

DATED

10 September

2024

(1) JAMES ANDREW SELICK

AND

(2) BLOOR HOMES LIMITED

ALLOCATION AGREEMENT
relating to
nitrate mitigation at the Warnford Park
Estate for a prospective development site
at land at Berewood, West Waterlooville
Hampshire

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THIS AGREEMENT is made on

10 September

2024

BETWEEN:

- (1) **JAMES ANDREW SELICK** otherwise known as **ANDREW JAMES SELICK** of Warnford Park, Warnford, Southampton SO32 3LB ("**Owner**"); and
- (2) **BLOOR HOMES LIMITED** (company number 02162561) whose registered office is at Ashby Road, Measham, Swadlincote, Derbyshire DE12 7JP ("**Developer**").

BACKGROUND

- A The Owner owns the freehold interest in the Mitigation Site on which he is or will be managing the land in a manner designed to enable a reduction of net nitrogen emissions in a manner that creates nitrogen mitigation available for developers to purchase to offset the adverse nitrogen impact on the Solent region by virtue of the Developer's intended development at the Development Land.
- B The Development will result in an increased discharge of nitrates from the Development Land. In order to obtain the Planning Permission the Developer needs to demonstrate to the Determining Authority that the Development can maintain nitrate neutrality.
- C The Owner has agreed to sell to the Developer some nitrogen Credits in accordance with the terms of this agreement.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATIONS

The following definitions and rules of interpretation apply in this agreement:

"Agreed Number of Credits" means the number of Credits available from the Mitigation Land (being 220 Credits at the date of this agreement subject to any variation pursuant to the mechanism contained in clause 9) for use exclusively in relation to a Catchment Development;

"Application" means the Developer's application for reserved matters or standalone application for Planning Permission in respect of Berewood;

"Acquired Credits" means the Credits acquired by the Developer on the Completion Date;

"Berewood" means Phase 8 being part of the land at West Waterlooville, registered with title number HP657720, which is or will be the subject of an Application;

"Catchment Development" means a development site which drains to the waste water treatment works at Peel Common, Budds Farm or Ashlett Creek (which for the avoidance of doubt shall include Berewood);

"Challenge" means an application for judicial review or an application pursuant to section 288 of the Town and Country Planning Act 1990 brought by a party other than the Developer (or any associate of the Developer) arising from the grant of the Planning Permission or an application to a higher court appealing against a judgment in respect of an application made to a lower court;

"Challenge Period" means the period of six weeks and 10 Working Days starting on the date on which the Planning Permission is granted;

"Completion Date" means the date falling 10 Working Days after and including the Unconditional Date or earlier by mutual agreement by the Parties;

“Condition Precedent” means the satisfaction of the Planning Condition;

“Contract Rate” means four percent per annum above the base rate from time to time of Barclays Bank plc;

“Councils” means the Councils as defined in the Nitrate s106 Agreement;

“Court Confirmatory Decision” means either:

- (a) a judgment of the High Court or Court of Appeal confirming the grant of the Planning Permission by the Determining Authority or by the Secretary of State following an appeal, and the period for an appeal against such a decision has expired without a further Challenge being made; or
- (b) a judgment of the Supreme Court confirming the grant of the Planning Permission by the Determining Authority or by the Secretary of State following an appeal;

“Credit Price” means [REDACTED] plus VAT per Credit;

“Credits” means measurements of nitrogen reduction where one Credit equates to 1 Kg of total Nitrogen reduction (as against historic discharges on the Mitigation Land) in discharges from the Mitigation Land in each year as defined in the Nitrates s106 Agreement;

“Deposit” means [REDACTED]

“Determining Authority” means the local planning authority with jurisdiction over the Application;

“Developer’s Conveyancer” means Gateley Legal of One Eleven, Edmund Street, Birmingham, B3 2HJ (Ref: 058632.00794) or such other firm of solicitors as may be notified in writing by the Developer to the Owner from time to time;

“Development Land” means the land which is described as Berewood;

“Drawdown Period” means five (5) years from and including, as relevant, (1) the Completion Date and/ or (2) the Second Tranche Date;

“Electronic Payment” means payment by electronic means in same day cleared funds from a client account held in the name of the Developer’s Conveyancer at a clearing bank to a client account in the name of the Owner’s Conveyancer;

“Finally Determined” means where a Challenge has been made, the date 10 Working Days after the first of the following events to occur:

- (a) permission to bring a Challenge (where required) has not been granted and the period within which an application for permission to appeal against such refusal has expired without a further Challenge being made;
- (b) all Challenges have been withdrawn;
- (c) a Court Confirmatory Decision has been issued; or
- (d) a quashing order has been issued nullifying the Planning Permission and the Determining Authority has issued a further planning permission and the Challenge Period in respect of that planning permission has expired;

“Longstop Date” means 10 March 2027] being the date falling 30 months after and including the date of this agreement or such alternative date as may be agreed in writing between the Parties (each acting in their own absolute discretion);

“Maximum Credits” means 242 Credits;

“Minimum Credits” means 150 Credits;

“Mitigation Land” such part of the Mitigation Site (referred to in the Nitrate s106 Agreement as **“Credits Linked Land”**) as determined by the Owner but which must correspond to and provide the Agreed Number of Credits and must be shown coloured orange on the plan annexed to the Notice of Purchase;

“Mitigation Site” means the Owner’s property known as Warnford Estate shown tinted blue and edged red on the Plan 1 annexed to the Nitrate s106 Agreement title to which is registered at HM Land Registry under title numbers HP506221 and HP614524;

“Monitoring Authority” means South Downs National Park Authority;

“Nitrate Mitigation” means strategies and measures to reduce the levels of nitrates in the Solent region in line with Natural England requirements at the date of the Nitrate s106 Agreement;

“Nitrate s106 Agreement” means the agreement made pursuant to section 106 of the Town and Country Planning Act 1990, section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and other powers dated 1 November 2023 made between the Councils (1) South Downs National Park Authority (2) and the Owner (3);

“Notice of Purchase” means a Notice of Purchase (as defined in the Nitrate s106 Agreement) in relation to the Agreed Number of Credits;

“Owner’s Conveyancer” means Irwin Mitchell LLP (reference SK/05437861/16) of Thomas Eggar House, Friary Lane, Chichester West Sussex PO19 1UF or such other firm of solicitors as may be notified in writing by the Owner to the Developer from time to time;

“Part 1 Conditions” means Part 1 of the Standard Commercial Property Conditions (Third Edition – 2018 Revision) and **“Condition”** means any one of them;

“Part 2 Conditions” means Part 2 of the Standard Commercial Property Conditions (Third Edition – 2018 Revision);

“Party” means the Owner or the Developer as the context so requires and **“Parties”** means both of them as the context so requires;

“Planning Condition” means the grant of the Planning Permission and either:

- (a) the expiry of the Challenge Period where no Challenge is lodged; or
- (b) where a Challenge is lodged, the Challenge has been Finally Determined and has resulted in the upholding of the grant of the Planning Permission;

“Planning Permission” means planning permission for Berewood issued pursuant to the Application or pursuant to any appeal against a refusal of the Application;

“Purchase Price” means [REDACTED]
[REDACTED] plus VAT;

"Relevant Development" means either Berewood or any Catchment Development(s) as notified to the Owner;

"Relevant Event" means any of the following events:

- (a) a change in the law; or
- (b) a decision of a Court, tribunal, Secretary of State, or other decision maker with competence; or
- (c) a change in Natural England's custom or practice; or
- (d) a change in scientific opinion based on evidence; or
- (e) a change in industry practices or in the generally accepted calculation methods for the type or extent of land required to provide Credits,

that is accepted in writing by both Natural England and the relevant local planning authority and results in any of the following:

- (a) offsite Nitrate Mitigation not being required in relation to the Development Land;
- (b) Credits not being required; or
- (c) taking the Mitigation Site out of nitrate production not being considered to be an effective form of offsite Nitrate Mitigation;

"Remaining Credits" the balance of Credits calculated by deducting the Acquired Credits from the Maximum Credits;

"Revised Requirement Notice" means the notice from the Developer to the Owner served in accordance with the requirements of clause 9 of this agreement requesting a Notice of Purchase in relation to the Agreed Number of Credits or a revised requirement identifying not less than the Minimum Credits and not more than the Maximum Credits;

"Second Tranche Date" means the date of completion of the purchase of the Credits identified in the Further Drawdown Notice;

"Unconditional Date" means the date on which the Condition Precedent is satisfied;

"VAT" means value added tax or any equivalent tax chargeable in the UK;

"VAT Invoice" means an invoice complying with the provisions of regulations 13 and 14 of the VAT Regulations 1995;

"Working Days" means any day from Monday to Friday (inclusive) which is not Good Friday, a statutory Bank Holiday or any day between 24 December to the immediately following 2 January inclusive.

2 AGREEMENT

- 2.1 Subject to the occurrence of the Unconditional Date and the remaining terms of this agreement, the Owner shall sell and the Developer shall buy the Agreed Number of Credits for the Purchase Price provided that the Developer may elect to serve a Revised Requirement Notice identifying a revised requirement for Credits but such Revised Requirement Notice shall not identify less than the Minimum Credits and not more than the Maximum Credits in accordance with the terms of this agreement.

- 2.2 On the date of this agreement, the Developer's Solicitors will transfer the amount of the Deposit to the Owner's Conveyancer which may immediately be released by the Owner's Conveyancer to the Owner and is not refundable in any circumstance, but will be taken into account as part of the Purchase Price if this agreement completes.
- 2.3 The Owner warrants to the Developer on the date of this agreement that the Owner shall thereafter exclusively reserve the Maximum Credits for the Developer until the earlier of allocation of the Maximum Credits and the Longstop Date.
- 2.4 This agreement is personal to the Developer. The Developer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement or any part of it.
- 2.5 For the avoidance of doubt:
 - 2.5.1 subject to the applicable Credit Price having been paid to the Owner, the Developer may require the Owner to allocate the Agreed Number of Credits (or, subject to the Minimum Credits, such Credits notified to the Owner pursuant to a Revised Requirement Notice in accordance with this agreement) for the benefit of a Catchment Development (but cannot require the Owner to do so in respect of any land which is not a Catchment Development);
 - 2.5.2 subject to clause 10.1, it is agreed by the Parties that the Developer shall not be limited to requesting only one Notice of Purchase for the Agreed Number of Credits and/or the Remaining Credits provided that each Credit can only be allocated on one occasion and cannot then be the subject of a further Notice of Purchase.

3 PLANNING & CONDITION PRECEDENT

- 3.1 The Developer confirms it has submitted and/or will submit the Application at its own cost to the Determining Authority.
- 3.2 The Developer will use reasonable commercially prudent endeavours to obtain a Planning Permission and satisfy the Planning Condition before the Longstop Date and will pursue the relevant Application and any related planning obligation and/or any appeal expeditiously and diligently.
- 3.3 The Developer will keep the Owner regularly informed as to progress of the Application and any appeal but for the avoidance of doubt, not more than once in every 3 month period.
- 3.4 The Developer will supply the Owner with a copy of the decision notice on the Application or any related appeal within five Working Days of receipt.
- 3.5 The Owner shall reserve the Maximum Credits from the Mitigation Site for the Developer until the earlier of:
 - 3.5.1 the Longstop Date;
 - 3.5.2 the date on which Notices of Purchase have been issued by the Owner (subject to the Owner having paid any monies due under clause 3.6.3 of this agreement) in respect of the Maximum Credits; and
 - 3.5.3 termination of this agreement.
- 3.6 Following the service of a Notice of Purchase relating to a Relevant Development, in accordance with the Nitrate s106 Agreement, the Owner shall:

- 3.6.1 submit a draft Woodland Planting Scheme related thereto (as defined in the Nitrate s106 Agreement) to the Mitigation Land Authority (as defined in the Nitrate s106 Agreement) within the timeline set out in paragraph 1.3 of the Schedule contained in the Nitrates s106 Agreement and procure that a Woodland Planting Scheme is approved accordingly;
- 3.6.2 following the approval of the Woodland Planting Scheme, implement and comply with the same in accordance with paragraph 1.4 of the Schedule contained in the Nitrates s106 Agreement; and
- 3.6.3 pay any monies due to the Mitigation Land Authority pursuant to the Nitrate s106 Agreement insofar as they relate to the Relevant Development.
- 3.7 The Owner shall (if reasonably required by the Developer and at the cost of the Developer (such costs to be reasonable and properly incurred)) lend the Developer all reasonable assistance to discharge the condition(s) relating to Nitrate Mitigation in respect of any Relevant Development insofar as the Owner is able to do so as owner of the Mitigation Site.

4 CONDITIONS

- 4.1 The Part 1 Conditions will be incorporated in this agreement so far as they:
 - 4.1.1 apply to a sale by private treaty;
 - 4.1.2 can be relevant to a sale of Credits;
 - 4.1.3 are not inconsistent with the other clauses in this agreement; and
 - 4.1.4 have not been modified or excluded by any of the other clauses in this agreement.
- 4.2 The terms used in this agreement have the same meaning when used in the Part 1 Conditions.
- 4.3 References in the Part 1 Conditions to:
 - 4.3.1 “seller” are references to the Owner; and
 - 4.3.2 “buyer” are references to the Developer; and
 - 4.3.3 “property” are references to the Agreed Number of Credits.
- 4.4 The Part 2 Conditions will not be incorporated into this agreement.
- 4.5 The following Conditions are amended:
 - 4.5.1 Condition 1.1.1 (c) so that reference to “**Clearing Bank**” means a bank which is a direct participant in the CHAPS system operated by the Bank of England;
 - 4.5.2 Condition 1.1.1(d) so that reference to completion date in Condition 1.1.1(d) is to the Completion Date as defined by this agreement;
 - 4.5.3 Condition 1.1.1(e) so that reference to contract rate in Condition 1.1.1(e) is to the Contract Rate as defined by this agreement;
 - 4.5.4 Condition 1.1.1(o) so that reference to VAT in Condition 1.1.1(o) is to VAT as defined by this agreement;

- 4.5.5 Condition 1.1.3(b), so as to read "in the case of the seller, even though a mortgage remains secured on the Mitigation Site";
- 4.5.6 Condition 9.1.1 by the deletion of the words "Completion date is 20 working days after the date of the contract";
- 4.5.7 Condition 9.4, so as to add "(d) any other sum which the parties agree under the terms of the contract should be paid or allowed on completion";
- 4.5.8 Condition 9.7 so as to read "The buyer is to pay the money due on completion by Electronic Payment and, if appropriate, by an unconditional release of a deposit held by a stakeholder"; and
- 4.6 The following Conditions will not apply to this agreement: 2.1, 2.2, 4.1.1, 4.1.2, 4.1.3, 5, 6, 7, 8, 9.1.3, 9.5, 11, and 12.

5 TITLE

- 5.1 The Owner's title to the Maximum Number of Credits has been accepted by the Developer prior to the date of this agreement.
- 5.2 Subject to the Owner's warranty given in clause 2.3, the Developer is deemed to have full knowledge of the Owner's title to the Maximum Number of Credits and is not entitled to raise any objection, enquiry, requisition or claim in relation to it.
- 5.3 The Developer shall not register any notices against the Owner's title to the Mitigation Site in relation to this agreement.
- 5.4 Up until the date calculated in accordance with clause 3.7, the Owner covenants with the Developer not to transfer or lease (being a lease in excess of 20 years) the Mitigation Land without procuring that the incoming transferee or lessee executes and delivers to the Developer a deed of covenant to comply with the terms of this agreement in the same way as the Owner Provided that the Developer accepts that it shall not register any restriction or notice on the Owner's title to the Mitigation Site.

6 MATTERS AFFECTING THE PROPERTY

The Owner will sell the Agreed Number of Credits (subject to any variation set out in this agreement) to the Developer subject to the terms of the Nitrate s106 Agreement.

7 COSTS

The Developer will pay the following costs to the Owner:

- 7.1 [REDACTED] VAT towards the Owner's legal costs in connection with this agreement payable on or before the date of this agreement;
- 7.2 [REDACTED] plus VAT towards the Owner's agency costs in connection with this agreement payable as follows;
 - 7.2.1 50% of the above fee payable on or before the date of this agreement; and
 - 7.2.2 50% of the above fee payable on the Completion Date;
- 7.3 [REDACTED] no VAT to the Owner as a contribution to the Owner's pre-payment of the monitoring and/or verification contributions required to be paid to the Monitoring Authority pursuant to the Nitrate s106 Agreement payable on or before the Completion Date.

8 VAT

- 8.1 Each amount stated to be payable by the Developer to the Owner under or pursuant to this agreement is exclusive of VAT (if any).
- 8.2 If VAT is chargeable on any supply made by the Owner under or pursuant to this agreement, the Developer will pay the Owner an amount equal to that VAT as additional consideration on the date that the supply is made subject to receipt of a properly addressed VAT Invoice.

9 ^{8.3 See Rider} COMPLETION & FIRST NOTICE OF PURCHASE

The following clauses shall apply in respect of Relevant Developments.

- 9.1 At any time prior to and up to five Working Days after and including the Unconditional Date, the Developer may serve a single Revised Requirement Notice on the Owner requiring a Notice of Purchase for Credits being not less than the Minimum Credits and not more than the Maximum Credits below and the remaining relevant provisions of this agreement.
- 9.2 For the avoidance of doubt, a Revised Requirement Notice may only be served on one occasion.
- 9.3 Completion will take place on the Completion Date.
- 9.4 On Completion:
 - 9.4.1 if the Developer has served a Revised Requirement Notice the Developer shall pay the Credit Price (less any Deposit previously paid) for the Credits identified in the Revised Requirement Notice by Electronic Payment;
 - 9.4.2 if the Developer has not served a Revised Requirement Notice, the Developer shall pay the Purchase Price (less any Deposit previously paid) to the Owner by Electronic Payment; and
 - 9.4.3 on receipt of all monies due from the Developer on the Completion Date, the Owner shall, at the request of the Developer, serve a Notice of Purchase on the Determining Authority and/or the local planning authority administering a Relevant Development (subject to the Developer providing the Owner with the necessary information required in order to serve a Notice of Purchase pursuant to the Nitrate s106 Agreement (as detailed in clause 9.7 below))
- 9.5 Any Notice of Purchase served in accordance with clause 9.4.3 may relate to less Credits than the Acquired Credits.
- 9.6 At any time up to five Working Days prior to 5pm on the last day of the Drawdown Period the Developer may serve any notices on the Owner ("**Drawdown Allocation Notice**") to call for further Notices of Purchase to be served by the Owner in respect of the remaining or balance of remaining Acquired Credits that have not at that date been allocated to a Catchment Development.
- 9.7 The Owner will within 10 Working Days of receipt of any Drawdown Allocation Notice serve a Notice of Purchase on the Determining Authority and/or the local planning authority administering the Relevant Development(s) notified in the relevant Drawdown Allocation Notice (subject to the Developer providing the Owner with the necessary information required in order to serve a Notice of Purchase pursuant to the Nitrate s106 Agreement).

10 FURTHER DRAWDOWN

- 10.1 Any Remaining Credits shall not be released from the terms of this agreement (for the duration of this agreement and subject to the Longstop Date).
- 10.2 Prior to the Longstop Date, the Developer shall have the right to purchase any Remaining Credits by serving a notice on the Owner ("**Further Drawdown Notice**").
- 10.3 The Developer shall pay the Owner, on service of any Further Drawdown Notices, a sum calculated by multiplying the number of Remaining Credits referred to in the Further Drawdown Notice served by the Developer at clause 10.2, by the Credit Price.
- 10.4 The provisions of clauses 9.6 and 9.7 shall then apply to any Further Drawdown Notices.
- 10.5 Where there are any Remaining Credits by the Longstop Date then those Credits shall be released from the terms of this agreement and this agreement shall terminate in respect of those Remaining Credits.

11 LONGSTOP

If the Condition Precedent has not been satisfied or (as appropriate) waived (by notice in writing served by the Developer on the Owner) before the Longstop Date then either the Owner or the Developer may serve notice on the other to terminate this agreement with immediate effect.

12 WAIVER OF CONDITION PRECEDENT

The Developer has the sole benefit of the Planning Condition and may waive the Planning Condition by serving notice in writing on the Owner and upon receipt of such notice the Planning Condition shall be deemed to be satisfied on the date of receipt of such notice.

13 TERMINATION & INSOLVENCY

- 13.1 Without affecting any other right or remedy available to it, the Owner may terminate this agreement (but only prior to actual completion) with immediate effect by giving notice to the Developer if any of the following events occur:
 - 13.1.1 the Developer is in fundamental or substantial breach of any of its obligations in this agreement and has failed to rectify the breach within a reasonable time after receiving notice to rectify from the Owner;
 - 13.1.2 the Developer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 13.1.3 the Developer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Developer with one or more other companies or the solvent reconstruction of the Developer;
 - 13.1.4 a resolution is passed, or an order is made, for or in connection with the winding up of the Developer (being a company) other than for the sole purpose of a

scheme for a solvent amalgamation of the Developer with one or more other companies or the solvent reconstruction of the Developer;

- 13.1.5 an order is made, for the appointment of an administrator, or if an administrator is appointed, over the Developer (being a company);
 - 13.1.6 the holder of a qualifying floating charge over the assets of the Developer (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 13.1.7 a receiver is appointed over the assets of the Developer;
 - 13.1.8 a creditor or encumbrancer of the Developer attaches or takes possession of, or an execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Developer's assets and such attachment or process is not discharged within 14 Working Days;
 - 13.1.9 any event occurs, or proceeding is taken, with respect to the Developer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned elsewhere in this clause 13;
 - 13.1.10 the Developer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
 - 13.1.11 the Developer (being a company) is struck off from the Register of Companies; or
 - 13.1.12 the Developer otherwise ceases to exist.
- 13.2 Without affecting any other right or remedy available to it, any party may terminate this agreement with immediate effect by giving notice to the other party if a Relevant Event occurs.

14 NOTICES

- 14.1 Any notice given under this agreement may be given or made by or to the Party concerned and any notice alleging default or requiring action to be taken within a specified period must be copied to the solicitors acting for the Party concerned when served.
- 14.2 Where the expiry of any notice falls on a day which is not a Working Day then the relevant date shall be the next Working Day.
- 14.3 Any notice or payment shall be effective only if given or made by 5.30 pm on the day in question.
- 14.4 Notices can be served by email and/or post.

15 DETERMINATION OF DISPUTES

- 15.1 Subject to clause 15.7, if any dispute arises relating to or arising out of the terms of this agreement, either Party may give to the other written notice requiring the dispute to be determined under this clause 15. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 15.2 For the purposes of this clause 15 a "Specialist" is a person qualified to act as an expert (which may be an ecologist) in relation to the dispute having not less than ten years'

professional experience in relation to nutrient mitigation matters in the same locality as the Mitigation Land.

- 15.3 Any dispute over the type of Specialist 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 who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 15.4.
- 15.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.
- 15.5 The Specialist is to act as an independent expert and:
 - 15.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other Party;
 - 15.5.2 each Party is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other Party;
 - 15.5.3 the Specialist is to 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;
 - 15.5.4 the Specialist is not to 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;
 - 15.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
 - 15.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.
- 15.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 15, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of either Party in relation to a dispute, will be decided by the Specialist.
- 15.7 This clause 15 does not apply to disputes in relation to matters of law or the construction or interpretation of this agreement which will be subject to the jurisdiction of the courts of England.

16 ENTIRE AGREEMENT

- 16.1 This agreement constitutes the whole agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.
- 16.2 The Developer acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently).

17 JOINT AND SEVERAL LIABILITY

Where the Developer comprises more than one person, those persons will be jointly and severally liable for the obligations and liabilities of the Developer arising under this agreement. The Owner may take action against, or release or compromise the liability of, or grant time or other indulgence to, any one of those persons without affecting the liability of any other of them.

18 THIRD PARTY RIGHTS

A person who is not a party to this agreement will not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

19 GOVERNING LAW

19.1 This agreement 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) will be governed by and construed in accordance with the law of England.

19.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

THIS AGREEMENT HAS BEEN ENTERED INTO on the date stated at the beginning of it.

Signed for and on behalf of the Owner:



Signed for and on behalf of the Developer:

RIDER

8.3 The Owner holds the Property on trust as bare trustee for the Gawthorpe Estates Partnership, VAT is payable on the Purchase Price and the VAT invoice will be issued by the Gawthorpe Estates Partnership. The Gawthorpe Estates Partnership is registered for VAT with number 182389576. The Owner enters into (and acts under) this agreement as agent and bare trustee for the Gawthorpe Estates Partnership.

8.4 If and to the extent that HM Revenue and Customs determines that VAT should not have been charged on any supply made by the Owner to the Developer under this Agreement ("Determination") the party receiving the Determination (Party A) shall provide a copy of the Determination to the other party (Party B) within five Working Days of the date the Determination was received by Party A and within 10 Working Days of the later of:

8.4.1 the date the Determination was received by Party A; and

8.4.2 the date of receipt by the Owner and/or the Gawthorpe Estates Partnership of the amount equal to the VAT paid by the Owner and/or the Gawthorpe Estates Partnership to HM Revenue and Customs,

the Owner shall (a) pay to the Developer an amount equal to the VAT paid by the Developer to the Owner on the supply and (b) shall procure that the Gawthorpe Estate Partnership issues to the Developer a VAT credit note in respect of the same.

8.5 As agent and bare trustee of the Gawthorpe Estates Partnership the Owner shall procure that the Gawthorpe Estate Partnership shall amend its VAT return and apply to HM Revenue and Customs for reimbursement of the supply paid by the Developer under this agreement as soon as reasonably practicable after receipt of the Determination (or where the Owner is Party B a copy of the Determination)."

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IM LLP