DATED 12th November 2021

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) HAMPSHIRE COUNTY COUNCIL

and

(3) BDW TRADING LIMITED

DEED OF VARIATION PURSUANT TO SECTION 106 AND 106A OF THE TOWN AND COUNTRY PLANNING ACT 1990 RELATING TO DEVELOPMENT AT FORTY ACRE FARM, HAVANT ROAD BEDHAMPTON

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THIS DEED OF AGREEMENT is dated the 12th day of November 2021

BETWEEN

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX **("the Council");** and

2. **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UJ **("the County Council");** and

3. **BDW TRADING LIMITED** (Company Reg. No. 03018173) whose registered office is at Barratt House Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF **("the Owner");** and

RECITALS

a) The Council and the County Council are the local planning authority for the area in 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 Owner owns the Land.

d) On 17 January 2020 the Original Agreement was entered into and the Original Planning Permission was issued

e) On 2nd June 2021 the Original Agreement was varied by way of the First Deed of Variation

f) This Deed is made pursuant to section 106 and 106A of the 1990 Act and to the extent that any obligations contained in this Deed are not planning obligations for the purposes of the 1990 Act they are entered into by the Council pursuant to the powers contained in section 111 of the Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011and all other powers so enabling

OPERATIVE PROVISIONS

NOW THIS DEED WITNESSES as follows:

1. **INTERPRETATION**

1.1. In this Deed the following definitions shall apply

this Deed	means this deed of agreement
First Deed of Variation	A deed of variation of the Original Agreement dated 2nd June 2021 and made between the Council (1) the County Council (2) and the Owner (3)
Care Home	means the freehold property as shown on Plan 2
Land	means the freehold property known as land at Forty Acre Farm, Havant Road, shown edged red on Plan 1 and registered at the Land Registry with title number SH55541 not including the Care Home

Original Agreement	means the planning obligation under section 106 of the 1990 Act relating to land at Forty Acre Farm, Havant Road, Bedhampton dated 17 January 2020 entered into between (1) the Council (2) the County Council (3) Melanie Jean Flint (4) Steven Walter Hamilton Mason (5) Timothy Nelson Mason (6) Melanie Jean Flint, Steven Walter Hamilton Mason and Timothy Nelson Mason(7) BDW Trading Limited
Original Planning Permission	means the planning permission issued by the Council dated 17 January 2020 for "the erection of 320 dwellings (including a 30% provision of affordable homes), 66 bed care home, provision of public open space, habitat mitigation zone, allotments, closure of existing access and creation of 2 new access points and associated infrastructure following demolition of existing buildings" and given the planning reference APP/18/00450 together with all variations thereto as registered and published on the Council's planning portal from the date of the Original Agreement until the date of this Deed
Plan 1	means the Plan attached hereto at Appendix 1
Plan 2	means the Plan attached hereto at Appendix 2

1.2. In this Deed the words and expressions used shall have the meanings prescribed in Clause 1.1 of this Deed and/or in Clause 1 (Definitions) of the Original Agreement (as the case may be) unless as otherwise stated

1.3. The headings in this Deed are for convenience only and shall not be deemed to be part of (or taken into consideration in the interpretation of) this Deed.

1.1. A person includes a natural person corporate or unincorporated body (whether or not having separate legal personality)

1.2. Unless the context otherwise require words in the singular shall include the plural and in the plural shall include the singular

1.3. Unless the context otherwise requires a reference to one gender shall include a reference to the other genders

1.4. A reference to any party shall include that party's personal representatives successors or permitted assigns and in the case of the Council the successors to its respective statutory functions

1.5. 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

1.6. 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

1.7. Unless the context otherwise requires references to clauses schedules and appendices are to the clauses schedules and appendices of this Deed

1.8. 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

1.9. Where an obligation falls to be performed by more than one person in respect of their interest the obligation can be enforced against every person so bound jointly and against each of them individually in respect of their interest.

1.10. Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction

1.11. If any provision (or part thereof) of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions (or such part of the provisions as is still enforceable) shall not in any way be deemed thereby to be affected impaired or called into question

2. LEGAL EFFECT

2.1. This Deed is a planning obligation made pursuant to section 106 of the 1990 Act together with section 106A of the 1990 Act and its purpose is to vary the Original Agreement with the intention that the planning obligations contained in the Original Agreement shall continue to apply save for any variations contained within this Deed

2.2. To the extent that any obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into by the Council and the County Council pursuant to the powers contained in section 111 of the Local Government Act 1972 section 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and any other enabling powers

2.3. The covenants obligations restrictions and requirements imposed upon the parties by this Deed are:

2.3.1. entered into pursuant to the provisions of section 106A of the 1990 Act

2.3.2. planning obligations for the purposes of section 106 of the 1990 Act

2.3.3. related to the Land

2.3.4. entered into with intent to bind the Owner's interests in the Land and each and every part thereof into whosoever hands the same may come (save for those excluded pursuant to clause 9 of the Original Agreement)

2.3.5. enforceable by the Council and the County Council as local planning authorities

2.3.6. executed by the respective parties as a deed.

3. COMMENCEMENT

3.1. This Deed shall take effect on the date set out above.

4. VARIATION

4.1. All the terms definitions conditions and obligations in the Original Agreement (including for the avoidance of doubt any recitals and any schedules and appendices referred to therein) are incorporated in full in this Deed and nothing in this Deed shall vary or alter the Original Agreement save where expressly stated otherwise in this Deed

4.2. From the date of this Deed the Original Agreement shall be varied and construed as follows:

4.2.1. In Clause 1, the Definitions, to delete the definition of "School Travel Contribution" and replaced with the following:

means the sum of £217,250 (two hundred and seventeen thousand two hundred and fifty pounds) 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 2024

4.2.2. Schedule 5 Clause 1.2 shall be deleted in its entirety;

4.2.3 Schedule 5 Clause 2.2 of the Original Agreement shall be deleted in its entirety and replaced with the following:

2.2

2.2.1 By no later than 31 May 2021 to make a preliminary design check submission to the County Council for the following works:

2.2.1.1 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

2.2.1.2 for the delivery of the southern walking and cycling route around the Rusty Cutter roundabout as detailed in principle drawing number 041.0023.024 and;

2.2.2 To make a detailed design submission for the works outlined in 2.2.1 above no later than 4 months after receiving of preliminary design check approval from the County Council and;

2.2.3 To enter into a Highway Works Agreement for the works outlined in 2.2.1 no later than 12 months from the detailed design submission detailed in 2.2.1;

2.2.4 To commence the works outlined in 2.2.1 above no later than 6 months following entering into the Highway Works Agreement in 2.2.3 above and;

2.2.5 To complete the works outlined in 2.2.1.1 above to Completion Certificate Standard prior to Occupation of anymore than 200 Dwellings and in any event prior to completion of the works outlined in 2.2.1.2 above and;

2.2.6 To complete the works outlined in 2.2.1.2 above to Completion Certificate Standard prior to the Occupation of the 200th Dwelling or by 31 March 2024, whichever is the sooner

4.2.3. Schedule 5 Clause 2.3 of the Original Agreement shall be deleted in its entirety and replaced with the following:

2.3

2.3.1 *Not to permit the Occupation of any Dwelling on the Land until the works described in paragraph 2.1 have been completed to Completion Certificate Standard.*

2.3.2 *Not to Occupy nor permit the Occupation of anymore than 200 Dwellings on the Land until the works in paragraph 2.2.1.1 have been completed to Completion Certificate Standard.*

2.3.3 *Not to Occupy nor permit the Occupation of more than 200 Dwellings on the Land until the works in paragraph 2.2.1.1 and 2.2.1.2 have been completed to Completion Certificate Standard.*

4.2.4. Schedule 5 Clause 2.4 of the Original Agreement shall be deleted in its entirety.

4.2.5. Clause 7.4 of the Original Agreement shall be amended to read as follows:

7.4 *The County Council shall return to the Owners any part of the School Travel Contribution which remains unspent as of 31 March 2024.*

4.3. The parties agree that with effect from the date hereof the Original Agreement shall be varied and read and construed as being subject to the terms of this Deed and as having been amended by the terms of this Deed and the terms of the Original Agreement shall continue in full force and effect

5. **COVENANTS**

5.1. The Parties hereby agree that:

5.1.1. performance or part performance of any covenant obligation or restriction pursuant to the Original Agreement shall be deemed also to have been performed or part performed for the purposes of the satisfaction of the covenant obligation or restriction in this Deed

5.1.2. non-performance of any covenant obligation or restriction in the Original Agreement shall be deemed also to be non-performance for the purposes of compliance with the convent obligation or restriction in this Deed

5.1.3. the Parties covenant to observe and perform the covenants restrictions and obligations contained in the Original Agreement as varied by this Deed

6. **LOCAL LAND CHARGE**

6.1 This Deed is a local land charge and shall be registered as such by the Council.

6.2 Where in the opinion of the Owner any of the provisions of this Deed have been satisfied the Owner shall be entitled to apply to the Council for confirmation to that effect and (subject to the payment of the Council's reasonable costs and charges in connection therewith) upon the Council being satisfied that the relevant obligation or covenant (as the case may be) has been satisfied the Council shall as soon as is reasonably practicable issue a written confirmation to such effect to the Owner

6.3 The Council shall upon the written request of the Owner (and subject to the payment of the Council's reasonable costs and charges in connection therewith) at any time after all the obligations of the Owner under this Deed have been performed or otherwise discharged and the Council being satisfied that this Deed no longer serves a useful purpose as soon as is reasonably practicable cancel all entries made in the local land charges register in respect of this Deed

7. **COSTS**

7.1. The Owner covenants to pay on or before completion of this Deed the Council's reasonable legal and administrative costs of [ ] in connection with the negotiation preparation completion and registration of this Deed whether or not this Deed is delivered in accordance with clause 11

7.2. The Owner covenants to pay on or before completion of this Deed the County Council's reasonable legal costs up to a limit of [ ] in connection with the negotiation preparation completion and registration of this Deed together with the

County Council's development control costs of £5,000 whether or not this Deed is delivered in accordance with clause 11

8. **THIRD PARTY RIGHTS**

8.1. The Parties to this Deed intend that no terms of this Deed may be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Deed **SAVE FOR** the successors in title to the Parties to this Deed (save for those excluded pursuant to clause 9 of the Original Agreement) and in the case of the Council the successor to its statutory functions

9. **AGREEMENTS AND DECLARATIONS**

9.1 The Parties agree that

9.1.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission and

9.1.2 nothing in this Deed grants planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function

10. **GOVERNING LAW**

10.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England

10.2 It is hereby agreed that the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales

11. **DELIVERY**

11.1. This Deed is delivered on the date written at the start and the provisions of this Deed shall be of no effect until this Deed has been dated

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

APPENDIX 1

PLAN 1

[redacted]

13250

N

KEY

SITE BOUNDARY

DO NOT SCALE
All dimensions to be checked on site and Architect to be notified of any discrepancies prior to commencement

DESIGNER'S RISK ASSESSMENT

RESIDUAL RISKS:

HAVANT ROAD A2030

AURIOL DRIVE

K RIDGE

CTORY AVENUE

12m

WESTWAYS

ALMOND CLOSE

Forty Acre Farm

A3(M)

Su

A27

.odge
'm

dge
Field

Drain

Drain

[redacted]

BARRATT HOMES

DAVID WILSON HOMES

idPARTNERSHIP NORTHERN

ARCHITECTURE | MASTERPLANNING | URBAN DESIGN

Land at Forty Acre Farm, Havant Road, Havant
for Barratt David Wilson Homes Southampton

Site Location Plan

KD	KA		
1:1250 @ A1			
April 2016	NB1:2393	PL01	

COPYRIGHT ©

3/1/17

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

13250

3117080

Executed as a deed by Glen O'Nion

and JEREMY CHAPMAN

as attorneys pursuant to a Power of Attorney dated 14 June 2021 for and on behalf of

BDW TRADING LIMITED

.....

Attorney

.....

Signature of Witness

.....

Name of Witness

.....

Address

.....

.....

.....

.....

Signature of Witness

.....

Name of Witness

.....

Address

.....

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.....

Attorney

THE COMMON SEAL OF THE COUNCIL OF THE BOROUGH OF HAVANT

was hereunto affixed in the

presence of:

[redacted]

Authorised Officer Signatory

1325c

37/7080.

EXECUTED as a **DEED** by affixing
THE COMMON SEAL of
HAMPSHIRE COUNTY COUNCIL
in the presence of

[redacted]

Authorised Signatory

SIMON COOK

Name

LEGAL TEAM LEADER

Position