

DATED

20 December

2023

(1) JAMES ANDREW SELICK

AND

(2) BRACKLEY INVESTMENTS LIMITED

ALLOCATION AGREEMENT
relating to
nitrate mitigation at the Warnford Park
Estate for a prospective development site
at 1059 Bartons Road, Havant, Hampshire

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BETWEEN:

- (1) **JAMES ANDREW SELICK** otherwise known as **ANDREW JAMES SELICK** of Warnford Park, Warnford, Southampton SO32 3LB ("**Owner**"); and
- (2) **BRACKLEY INVESTMENTS LIMITED** (company number 03119358) whose registered office is at 27 Eldon Business Park, Attenborough, Nottingham, NG9 6DZ ("**Developer**").

BACKGROUND

- A The Owner owns the property at 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 28.58 Credits at the date of this agreement) for use exclusively in relation to the Development Land;

"Application" means the Developer's application for Planning Permission for 78 bed care home under application reference number APP/23/00665;

"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 a 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 starting on the date on which Planning Permission is granted;

"Completion Date" means the date falling fifteen (15) Working Days after and including the Unconditional Date or earlier by mutual agreement by the Parties;

"Condition Precedent" means the grant of 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 Planning Permission;

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

[REDACTED]

“Court Confirmatory Decision” means either:

- (a) a judgment of the High Court or Court of Appeal confirming the grant of 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 Planning Permission by the Determining Authority or by the Secretary of State following an appeal;

“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;

“Deposit” means [REDACTED] plus VAT;

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

“Developer’s Conveyancer” means Hugh James, Two Central Square, Cardiff, CF10 1FA (Ref: Caroline O’Flaherty) 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 the subject of the Application being land at 1059 Bartons Road, Havant, Hampshire;

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

“Finally Determined” means where a Challenge has been made, 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 [19 June] 2024 being the date falling 6 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);

“Mitigation Land” such part of the Mitigation Site (referred to in the Nitrate s106 Agreement as **“Credits Linked Land”**) as determined by the Owner which is capable of providing the Agreed Number of Credits and to 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 edged red on the plan annexed to the Nitrate s106 Agreement title to which is registered at HM Land Registry under title numbers HP506221 and HP614524;

[REDACTED]

“Monitoring Authority” means South Downs National Park Authority;

“Nitrate s106 Agreement” means an agreement relating to the Mitigation Site dated 01 November 2023 and made between (1) East Hampshire District Council, (2) The Council of the Borough of Havant, (3) Winchester City Council, (4) South Downs National Park Authority and (5) Andrew Sellick;

“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/05437861/29) 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 Permission” means planning permission granted pursuant to the Application or pursuant to any appeal against a refusal of the Application;

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

“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;

“Unconditional Date” means the date on which the earlier of the following first occurs:

- (a) satisfaction of the Condition Precedent; or
- (b) waiver of the Condition Precedent in accordance with clause 11;

“VAT” means value added tax or any equivalent tax chargeable in the UK; and

“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 the Owner shall sell and the Developer shall buy the Agreed Number of Credits for the Purchase Price.
- 2.2 On the date of this agreement, the Developer will pay the Deposit to the Owner by Electronic Payment and the Owner shall thereafter reserve the Agreed Number of Credits for the Developer until the Longstop Date. The Deposit will be released by the Owner's Conveyancer to the Owner on the date of this agreement, 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 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.
- 2.4 The Developer cannot require the Owner to transfer the Agreed Number of Credits or any part of it to any person other than the owner for the time being of the Development Land.

3 PLANNING & CONDITION PRECEDENT

- 3.1 The Developer confirms it has submitted the Application at its own cost to the Determining Authority.
- 3.2 The Developer will use all reasonable endeavours to obtain the Planning Permission and satisfy the Condition Precedent before the Longstop Date and will pursue the Application and any related planning obligation and/or any appeal expeditiously and diligently.
- 3.3 The Developer will give the Owner at least ten (10) Working Days' notice of any meetings to be held with the Determining Authority where the issue of nitrate offset may arise and will give the Owner the opportunity to attend and participate.
- 3.4 The Developer will keep the Owner regularly informed as to progress of the Application and any appeal.
- 3.5 The Developer will supply the Owner with a copy of the decision notice on the Application or any related appeal within three (3) Working Days of receipt.
- 3.6 The Developer will notify the Owner in writing within three (3) Working Days of the Planning Permission becoming free from Challenge.

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 twenty (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 Agreed Number of Credits has been accepted by the Developer prior to the date of this agreement.
- 5.2 The Developer is deemed to have full knowledge of the Owner’s title to the Agreed 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.

6 MATTERS AFFECTING THE PROPERTY

The Owner will sell the Agreed Number of Credits 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] plus 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 on or before the date of this agreement;
- 7.3 [REDACTED] plus 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.

9 COMPLETION

- 9.1 Completion will take place on the Completion Date.
- 9.2 On completion:
 - 9.2.1 the Developer shall pay the Purchase Price (less any Deposit previously paid) to the Owner by Electronic Payment; and
 - 9.2.2 on receipt of all monies due from the Developer the Owner will serve the Notice of Purchase on the Determining Authority.

10 LONGSTOP

If the Condition Precedent is not either satisfied or 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.

11 WAIVER OF CONDITION PRECEDENT

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

12 TERMINATION & INSOLVENCY

- 12.1 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:

- 12.1.1 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;
- 12.1.2 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;
- 12.1.3 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;
- 12.1.4 a petition is filed, a notice is given, 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;
- 12.1.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Developer (being a company);
- 12.1.6 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;
- 12.1.7 a person becomes entitled to appoint a receiver over the assets of the Developer or a receiver is appointed over the assets of the Developer;
- 12.1.8 the Developer (being an individual) is the subject of a bankruptcy petition or order or makes an application for a bankruptcy order;
- 12.1.9 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 fourteen (14) Working Days;
- 12.1.10 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 12;
- 12.1.11 the Developer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 12.1.12 the Developer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs;
- 12.1.13 the Developer (being a company) is struck off from the Register of Companies; or
- 12.1.14 the Developer otherwise ceases to exist.

- 12.2 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.

13 NOTICES

- 13.1 Any notice given under this agreement may be given or made by or to the Party concerned or the solicitors for that Party.
- 13.2 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.
- 13.3 Any notice or payment shall be effective only if given or made by 5.30 pm on the day in question.
- 13.4 Notices can be served by email and/or post.
- 13.5 In the event of default by either Party on completion and the serving of a valid notice to complete by the non-defaulting Party's solicitor the defaulting Party will pay (but without prejudice to any other rights or remedies of the non-defaulting Party) the sum of £250 plus VAT in respect of the non-defaulting Party's solicitor's additional costs.

14 DETERMINATION OF DISPUTES

- 14.1 Subject to clause 14.7, 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 14. 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.
- 14.2 For the purposes of this clause 14 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.
- 14.3 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 14.4.
- 14.4 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.
- 14.5 The Specialist is to act as an independent expert and:
- 14.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other Party;
- 14.5.2 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;

14.5.3 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;

14.5.4 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;

14.5.5 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

14.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.

14.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 14, 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.

14.7 This clause 14 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.

15 ENTIRE AGREEMENT

15.1 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.

15.2 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).

16 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.

17 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.

18 GOVERNING LAW

18.1 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.

18.2 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.

[Redacted]

Signed for and on behalf of the Owner: [Redacted]

Signed for and on behalf of the Developer: [Redacted]