as a Deed

NOW THIS DEED WITNESSETH as follows:

I.	Interpretation	
I.1	In this Agreement unless otherwise stated the following expressions shall where the context so admits have the following meanings:	
	“ Act”	means the Town and Country Planning Act 1990 as amended
	“Access Management Contribution”	a sum to be determined after approval of the Reserved Matters application and calculated as £871 per Net New Dwelling as a contribution towards the cost of delivering measures to avoid, or mitigate to an acceptable level, the harm caused to Pagham Harbour by the Development
	“All Requisite Consents”	means all requisite consents orders agreements authorisations licences and permissions required to implement a scheme
	“Application”	means an application in respect of the Land for the Proposed Development and given Council reference BR/70/22/OUT
	“CIL Regulations”	means the Community Infrastructure Regulations 2010 (as amended)
	“Commencement”	means the carrying out of a material operation as defined in section 56(4) of the Act in respect of the Development (but excluding for the purposes of this Agreement and for no other purpose) any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof enabling works site

		clearance archaeological investigations and digs exploratory boreholes operations permitted by the Town and Country Planning General Permitted Development) Order 2015 the erection of hoardings and fencing temporary diversion of services and signage (including the formation of temporary construction accesses) and "Commence " shall be construed accordingly
	"CPI"	means the Consumer Price Index published from time to time by the Office of National Statistics
	"the Development"	Means proposal for up to 10 No. new dwellings with all matters reserved
	"Index"	means the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any successor government office, ministry or department
	"Index Linked"	means indexation (which may increase or decrease) calculated by multiplying the relevant sum by <u>Final Index Figure</u> Base Index Figure Where: Base Index Figure equals the latest published figure in the Index at the date of this Agreement and Final Index Figure equals the latest figure published in the index at the date of the relevant payment is made

	“Interest Rate”	means the rate 4% above the base rate from time to time of Lloyds Bank applicable at the date the relevant contribution under this Agreement is paid
	“Land”	means land known as 26 Burnham Avenue Bognor Regis Address West Sussex Address PO21 2JU shown on the Location Plan attached hereto as Appendix I and being registered at the Land Registry under the title number WSX371845
	“Monitoring Fee”	means an amount of £300 (THREE HUNDRED POUNDS) to be applied by the Council for all the purposes relevant to and connected with monitoring and compliance checking with regard to the obligations in this Deed.
	“Net New Dwelling”	The total number of new dwellings on the site excluding the existing dwelling
	“Occupation”	means the occupation of any part of the Development for its designated planning use but does not include occupation by the Owner or any contractor or other occupier for the purposes of construction, fitting out, decoration, marketing or display and “Occupy” and “Occupied” shall be construed accordingly.
	“Off Site Play Contribution”	Means a contribution towards play equipment at Hotham Park Bognor Regis calculated as £1730.30 per flat

	“Operative Date”	means the date the Development is Commenced
	“Pagham Harbour”	A Special Protection Area, based in Pagham, West Sussex in the District of Arun, identified as being of international importance for the breeding, feeding, wintering or migration of rare and vulnerable species of European Union birds.
	“Planning Permission”	means a planning permission for the Proposed Development BR/70/22/OUT granted pursuant to the Application
	“Planning Authority”	means the Council
	“Planning Application”	Means the outline planning application registered as BR/70/22/OUT
	“Reserved Matters Application”	Means a planning application for the approval of matters reserved under the Planning Application
2.	INTERPRETATION	
	2.1	Clause headings shall not affect the interpretation of this Deed.
	2.2	A “person” includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

2.3	A reference to a “company” shall include any company, corporation or other body corporate, where and however incorporated or established.
2.4	Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
2.5	Unless the context otherwise requires a reference to one gender shall include a reference to other genders.
2.6	A reference to any party shall include that party’s representatives, successors and permitted assigns and to any person deriving title through or under the party and in the case of the Council and the County Council the successors to their respective statutory functions.
2.7	Unless the context otherwise requires a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
2.8	Unless the context otherwise requires a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
2.9	A reference to “writing” and “written” does not include fax or email.
2.10	References to clauses and Schedules are to the clauses and schedules of this deed
2.11	An obligation on a party not to do something includes an obligation not to allow that thing to be done
2.12	Any words following the terms “including” , “include” , “in particular” , “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the

		words, description, definition, phrase or term preceding those terms.
	2.13	Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually
3.	LEGAL BASIS	
	3.1	This Deed is made under Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
	3.2	The covenants, restrictions and requirements imposed upon the Owners under this Deed create planning obligations under Section 106 of the Act and are enforceable by the Council in accordance with Section 106 of the Act as local planning authorities against the Owners.
4	CONDITIONALITY	
	4.1	This Deed is conditional upon:
	4.1.1	the grant of the Planning Permission
	4.1.2	the Commencement of the Development,
		save for the provisions of Clauses 4, 7.1, 7.2, 10,15 and 16 which shall come into effect immediately upon completion of this Deed.
	4.2	In the event that the Planning Application or any Planning Condition is subject to an appeal then each Planning Obligation in this Deed is also conditional upon:
	4.2.1	The Secretary of State or the planning inspector deciding the appeal being satisfied that it is:

			4.2.1.1	Necessary to make the Development acceptable in planning terms; and
			4.2.1.2	Directly related to the Development; and
			4.2.1.3	Fairly and reasonably related in scale and kind to the Development; and
			4.2.1.4	Complies, in all other respects with Regulation 122 of the CIL Regulations
		4.2.2	In the event that the Secretary of State or the planning inspector deciding the appeal expressly states in his Decision Letter that any individual planning obligation within the Deed is not compliant with the CIL Regulations and/or the NPPF or is immaterial to the grant of the Planning Permission and that no weight has been given to the same in reaching his decision then that planning obligation or those planning obligations will cease to have effect and shall be void for the purposes of this Deed and shall have no effect and the Owner shall not be obliged to comply with the terms of that obligation and the remaining clauses will remain in full force and effect provided that severance is achievable.	
5	THE OWNERS' COVENANTS			
	5.1	The Owners covenant with the Council so as to bind all their interests in all parts of the Land to perform the obligations set out in the First Schedule to this agreement.		
6	MISCELLANEOUS			
	6.1	The Owners shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.		

	6.2	No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
	6.3	This Deed shall be registrable as a local land charge by the Council.
	6.4	Where the agreement, approval, consent or expression of satisfaction is required by the Owners from the Council or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
	6.5	Following the performance and satisfaction of all the obligations contained in this Deed the Council shall at the Owners' request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
	6.6	Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
	6.7	This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of Development.
	6.8	Nothing in this Deed 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 Deed.

6.9	Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council or the County Council under all statutes by laws statutory instruments orders and regulations in the exercise of their functions as a local authority
6.10	The Parties agree that the obligations in this Deed are in the interests of the proper planning of the Council's administrative area. They meet the tests of planning obligations set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, being necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development
6.11	The Council shall be entitled to use all Interest accrued on the Financial Contributions from the date of actual payment of the Financial Contributions until the date that the Financial Contributions are spent
6.12	In the event of any delay in paying the whole of or part of the Financial Contributions then the Financial Contributions or the part thereof in respect of which there has been any such delay will be: a. a debt due to the Council recoverable by action; and b. liable to Interest thereon calculated on a daily basis from the date due until the date of payment.
7	EXCLUSIONS OF LIABILITY
7.1	No person shall be liable for any breach of any of the Planning Obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land, or such part of the Land to which the breach relates, but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
7.2	No person shall be liable for any breach of any of the Planning Obligations or other provisions of this Deed which relate to a part of the Land in which it does not have an interest.

	7.3	This Deed shall not be enforceable against any owner, occupier or tenant of any Dwelling constructed pursuant to the Planning Permission, or their mortgagees, nor against those deriving title from them.	
	7.4	Notwithstanding any other provision of this Deed the obligations under this Deed shall not be binding or enforceable against:	
		7.4.1	Any mortgagee of any tenant or person to whom an Affordable Housing Provider grants a shared ownership lease or any receiver appointed by such mortgagee or any person deriving title through any such mortgagee or receiver.
		7.4.2	Any person to whom a shared ownership lease of an Affordable Dwelling is granted.
		7.4.3	Any person who has acquired a either a reversionary interest or a new lease in an Affordable Dwelling pursuant to the terms of a shared ownership lease.
	7.5	Subject to clause 7.4 the Mortgagee hereby consents to the Owners entering into this Deed and agrees that the title to the Land shall be bound by the aforesaid covenants therein.	
	7.6	The parties agree that the obligations contained in this Deed shall not be binding on, nor enforceable against, the Mortgagee or any other chargee from time to time unless and until the Mortgagee or such chargee shall have entered into possession of the Land.	

	7.7	Any legal charge entered into in respect of the Land or any part of the Land after this Deed has been completed shall take effect subject to this Deed PROVIDED THAT the mortgagee under such a legal charge shall have no liability under this Deed unless it causes the breach after it becomes a mortgagee in possession of the land comprised in the legal charge and the mortgagee shall not be liable for any breach of this Deed that occurs prior to the mortgagee taking possession of the land
8	WAIVER	
		No waiver (whether expressed or implied) by the Council or Owners of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the Owners from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.
9	CHANGE IN OWNERSHIP	
		The Owners 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 Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan provided that the Owners shall not be required to give notice to the Council of any change of ownership affecting a Dwelling.
10	FUTURE SECTION 73 CONSENTS	
	10.1	Subject to clauses 10.2 to 10.5 below, if any Section 73 Consent is granted after the date of this Deed:
		10.1.1 the obligations in this Deed shall relate to and bind such Section 73 Consent; and

	10.1.2	the definitions of Planning Application, Development and Planning Permission (other than for the purposes of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself;
	10.2	nothing in this clause shall fetter the discretion of the Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;
	10.3	to the extent that any of the obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent;
	10.4	the provisions of this clause 10 shall not apply to any Section 73 Consent which necessitates or requires amendments to the substantive terms or obligations of or contained within this Deed; and
	10.5	the Council reserves the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it necessary to do so.

II INDEX LINKED

	11.1	Unless there is an express provision to the contrary the Owners agree with the Council that any sum payable by the Owners and referred to in the First Schedule shall be increased by the application of the following formula: $A = (B \times C) \text{ divided by } D$
--	------	---

Where	A	is the sum actually payable on the Specified Date
	B	is the original sum mentioned in this Deed

		C	is the RPI Index for the month two months before the Specified Date
		D	is the RPI Index for the month two months before the date that Planning Permission is granted
		C/D	is equal to or greater than 1
	11.2	Unless there is an express provision to the contrary the Owners agree with the County Council that any sum payable by the Owners and referred to in Schedule 2 shall be increased by the application of the following formula: $A = (B \times C) \text{ divided by } D$	
	Where	A	is the sum actually payable on the Specified Date
		B	is the original sum mentioned in this Deed
		C	is the BCIS Index for the quarter preceding the Specified Date
		D	is the BCIS Index for the quarter preceding the date that Planning Permission is granted
		C/D	is equal to or greater than 1
	11.3	Where reference is made to an index (including the RPI Index and the BCIS Index) and that index ceased 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 or the County Council (as applicable) shall advise the Owners in writing.	
	12	INTEREST	
		If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.	
	13	VAT	

	All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.		
14	NOTICES		
	14.1	A notice or other communication to be given under or in connection with this deed must be in writing and must be:	
		14.1.1	delivered by hand; or
		14.1.2	sent by pre paid first class post or other next working day delivery service.
	14.2	Any notice or other communication to be given under this deed must be sent to the relevant party as follows:	
		14.2.1	to the Council at: Arun Civic Centre Maltravers Road, Littlehampton, West Sussex BN17 5LF marked for the attention of the Planning Department and quoting the Planning Application number;
		14.2.2	to the Owners at: 26 Burnham Avenue Bognor Regis West Sussex Address 4 PO21 2JU
		14.2.3	to the Mortgagee at: Mortgage Centre, P.O Box 123, Greenock, PA15 1EF
	14.3	Any notice or other communication given in accordance with clause 14.1 and clause 14.2 will be deemed to have been received:	
		14.3.1	if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address provided that if delivery occurs before 9 am on a Working Day, the notice will be deemed to have been received at 9 am on that day, and if delivery occurs after 5 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9 am on the next Working Day;

		14.3.2	if sent by pre-paid first class post or other next working day delivery service at 9 am on the second Working Day after posting.
	14.4		A notice or other communication given under this deed shall not be validly given if sent by email.
	14.5		This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
15	JURISDICTION		
	This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non exclusive jurisdiction of the courts of England.		
16	DELIVERY		
	The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.		

FIRST SCHEDULE FINANCIAL CONTRIBUTIONS

The Owners Covenant with the Council

I MONITORING FEE CONTRIBUTION

- 1.1 Prior to the Commencement of the Development to pay to the Council the Monitoring Fee Contribution.
- 1.2 Not to cause or allow the Commencement of the Development before the Monitoring Fee Contribution has been paid to the Council

2 ACCESS MANAGEMENT CONTRIBUTION

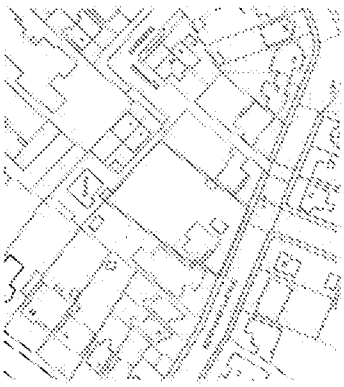
- 2.1 Prior to the Commencement of the Development to pay to the Council the Access Management Contribution
- 2.2 Not to cause or allow the Commencement of the Development before the Access Management Contribution has been paid to the Council

3 OFF SITE PLAY CONTRIBUTION

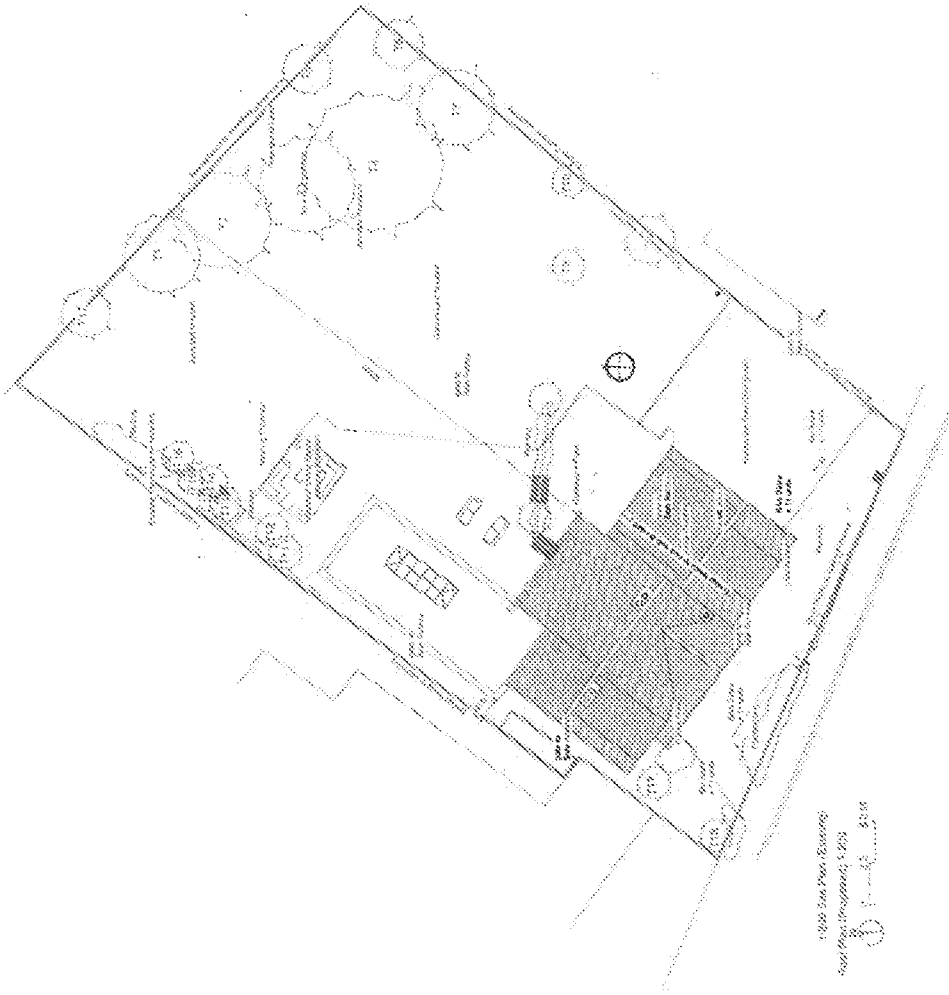
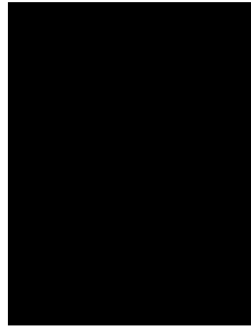
- 3.1 Prior to the Occupation of the dwellings in the Development to pay to the Council the Off-Site Play Contribution
- 3.2 Not to cause or allow the Occupation of the dwellings in the Development before the Off-Site Play Contribution has been paid to the Council



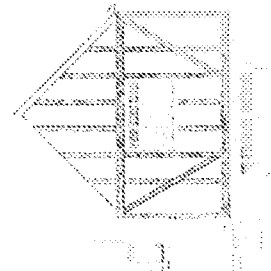
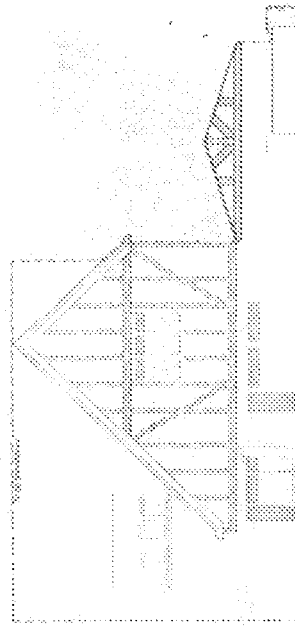
APPENDIX I LOCATION PLAN



1:1000 Scale



1:100 Scale
 1:100 Scale
 1:100 Scale



Job No.	2018/001
Client	Arundel District Council
Project	Arundel District Council
Scale	1:1000
Date	10/10/18

ADS

Authorised Signature:

25.07.22

EXECUTED AS A DEED by APPIXING

the Common Seal of

ARUN DISTRICT COUNCIL

in the presence of

Authorised Signatory

Name: EDWARD O BRIEN

Job Title: PROCEEDING CLERK

Seal Book Number: 335/2022



EXECUTED AS A DEED by

CHRISTIAN BRIAN

in the presence of

Name: GRAHAM JONES

Job Title: DIRECTOR OF BOSCO TEACHING SCHOOL (ST PHILIP HOWARD CATHOLIC SCHOOL),

14 ST Richards way
Ardwick
Bognor Regis
PO21 3BD

EXECUTED AS A DEED by

SAMANTHA JANE BRIAN

in the presence of

Name: GRAHAM JONES

Job Title: DIRECTOR OF BOSCO TEACHING SCHOOL
(ST PHILIP HOWARD CATHOLIC SCHOOL).

14 ST Richards way
Ardwick
Bognor Regis
PO21 3BD

the Common Seal of
NATIONAL WESTMINSTER BANK PLC
in the presence of

.....
Authorised Signatory
Name:

Job Title:
Seal Book Number.

	
As the attorney for and on behalf of National Westminster Bank PLC	National Westminster Bank PLC PO Box 12 Greenock PA15 1EF

Joanne Ralph
Clerical Level B
Mortgage Operations

CLERICAL LEVEL B
Mortgage Operations
Johann White
Clerical Level B

