

DATED

17 JANUARY

2020

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) HAMPSHIRE COUNTY COUNCIL

and

(3) MELANIE JEAN FLINT

and

(4) STEVEN WALTER HAMILTON MASON

and

(5) TIMOTHY NELSON MASON

and

(6) MELANIE JEAN FLINT, STEVEN WALTER HAMILTON MASON and

TIMOTHY NELSON MASON

and

(7) BDW TRADING LIMITED

AGREEMENT

Under Section 106 Town and Country Planning Act 1990
relating to land at Forty Acre Farm, Havant Road, Bedhampton

THIS AGREEMENT is made on

17 JANUARY

2020

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**);
2. **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UJ (**County Council**);
3. **MELANIE JEAN FLINT** of Lone Barn, Catherington, Waterlooville, PO8 0SF (**First Owner**);
4. **STEVEN WALTER HAMILTON MASON** of South Holt Farm, Dean Lane End, Rowland's Castle, PO9 6EL (**Second Owner**);
5. **TIMOTHY NELSON MASON** of South Holt Farm, Dean Lane End, Rowland's Castle, PO9 6EL (**Third Owner**);
6. **MELANIE JEAN FLINT** of Lone Barn, Catherington, Waterlooville, PO8 0SF, **STEVEN WALTER HAMILTON MASON & TIMOTHY NELSON MASON** of South Holt Farm, Dean Lane End, Rowland's Castle, PO9 6EL (**Fourth Owner**); and
7. **BDW TRADING LIMITED** incorporated and registered in England and Wales with company number 03018173 whose registered office is at Barratt House Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF (**Developer**).

BACKGROUND

- (A) For the purposes of the Act, the Council and the County Council are the local planning authorities for the area within which the Land is situated.
- (B) The County Council is also the Local Highway Authority for Hampshire (save for trunk roads and special roads) and the Transport Authority for Hampshire for the purpose of the Transport Act 1985 and 2000.
- (C) The First Owner is the freehold owner of the land registered under title number HP395665.
- (D) The Second Owner is the freehold owner of the land registered under title number HP395666.
- (E) The Third Owner is the freehold owner of the land registered under title number HP395664.
- (F) The Fourth Owner is the freehold owner of the land registered under title number HP278284 and HP510153 and together the First Owner, Second Owner, Third Owner and Fourth Owner are the freehold owners of the whole of the Land.
- (G) The Developer is the beneficiary of unilateral notices registered under title numbers HP395664, HP395665, HP395666, HP278284 and HP510153 in respect of an option to purchase agreement dated 23 June 2016 made between the Developer and the Owners for the Land.
- (H) The Developer has submitted the Application to the Council for permission to develop the Land in accordance with the Planning Permission.

- (I) The Owners and the Developer enter into this Agreement in anticipation of the grant of Planning Permission being made subject to the Owners and the Developer having entered into this Agreement which makes provision for regulating the Development and securing the matters referred to in this Agreement.
- (J) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council and the County Council against the Owners and the Developer and their successors in title

The parties agree as follows

1 DEFINITIONS

From the date of this Agreement unless the context otherwise requires, the following definitions apply to this Agreement and Background:

"Act"	the Town and Country Planning Act 1990
"Affordable Dwellings"	means 96 Dwellings to be constructed on the Land to be provided as units of Affordable Housing as part of the Development and in accordance with the Affordable Housing Mix and the Affordable Housing Plan and any reference to "Affordable Dwelling" will be interpreted accordingly
"Affordable Housing"	means Dwellings that: (a) meets the needs of Eligible Persons including availability at a cost low enough for them to afford determined with regard to the local incomes local house prices and local rents, and (b) includes provisions for the housing to remain at an affordable cost for future Eligible Persons
"Affordable Housing Land"	means that part of the Land upon which the Affordable Dwellings will be built
"Affordable Housing Mix"	means the mix of Affordable Dwellings, in terms of the number, size and tenure and set out at paragraph 1 of Schedule 1 or such other number, size and tenure as agreed in writing with the Council
"Affordable Housing Plan"	means the plan titled "affordable housing plan" with drawing number PL09 Rev N identifying the siting of the Affordable Dwellings at Appendix 2 to this Agreement or such alternative plan as may be agreed in writing with the Council
"Affordable Housing Provider"	means either one or a combination of (a) a body registered as a provider of social housing with the Regulator of Social Housing under Part 2 of the Housing and Regeneration Act 2008 or such other

	class of body approved by the Council as may be constituted under any legislation replacing that provision; or (b) such other body eligible to receive grant monies from the Council or Homes England and able lawfully to own or manage housing for Eligible Persons and approved by the Council; or (c) any company or organisation specialising in the delivery of Affordable Housing and approved by the Council
"Affordable Rent"	means rent inclusive of service charge which does not exceed: a) 80% of the local gross open market rent; and b) the local housing allowance rates, unless otherwise agreed in writing with the Council; and shall only be increased annually in accordance with arrangements made for such rent increases established by Homes England
"Affordable Rented Dwellings"	means any Affordable Dwellings let on a fixed term tenancy agreement at an Affordable Rent
"Agreement"	this deed of Agreement
"Allotment"	means an allotment garden as defined in section 22 of the Allotments Act 1922 but which is for the avoidance of doubt not a statutory allotment
"Allotment Land"	means the area of land having an area of approximately 1031 sqm for the provision of Allotments, access thereto and parking provision and shown marked "8" on the Landscape Master Plan which shall be formed in accordance with the Planning Permission
"Application"	the application submitted by the Developer to the Council for planning permission to carry out the Development and given the Council's reference number APP/18/00450
"Bond"	means a bond issued by a Surety in the form annexed at Appendix 6 to this Agreement (or such other form as the Council shall approve) for the Bond Amount
"Bond Amount"	means 10% of the open book construction costs for the SuDs as approved in accordance with Schedule 2
"Care Home Development"	means that part of the Land which shall comprise the 66 bed care home and shown marked "Care Home Development Site" on the Affordable Housing Plan

"Cash Deposit"		means a lump sum payment in cash of a sum being 10% of the open book construction costs for the SuDs as approved in accordance with Schedule 2
"Commencement of Development"		means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is begun other than (for the purposes of this Agreement and for no other purpose) operations consisting of, site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, and "Commence" and similar expressions shall be construed accordingly
"Common Parts"		means the parts of the Land which are intended to benefit the occupiers of the Dwellings as a whole or to enhance their occupation and shall without prejudice to the generality thereof include the Permissive Paths, communal parking areas, street lighting and street furniture but excluding (a) a Dwelling or the curtilage of a Dwelling, (b) internal communal areas forming part of any residential block of flats, such as stairwells, lifts, lighting etc; and (c) the Care Home Development.
"Community Orchard"		means approximately 17.09 square metres forming part of the Land to be laid out and intended for use as a community orchard for the planting of fruit and nut trees in accordance with the details approved in writing by the Council and shown marked "9" on the Landscape Master Plan
"Community Project Worker Contribution"		means the sum of £80,000 as a contribution towards the provision of a suitably qualified and experienced person employed by the Council to assist in the establishment of a successful and cohesive local community within the Development and to promote integration with existing communities in the vicinity of the Development
"Completion Standard"	Certificate	means in the case of the highway works as described at paragraph 2 of Schedule 5 completion to the full satisfaction of the County Council as evidenced by the issue of a certificate of completion by the County Council pursuant to a related Section 278 Agreement
"Contributions"		means all of the following (a) Community Project Worker Contribution, (b) Health Contribution, (c) Monitoring Fee

	(d) Park and Stride Contribution; (e) Rusty Cutter Roundabout Contribution; (f) School Travel Contribution; (g) SRMS Contribution; (h) Travel Plan Cash Deposit; (i) Travel Plan Approval Fee; (j) Travel Plan Monitoring Fee; (k) TRO Contribution; and (l) Wintering Bird Mitigation Area Funding
"CPI"	means the consumer prices index published by the Office of National Statistics
"Development"	the erection of 320 Dwellings, a 66-bed care home together with the provision of Open Space Land, Allotment Land, Wintering Bird Mitigation Area and the creation of two new access points following the closure of the existing access and the demolition of existing buildings and associated infrastructure works in accordance with the Planning Permission
"Director"	the Director of Economy Transport and Environment at the County Council or his appointed representative for the time being or successor
"Disposal"	in relation to each Dwelling means: (a) the first Occupation by anyone permitted or suffered to Occupy the Dwelling whether by I. a person who has acquired or has contracted to acquire any of the estates further defined in this definition at (b) (c) and (d) below in the Dwelling; or II. who otherwise Occupies the Dwelling; (b) the creation of a legal term of years in respect of the Dwelling; or (c) the transfer of a freehold interest in respect of the Dwelling; or (d) the creation of a freehold interest in the Dwelling by constituting the Dwelling as commonhold land for the purposes of the Commonhold and Leasehold Reform Act 2002; and/or whichever shall first occur; and "Dispose" and "Disposed of" shall be construed accordingly
"Dwelling"	means a self-contained unit of residential accommodation (including houses, flats and maisonettes) constructed on the Land pursuant to the Planning Permission and "Dwellings" shall be construed accordingly

"Eligible Persons"	means persons with a Local Connection who are unable to afford housing accommodation on the open market (whether by renting or purchasing) within the administrative area of the Council and the expression "Eligible Person" shall be construed accordingly
"Expert"	means an independent and suitable person holding appropriate professional qualifications and of at least 10 years' post qualification experience in the area of expertise relevant to the dispute and appointed in accordance with the provisions of clause 12 to determine a dispute
"First Phase Open Space Land"	means that part of the Land shown edged red on the Landscape Master Plan
"Health Contribution"	means the sum of £55,600 payable to the Council as a contribution towards increasing the capacity of existing health care facilities being The Portsdown Group Practice, The Bosmere Medical Practice and Homewell Curlew Practice or such other health care facilities in the vicinity of the Land to accommodate the increased demand for such services as a result of the Development
"Help to Buy Agent"	means the body nominated by the Homes England to be responsible for Low Cost Home Ownership nominations within the administrative area of the Council or in the event that nobody has been nominated such other body or organisation as the Council shall first approve in writing
"Highway Works Agreement"	means an agreement made under section 278 and/or section 38 of the Highways Act 1980 to secure highway works as detailed at paragraph 2 of Schedule 5
"Homes England"	means the body corporate charged under the Housing and Regeneration Act 2008 with the functions of regulating the provision of Affordable Housing within the Council's administrative area by any registered provider or if such body ceases to exist or is superseded or any such successor body or organisation and including the Regulator of Social Housing where the context so requires
"Index"	means either: (a) CPI in respect of all financial obligations payable to the Council (except for the SRMS Contribution where RPI shall apply); or (b) RPI in respect of all financial obligations payable to the County Council and the Wintering Bird Mitigation Area Funding and where no index is specified CPI shall apply

"Index Linked"	means increased in accordance with the following formula: Amount payable = the payment specified in this deed x (A/B) where A = the last figure published for the Index that applied immediately preceding the date that payment was due or, if earlier, the date that the relevant payment was paid. B = the last figure published for the Index that applied immediately prior to the date of this Agreement
"Interest"	means interest at 4% above the base lending rate of the Barclays Bank PLC from time to time
"Land"	means the freehold property known as land at Forty Acre Farm, Havant Road, shown edged red on the Plan and registered at the Land Registry with title numbers HP395664, HP395665, HP395666, HP278284 and HP510153
"Land Trust"	means the Land Restoration Trust (company registration number 5077263 and registered charity number 1138337) whose registered address is at 7 Birchwood One, Dewhurst Road, Birchwood, Warrington, Cheshire WA3 7GB
"Landscape Master Plan"	means the plan titled "Landscape Colour Masterplan" with drawing number D2434L.101 Revision 12 at Appendix 3 to this Agreement
"LAP"	means the local area of play to be provided as part of the Development having an area of approximately 635 sqm and shown marked "5" on the Landscape Master Plan to be provided in accordance with the details approved in writing by the Council
"Local Connection"	means a connection to the administrative area of the Council by virtue of: (a) existing or previous residence; (b) employment; (c) close family links through parents, siblings or offspring; or (d) any other connection as agreed with the Affordable Housing Provider and the Council.
"Low Cost Home Ownership Dwellings"	means Help to Buy products as defined by Homes England including Shared Ownership Dwellings
"Management Agreement"	means an agreement made between the Owners and the Management Company setting out the terms of appointment of the Management Company with respect to the Development, including the Management Company's

	responsibilities in implementing and performing the obligations as contained within the Management Plan
"Management Body"	the body responsible for the ongoing management and maintenance of the Wintering Bird Mitigation Area following implementation of the Wintering Bird Mitigation Area Creation Strategy, to be determined in accordance with paragraph 4 of the Schedule 7
"Management Company"	means a company limited by guarantee or by shares and established or appointed in accordance with the provisions of Schedule 2 to be charged with implementing and performing the obligations as contained within the Management Plan
"Management Plan"	means a plan for the maintenance and management of all of the following: (a) the Allotment Land (b) the Common Parts; (c) the Community Orchard (d) the LAP; (e) the Open Space Land, and (f) the SuDs for the lifetime of the Development including details of how the costs of maintenance and management shall be met by owner-occupiers of the Dwellings to be proposed by the Owners and approved by the Council in accordance with the provisions of Schedule 2 and includes any variation to the approved Management Plan as may be agreed in writing between the Owners and the Council from time to time
"Monitoring Fee"	means the sum of £10,000 as a contribution towards the costs incurred by the Council in the provision of a suitably qualified and experienced person whose function is to monitor, coordinate and enforce the obligations contained within this Agreement
"Occupation"	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" shall be similarly construed
"Open Market Dwellings"	means Dwellings which are not Affordable Dwellings
"Open Space Land"	means the public open space land and amenity spaces (but excluding the Allotment Land, Community Orchard and LAP) provided as part of the Development having an area of approximately 22 acres and shown coloured green on drawing number PL19 at Appendix 4 to this Agreement

"Owners"	means the First Owner, the Second Owner, the Third Owner and the Fourth Owner together
"Park and Stride Contribution"	means the sum of £2,000 as a contribution towards the provision of promotional material for the Park and Stride sites in the Borough of Havant
"Permissive Paths"	means any unadopted road, footpath, footway or other means of access constructed on the Land to serve the Development and the public
"Plan"	means the plan titled "site location plan" with drawing number PL01 attached at Appendix 1 to this Agreement
"Planning Permission"	means the planning permission that may be granted in pursuance of the Application
"Practical Completion"	means the issue of a certificate of practical completion of the Dwellings by the Owners' architect or in the event that the Dwellings are constructed by a party other than the Owners the issue of a certificate of practical completion by that other party's architect
"RPI"	means the retail price index published by the Office of National Statistics
"Rusty Cutter Roundabout Contribution"	means the sum of £954,176 as a contribution towards the southern walking and cycling route around the Rusty Cutter roundabout as detailed in drawing number 041-0023-024 at Appendix 5 to this Agreement such sum to be provided in lieu of actual works to be carried out in pursuance of a section 278 Highway Works Agreement
"Shared Ownership Dwellings"	means Affordable Housing leased to Eligible Persons who purchase a percentage of the equity of the Affordable Dwelling and pay a rent in relation to the share of the equity retained by the Affordable Housing Provider
"Shared Use Path"	means the shared cycle and pedestrian route shown on the Landscape Master Plan with a dotted blue line and marked '11'
"Solent Recreation Mitigation Partnership"	means the partnership of local planning authorities bordering the Solent formed to develop the Solent Recreation Mitigation Strategy
"Solent Recreation Mitigation Strategy (SRMS)"	means the framework to mitigate potential impacts on the Solent Special Protection Area from increased visitor pressure arising from housebuilding adopted by the Solent Recreation Mitigation Partnership in December 2017
"Solent Special Protection"	means the Special Protection Areas (designated under the

Areas"	Wildlife and Countryside Act 1981) in the Solent covered by the Solent Recreation Mitigation Strategy
"SRMS Contribution"	means the sum of £200,519.55 payable to the Council as a contribution towards measures to mitigate against the impact of the Development to the Solent Special Protection Areas in accordance with the Solent Recreation Mitigation Strategy
"SuDs"	means a sustainable drainage system for the Development in accordance with the specification agreed in writing by the Council
"Surety"	means a bank or other financial institution as may be nominated by the Owners and approved by the Council for the Bond
"School Travel Contribution"	means the sum of £217,350 as a contribution towards the provision by the County Council of free school travel from the Land to Bidbury Infant School and Bidbury Junior School for the school pupils who Occupy the Land during the construction period of the Rusty Cutter Southern route and ending no later than 31 March 2023
"TCF Bid"	means the bid submitted by the County Council to Her Majesty's Government entitled the Transforming Cities Fund Bid the outcome of which is expected to be announced in or around February 2020
"Travel Plan"	means the travel plan dated January 2019 approved by the County Council and attached at Appendix 7 to this Agreement
"Travel Plan Cash Deposit"	means a cash deposit in the sum of £63,505.00 being the sum of the cost of implementation and compliance with the targets/measures of the Travel Plan (as estimated by the County Council) plus 10% thereof
"Travel Plan Approval Fee"	means the sum of £1,500 payable by the Owners to the County Council towards the costs incurred or to be incurred by the County Council in approving the Travel Plan
"Travel Plan Co-Ordinator"	means the travel plan co-ordinator to be appointed pursuant to paragraph 1.3 of Schedule 3 of this Agreement
"Travel Plan Monitoring Fee"	means the sum of £15,000 payable by the Owners to the County Council towards the costs to be incurred by the County Council in monitoring compliance with the Travel Plan
"TRO"	means a traffic regulation order made pursuant to the Road Traffic Regulation Act 1984

“TRO Contribution”

means the sum of £5000 payable to the Council to be applied towards the implementation (which reference shall include all connected administration, supervision and the carrying out) of a road traffic regulation order(s) imposing parking restrictions on Westways and other adjoining roads and the immediate vicinity as necessary to allow the safe operation of the local highway network.

“Wintering Bird Mitigation Area”

means that part of the Land to be provided as a refuge area for wintering birds and having an area of approximately 39,684 sqm to mitigate against the impact of the Development against Brent Geese and Waders shown marked “10” and labelled “brent goose mitigation land” on the Landscape Master Plan or such alternative area of the Land as may otherwise be agreed in writing with the Council prior to Commencement of Development

“Wintering Bird Mitigation Area Funding”

the sum of £292,000 (two hundred and ninety two thousand pounds) to be paid to the Management Body and used towards measures and initiatives to monitor, maintain and protect the Wintering Bird Mitigation Area in perpetuity which may include the following:

- (a) creation of grassland for foraging winter birds;
- (b) management of grassland for foraging winter birds;
- (c) management of hedgerow on 3-year rotation;
- (d) maintenance of fencing including replacement as required;
- (e) management of scrapes; and
- (f) otherwise to enable the Management Body to comply with its obligations under this Agreement

SAVE THAT where the Management Body is the Land Trust, nothing in this Agreement shall restrict the Land Trust from using any interest or income or capital growth earned or created by the investment of the Wintering Bird Area Funding in furtherance of its charitable objects at its discretion

“Wintering Bird Mitigation Area Management Plan”

means a plan for the maintenance, management and monitoring of the Wintering Bird Mitigation Area including details of how the cost of maintenance and management are to be met in perpetuity to include the Wintering Bird Mitigation Area Funding and how any additional costs will be met by owner-occupiers of the Dwellings and includes any variation to the approved Wintering Bird Mitigation Area Management Plan as may be agreed in writing between the Owner of the Wintering Bird Mitigation Area and the Council from time to time.

“Wintering Bird Mitigation Area Creation Strategy ”

a strategy detailing the scheme of works to lay out and create the Wintering Bird Mitigation Area as a wet

grassland and shall include the following:

- (a) the creation of grassland
- (b) improvement works to existing grassland
- (c) installation of decoys to attract geese
- (d) creation of wader scapes
- (e) installation of fencing and visual screening along the boundary of the Wintering Bird Mitigation Area to prevent public access

in accordance with the details approved in writing by the Council

"Working Day"

a day other than a Saturday or Sunday or public holiday in England

2 INTERPRETATION

- 2.1 The clause and paragraph 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 Land include any part of it.
- 2.8 References to any party in this Agreement include the successors in title of that party and any references to the Council and County Council include any successor local planning authority exercising planning powers under the Act and any successor Local Highway Authority.
- 2.9 References to "including" mean "including, without limitation".
- 2.10 Any covenant by the Owners and the Developer 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 the Agreement shall be unaffected.

- 2.13 Whenever this Agreement requires the agreement approval confirmation or consent of the parties such approval or consent is not to be unreasonably withheld or delayed and the parties shall take a reasonable approach.

3 STATUTORY PROVISIONS

- 3.1 This Agreement is made by deed pursuant to sections 106 of the Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.
- 3.2 To the extent that they fall within the terms of section 106 of the Act, the obligations contained in this Agreement are planning obligations for the purposes of those sections of the Act and are enforceable by the Council and the County Council.
- 3.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers.
- 3.4 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council or the County Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.

4 COMMENCEMENT OF AGREEMENT

This Agreement shall have effect from the date hereof

5 OWNERS AND DEVELOPER COVENANTS

The Owners and the Developer covenant with the Council and the County Council to comply, observe and perform the obligations as set out in this Agreement.

6 COUNCIL COVENANTS

- 6.1 The Council covenants to use the Contributions received under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid or for such other purposes for the benefit of the Development as the Owners and the Council shall agree.
- 6.2 The Council covenants that in the event that the Council has not expended or committed for expenditure the Contributions received in accordance with the provisions of this Agreement (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within ten (10) years of the date of receipt by the Council of such payment (save for the Bond which shall be repaid in accordance with the provisions on paragraph 2 of Schedule 2) the Council shall refund any unspent or unexpended Contribution to the payer of the same promptly together with any interest at the base rate for Barclays Bank Plc for the period from the date of payment to the date of the refund.

7 COUNTY COUNCIL OBLIGATIONS

- 7.1 The County Council covenants to use the Contributions received under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid or for such other purposes for the benefit of the Development as the Owners and the County Council shall agree.

- 7.2 The County Council covenants that in the event that the County Council has not expended or committed for expenditure the Contributions received in accordance with the provisions of this Agreement (and money shall be deemed to be expended if the County Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within ten (10) years of the date of receipt by the County Council of such payment (save for the Travel Plan Cash Deposit which shall be repaid in accordance with the provisions of clause 7.3) the Council shall refund any unspent or unexpended Contribution to the payer of the same promptly together with any interest at the base rate for Barclays Bank Plc for the period from the date of payment to the date of the refund
- 7.3 On the expiry of five years following the first Occupation of a Dwelling on the Land the County Council shall return to the Owners the full or remaining balance of the Travel Plan Cash Deposit
- 7.4 Within 28 days of the completion of the works described at paragraph 2.4 of Schedule 5 to Completion Certificate Standard (or 31 March 2023 if the TCF Bid is unsuccessful) the County Council shall return to the Owners any part of the School Travel Contribution which remains unspent

8 REGISTRATION

This Agreement shall be registered by the Council as a Local Land Charge in the Register of Local Land Charges maintained by the Council

9 RELEASE

- 9.1 No party shall be liable for any breach of covenant, restriction or obligation contained in this Agreement after parting with all their interest in the Land except in respect of any breach on their part subsisting prior to parting with such interest save for a breach of any planning obligation securing the payment of the Contributions where the Developer shall continue to remain liable after parting with all its interest in the Land.
- 9.2 Except for Schedule 1 regulating the use of the Affordable Dwellings and those planning obligations which restrict Occupation of the Dwellings no planning obligations contained in this Agreement shall be binding on any land held by an Affordable Housing Provider for the provision of Affordable Housing or any freehold or leasehold owners or occupiers of individual Dwellings, constructed pursuant to the Planning Permission (or their respective mortgagees) or their successors in title.
- 9.3 No planning obligations contained in this Agreement shall be binding on any land held by any of the statutory undertakers for their operational purposes

10 NOTICES

- 10.1 The Owners and the Developer agree to give the Council and the County Council written notice within 10 Working Days of any change in ownership of any of its interests in the Land occurring before all the obligations under this Agreement have been discharged and such notice shall give details of the transferee's full name and

10.1.1 registered office where the transferee Owner is a company

10.1.2 usual address where the transferee is not a company

together with details of the area of the Land or unit of occupation transferred by reference to a plan.

10.2 Any notice, demand or any other communication to be given under or in connection with this Agreement shall be in writing and will be effective only if delivered by hand or sent by recorded delivery to the party due to receive the notice, demand or communication.

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

10.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served

10.4.1 if delivered by hand, at the time of delivery; or

10.4.2 if sent by recorded delivery, at the time delivery was signed for.

10.5 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served on the next Working Day.

10.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

11 COSTS OF THIS AGREEMENT

Upon completion of this Agreement the Owners shall pay to the Council and the County Council their reasonable and proper legal costs, in connection with the preparation, negotiation and completion of this Agreement together with the County Council's development control costs of £5,000.

12 DETERMINATION OF DISPUTES

12.1 Subject to clause 12.6, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other not less than ten Working Days' written notice requiring the dispute to be determined under this clause 12. The notice shall propose an appropriate Expert and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

12.2 Any dispute over the appointment of the Expert appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society of England and Wales who will have the power, with the right to take such further advice as he may require, to determine the appropriate Expert and to arrange his nomination.

12.3 The Expert shall act as an independent expert and:

12.3.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;

12.3.2 each party shall have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;

12.3.3 the Expert shall be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

12.3.4 the Expert shall not take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;

12.3.5 the Expert shall have regard to all representations and evidence before him when making his decision, which shall be in writing, and shall give reasons for his decision; and

12.3.6 the Expert shall use all reasonable endeavours to publish his decision within thirty Working Days' of his appointment.

12.4 Responsibility for the costs of referring a dispute to an Expert under this clause 12, including costs connected with the appointment of the Expert and the Expert's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Expert.

12.5 This clause 12 does not apply to disputes touching or concerning the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts

12.6 The provisions of this clause 12 shall not affect the ability of the Council to apply for and be granted declaratory relief injunction specific performance payment of any sum damages or any other means of enforcing this Agreement and consequential and interim orders and relief

13 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not made for the benefit of nor shall any of its provisions be enforceable by any person other than the parties to his Agreement and their successors in title.

14 INDEXATION

14.1 All Contributions payable pursuant to this Agreement shall be Index Linked

14.2 Where reference is made to an index and that index ceases 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 appropriate) shall advise the Owners in writing

15 SATISFACTION OF OBLIGATIONS

The Council will on written request from the Owners use reasonable endeavours to certify within 15 (fifteen) Working Days whether or not an obligation under this Agreement has been satisfied

16 INTEREST

If any Contribution due under this Agreement is paid late Interest will be payable from the date payment is due until the date of payment.

17 VAT

The parties to this Agreement acknowledge and agree the Contributions in this Agreement are not subject to VAT and no VAT should be charged or recoverable in addition to the amount of the Contributions specified in the Agreement.

18 WAIVER

No failure or delay by the Council or County Council to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver (whether express or implied) for any breach or default by the Owners in performing or observing any of the covenants, restrictions or obligation contained in this Agreement. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy

19 TERMINATION

19.1 The obligations in this Agreement (with the exception of clause 11) shall cease to have effect if before the Commencement of Development, the Planning Permission

19.1.1 expires;

19.1.2 is varied or revoked other than at the request of the Owners; or

19.1.3 is quashed following a successful legal challenge.

20 FUTURE PERMISSIONS

20.1 Subject to clause 20.2, nothing in this Agreement 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 Agreement.

20.2 This Agreement shall apply to any planning permission subsequently granted under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission (a "Subsequent Permission") and the Planning Permission shall be construed to include the development as stated in the Subsequent Permission unless otherwise required by the Council or the circumstances in clause 19.1.2 arise.

21 JURISDICTION

21.1 This Agreement shall be governed by and interpreted in accordance with the laws of England.

21.2 The Courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

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

Affordable Housing

The Owners and the Developer covenant with the Council as follows:

1. AFFORDABLE HOUSING MIX

- 1.1 To provide the Affordable Dwellings as part of the Development in accordance with the Affordable Housing Mix and the Affordable Housing Plan.
- 1.2 That the Affordable Housing Mix shall consist of:
 - 1.2.1 67 Affordable Rented Dwellings; and
 - 1.2.2 29 Shared Ownership Dwellings; or
 - 1.2.3 such other mix of type, tenure and numbers as may be agreed in writing with the Council at its absolute discretion

2. PROVISION OF AFFORDABLE DWELLINGS

- 2.1 Not to Dispose nor permit Disposal of any Open Market Dwellings until a contract for the sale of the Affordable Housing Land has been entered into with an Affordable Housing Provider
- 2.2 Not to Dispose nor permit Disposal of more than 179 Open Market Dwellings until the Affordable Housing Land has been transferred (by either a transfer or transfers of the freehold interest or long leasehold interest with a term of not less than 125 years) to an Affordable Housing Provider
- 2.3 Not to Dispose nor permit Disposal of more than 200 Open Market Dwellings until all the Affordable Dwellings have been constructed and are ready for Occupation

3. OCCUPATION OF AFFORDABLE DWELLINGS

- 3.1 Subject to the provisions of this Agreement not to
 - 3.1.1 allow or permit Occupation of any Affordable Dwellings for any purpose other than as Affordable Housing for Occupation by Eligible Persons
 - 3.1.2 let or transfer any Low Cost Home Ownership Dwellings to persons other than persons nominated by the Help to Buy Agent; or
 - 3.1.3 let any Affordable Rented Dwellings to persons other than persons nominated by the Council.
- 3.2 That the deed of transfer or lease (as applicable) to the Affordable Housing Provider of the Affordable Dwellings and/or the Affordable Housing Land shall contain the following (or such other alternative provisions as the Council may agree in writing)
 - 3.2.1 a covenant not to use the Affordable Dwellings otherwise than for the provision of Affordable Housing, and

- 3.2.2 a covenant not to Dispose of any of the Affordable Dwellings other than for the purpose of providing Affordable Housing to Eligible Persons; and
- 3.2.3 a covenant requiring the Affordable Housing Provider to enter into an agreement with the Council granting the Council the right to nominate 100% of the Occupiers of the Affordable Rented Dwellings when initially let and all subsequent true voids.

PROVIDED THAT such covenants (or such alternative provisions agreed by the Council in writing) shall be subject always to the provisions of this Agreement

4. 100% EQUITY SHARE

- 4.1 The provisions in paragraph 3 of Schedule 1 shall cease to have effect and shall cease to be enforceable in respect of:
- 4.1.1 any Affordable Dwelling where a leaseholder of that Affordable Dwelling held under Low Cost Home Ownership has purchased 100% of the equity in the relevant Affordable Dwelling; or
- 4.1.2 in respect of any Affordable Dwelling where the occupier has exercised a statutory right to buy or a right to acquire in respect of such Affordable Dwelling

and for the avoidance of doubt such provisions shall cease to be enforceable against any mortgagee or chargee of such leaseholders or occupiers and any person deriving title from them or any successor in title thereto together with their respective mortgagees and chargees.

5. CHARGE IN POSSESSION

- 5.1 For the purpose of this paragraph Chargee means:
- any mortgagee or chargee;
 - any receiver, administrative receiver or administrator appointed under the Law of Property Act 1925;
 - any housing administrator appointed under the Housing and Planning Act 2016; or
 - any other person appointed under any security document to enable a Chargee to realise its security
- of the Affordable Housing Provider and the whole or any one or more of the Affordable Dwellings.
- 5.2 The provisions of this Agreement relating to Affordable Dwellings shall not be binding on a Chargee (or any person or bodies deriving title through such Chargee) PROVIDED THAT the Chargee will have first:
- 5.2.1 given written notice to the Council of its intention to exercise its powers of sale to Dispose of any of the Affordable Dwellings ("Notice"); and
- 5.2.2 used reasonable endeavours over a period of three months from the date the Notice is served to complete a Disposal of the relevant Affordable Dwelling(s) to either:
- another Affordable Housing Provider; or

- to the Council.

- 5.3 Any Disposal referred to in paragraph 5.2.2 shall be for a consideration not less than the amount properly due and outstanding under the terms of the Chargee's relevant security documentation. This sum shall include all accrued principal monies, interest and the Chargee's reasonable costs and expenses.
- 5.4 In the event that a Disposal referred to in paragraph 5.2 shall not have been completed within the period of three months referred to in paragraph 5.2.2, the Chargee will be entitled to Dispose of the relevant Affordable Dwelling(s) free from the provisions of this Agreement relating to Affordable Housing which shall determine absolutely in respect of the relevant Affordable Dwelling(s).
- 5.5 For the avoidance of doubt in respect of the relevant Affordable Dwelling(s) Disposed of in accordance with paragraph 5.4 above the purchaser (or any person deriving title from them or any successor in title thereto together with their respective mortgagees and chargees) shall not be subject to the obligations of this Schedule 1 to this Agreement.

SCHEDULE 2

MANAGEMENT COMPANY AND MANAGEMENT PLAN

The Owners and the Developer (and the Council where relevant) covenant as follows

- 1.1 Save where the intention is for the Management Company to comprise the Land Trust, not later than six months from Commencement of Development the Owners shall take all necessary steps to secure the formation and registration of the Management Company at Companies House (taking into account any modifications reasonably required by the Council) and to notify the Council accordingly within 14 days of the completion of the registration of the Company
- 1.2 To secure the proper maintenance of the Allotment Land, Common Parts, Open Space Land, LAP, and SuDs to the reasonable satisfaction of the Council until such time as:
 - 1.2.1 the Management Company is registered or appointed pursuant to paragraph 1.1 hereof and the Management Plan has been approved by the Council; and
 - 1.2.2 the maintenance arrangements for the Allotment Land, Common Parts, Open Space Land, LAP, and SuDs in accordance with the Management Plan have been implemented, and
 - 1.2.3 the transfer of the freehold interest or the granting of a long leasehold interest of the Allotment Land, Common Parts, Open Space Land, LAP and SuDs to the Management Company is completed; or
 - 1.2.4 the transfer of the freehold interest or the granting of a long leasehold interest of Allotment Land, Common Parts, Open Space Land, LAP, is completed, and the SuDs is adopted by a statutory undertaker.
- 1.3 Save where the Management Company pursuant to paragraph 1.1 hereof is the Land Trust, if the Management Company ceases to exist as a company or if the Management Company at any time defaults in the performance of any of its covenants or obligations on its part as contained in the Management Plan and/or Management Agreement then the Owners shall (without prejudice to any other right or remedy of the Owners against the Management Company or any other person) perform the said covenants and obligations until the appointment by the Owners of a successor to the Management Company.
- 1.4 Not to Occupy or permit Occupation of any Dwelling until the Management Plan has been approved and either:
 - 1.4.1 the Management Company has been formed in accordance with the approved proposal; or
 - 1.4.2 where the Management Company is the Land Trust, a contract for the sale of the freehold interest or the granting of a long leasehold interest in the Allotment Land, Common Parts, Open Space Land, LAP and SuDs (if unadopted) has been entered into.
2. **SUDS**
 - 2.1 Not less than two months prior to Commencement of Development to submit to the Council for its approval a bill of quantities detailing the open book construction costs for the SuDs.

- 2.2 The Council covenants that it shall within ten Working Days' notify the Owners that it either approves the bill of quantities for the SuDs as submitted or proposes such reasonable amendments as are considered necessary. In the event that the Council fails to respond to the bill of quantities for the SuDs within ten Working Days of receipt, the bill of quantities as submitted are to be deemed approved.
- 2.3 Where reasonable amendments to the open book construction costs for the SuDs are proposed by the Council, the Owners shall not more than ten Working Days' after receiving the Council's proposed amendments revise the bill of quantities for the SuDs in accordance with the proposed amendments.
- 2.4 On or before Commencement of Development to
- 2.4.1 provide to the Council a Bond for the Bond Amount; or
- 2.4.2 pay the Cash Deposit.
- 2.5 the Bond shall endure, or the Cash Deposit shall be retained by the Council until:
- 2.5.1 the SuDS are adopted by a statutory undertaker; or
- 2.5.2 the SuDs are transferred to a Management Company; or
- 2.5.3 if earlier the date of completion of construction of the SuDS to the reasonable satisfaction of the Council
- 2.6 If
- i) the Owners fail to construct the SuDs in accordance with the details as approved by the Council in writing; or
- ii) prior to completion of the SuDs the Owners are adjudicated bankrupt or goes into liquidation voluntarily or otherwise; or
- iii) the Owners have executed a deed of assignment for the benefit of or otherwise compound with its creditors (except for the purpose of reconstruction or amalgamation)

the Council may (without prejudice to the Council's other rights remedies and powers against the Owners).

- by written notice require the Surety to pay for; or
- the Cash Deposit may be applied to

any reasonable and proper expenditure (including legal costs) which the Council may incur in carrying out the construction of the SuDs to its own design or the Owners' design to return the Land to the level of hydrological response as existed before the Commencement of the Development

SCHEDULE 3

Travel Plan

The Owners covenants as follows with the County Council

- 1.1 Not to Commence nor permit Commencement of Development unless and until it has secured the written approval of the County Council to the Travel Plan
- 1.2 Not to Occupy nor permit Occupation of any Dwelling on the Land unless and until it has implemented and complied with the Travel Plan in accordance with the requirements and timetable of the approved Travel Plan
- 1.3 Not Occupy nor permit Occupation of any Dwelling on the Land until it has appointed and funded a suitably qualified Travel Plan Coordinator with the responsibilities and duties set out in the Travel Plan and to ensure that the County Council is notified in writing of the identity of the Travel Plan Coordinator immediately following their nomination and that any changes in their nomination or responsibilities are notified to the County Council immediately and the Travel Plan Coordinator (or replacement Travel Plan Coordinator(s)) shall be retained for a continuous period of 5 years from first Occupation of any Dwelling
- 1.4 Prior to Commencement of Development to pay to the County Council the Travel Plan Approval Fee
- 1.5 Not to Occupy nor permit Occupation of any Dwelling on the Land until it has paid to the County Council the Travel Plan Monitoring Fee
- 1.6 Not to Occupy nor permit Occupation of the Development until it has provided to the County Council the Travel Plan Cash Deposit to the effect that if in the opinion of the County Council acting reasonably the Owners unreasonably fails at any time within five years of the first Occupation of a Dwelling on the Land to deliver the agreed measures and targets or to comply with any or all of the measures and targets contained within the approved Travel Plan then either
 - 1.6.1 the Owners shall pay to the County Council within 20 working days of written demand such sum as may be certified by the Director to be reasonably required up to the amount of the Travel Plan Cash Deposit: or
 - 1.6.2 the County Council shall use the Travel Plan Cash Depositin order to remedy the failure to achieve and implement the agreed measures and targets contained within the approved Travel Plan or such alternative measures as the Director in his absolute discretion determines will achieve the overall aims of the approved Travel Plan
- 1.7 That if it or its successors in title Occupy the Land or any part thereof they will implement and comply with the approved Travel Plan
- 1.8 That it will in relation to the Development include in any tenants lease or occupier's license of any part or parts of the Land a covenant that the tenant or occupier will implement the approved Travel Plan in respect of such part or parts of the Land and further that it will use all reasonable endeavours to enforce such obligations against any such tenant or occupier
- 1.9 That within 20 Working Days of the letting of the Development or any part or parts thereof procure the delivery to the County Council of a notice giving the following details

- 1.9.1 the name and address of the tenant;
- 1.9.2 a description of the premises demised;
- 1.9.3 the length of the term; and
- 1.9.4 a sufficient extract of the lease setting out the terms of the covenant expressed in favour of the County Council in relation to the Travel Plan
- 1.9.5 For the avoidance of doubt, paragraphs 1.8 and 1.9 of this Schedule 3, shall not be enforceable against individual purchasers of a Dwelling

SCHEDULE 4

Contributions payable to the Council

The Owners and the Developer covenant with the Council as follows:

1 MONITORING FEE

Not to Commence or permit Commencement of Development until the Monitoring Fee has been paid.

2 SRMS CONTRIBUTION

Not to Commence or permit Commencement of Development until the SRMS Contribution has been paid.

3 COMMUNITY PROJECT WORKER CONTRIBUTION

3.1 To pay the Community Project Worker Contribution to the Council in the following instalments:

3.1.1 25% payable prior to Commencement of Development

3.1.2 25% payable 6 months from Commencement of Development

3.1.3 25% payable 12 months from Commencement of Development

3.1.4 25% payable 18 months from Commencement of Development

3.2 Not to Commence or permit Commencement of Development until 25% of the Community Project Worker Contribution has been paid.

3.3 Not to Occupy or permit Occupation of more than 240 Dwellings until 100% of the Community Project Worker Contribution has been paid.

4 TRO CONTRIBUTION

4.1 To pay the TRO Contribution upon submission of a TRO application form to the Council

4.2 During the period beginning with the date of Commencement of Development and ending 3 years from Practical Completion of the Development to pay to the Council such sum as the Council shall notify the Owners in writing as being reasonably required for the purpose of implementing or amending (which expression shall include all connected administration, supervision and the carrying out of) such traffic management measures as the Council considers appropriate to ensure that any overspill parking from the Development or operation of any existing parking restrictions does not interfere with the capacity, operation or safety of the adjoining local highway network PROVIDING THAT such sum shall not exceed £2,000.

5 HEALTH CONTRIBUTION

Not to Occupy or permit Occupation of more than 160 Dwellings until the Health Contribution has been paid.

SCHEDULE 5

Highways and Transport

The Owners covenant as follows with the County Council

1 HIGHWAYS CONTRIBUTION

- 1.1 To pay the Park and Stride Contribution to the County Council prior to Commencement of Development.
- 1.2 To pay the Rusty Cutter Roundabout Contribution to the County Council within 28 days of the date of written notification from the County Council that the TCF Bid is successful unless that date is prior to Commencement of Development in which case to pay the Rusty Cutter Roundabout Contribution to the County Council on Commencement of Development.
- 1.3 To pay the School Travel Contribution to the County Council prior to Commencement of Development.
- 1.4 Not to permit the Commencement of Development until the Park and Stride Contribution and School Travel Contributions have been paid to the County Council.

2 HIGHWAY WORKS

- 2.1 To enter into a Highway Works Agreement for the delivery of the access to the Land and such other highway works as detailed in principle in drawing numbers 041-0023-003 Rev H and 041-0023-004 Rev H prior to Commencement of Development and to complete such works prior to Occupation of any Dwelling on the Land.
- 2.2 To enter into a Highway Works Agreement for the delivery of that part of the ramp connection to the Rusty Cutter roundabout within the Land as detailed in principle in the Landscape Master Plan together with the Shared Use Path and to complete those works prior to Occupation of any Dwelling on the Land.
- 2.3 Not to permit the Occupation of any Dwelling on the Land until the works described at paragraphs 2.1 and 2.2 have been completed to Completion Certificate Standard.
- 2.4 Within six calendar months of receipt of written notification from the County Council that the TCF Bid is unsuccessful (or such other timeframe as agreed between the County Council and the Owners) to enter into a Highway Works Agreement for the delivery of the southern walking and cycling route around the Rusty Cutter roundabout as detailed in principle in drawing number 041.0023.024 and to complete those works to Completion Certificate Standard no later than eighteen calendar months of receipt of such notice.